



January 9, 2025

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

RE: AFOP Public Comment on *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*; Docket Number: OSHA-2021-0009

Dear Secretary Parker:

The Association of Farmworker Opportunity Program (AFOP) is pleased to provide public comment on the United States Occupational Safety and Health Administration's (OSHA) Notice of Proposed Rulemaking (Docket No: OSHA-2021-0009), dated August 30, 2024, establishing a federal standard for *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings* (86 Fed. Reg. 59309). AFOP commends the agency for addressing a threat that too often stalks agricultural laborers as they toil in the fields to deliver the produce that feeds the nation.

With all 51 grantees of the National Farmworker Jobs Program (Public Law 113-128, Section 167) as its members, AFOP represents the largest job training program for agricultural workers in the United States. In addition to its members' work to provide life-changing career and housing services to these workers, AFOP ensures these organizations provide farmworkers training on heat stress, helping to secure for these laborers a safer workplace in the fields.

Medical data has long shown that excessive heat exposure can cause life-threatening heat stroke. It also exacerbates existing health problems, like asthma, kidney and heart disease, and diabetes. Although outdoor workers in agriculture and construction are at highest risk of heat-related injury, the problem affects all workers exposed to heat, including drivers, postal carriers, sanitation workers, healthcare workers covered in full personal protection equipment (PPE), and those working in warehouses, factories, or any other indoor locations without adequate climate control.

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The National Federation of Farmworker Training, Employment and Service Organizations An Equal Opportunity Employer



Farmworkers work all day under extreme temperatures year-round. During the summer, on an average day, temperatures in the fields are eight to ten degrees hotter than the daily high reported by the National Weather Service. During peak production seasons, May to September, workers are in the fields 12 hours or more in temperatures that frequently exceed 100 degrees. Many workplaces do not have access to shade for a break from the heat. Frequently, clean drinking water is also unavailable. While PPE is important when handling pesticides, it increases the worker's body temperature by five percent.

Heat deaths are hard to track and likely undercounted. According to the United States Environmental Protection Agency, excessive heat seriously injured nearly 70,000 U.S. workers and, unfortunately, killed 986 of them between 1992 and 2022, averaging 34 deaths per year. Many cases go unreported because of the lack of a federal standard. The Centers for Disease Control and Prevention found that crop workers are 35 times more likely to die from heat-related illness than civilian workers overall—a startling figure.

In 2010, AFOP Health & Safety Programs developed a heat stress prevention curriculum that won OSHA approval. The curriculum helps farmworkers identify the signs and symptoms of heat stress, recognize heat-related illness, and know how to prevent it and what to do in case of emergency. Since 2010, AFOP has helped train nearly 200,000 farmworkers in this critical knowledge, helping employers reduce heat-related illnesses among employees by 68 percent, according to the data AFOP has collected from growers since 2010.

Considering the ever-worsening threats of excessive heat to farmworker health and safety, AFOP strongly recommends OSHA adopt the final rule with the following requirements to prevent heat injuries and illnesses among workers laboring in the fields:

- 1. Employers should provide mandatory rest breaks in recovery areas away from the hot environment.**

Heat stress increases the body's core temperature. Workers need rest breaks to allow their core temperatures to return to normal. For indoor work, this should be in an air-conditioned or well-ventilated room. For outdoor environments, employers must provide workers with access to sufficient areas of shade. At heat stress thresholds, and dependent upon heat and work exertion levels, rest breaks should last 15 to 45 minutes per hour away from the hot environment. Regardless of scheduled breaks, any worker showing signs of heat illness should be given access to shade or a cooled room immediately.

Workers should never have to choose between their livelihood and their well-being. That is why AFOP supports OSHA's position that employer-mandated safety measures, such as rest breaks, remain the obligation of the employer. Under the Occupational Safety Act (OSH Act), employers are responsible for compliance with safety standards, including

providing adequate rest breaks when necessary to prevent heat-related illnesses. Just as employers must cover the costs of installing air-conditioning, providing water, or building shade canopies, they should also bear the financial responsibility for ensuring that workers are able to take preventive breaks to protect their health.

While the current standard requires employers to "allow and encourage" rest breaks at temperatures between 80°F and 89°F, AFOP is concerned this may not be sufficient. Workers frequently report being denied breaks, discouraged from taking breaks, or forced to continue working despite heat-related symptoms. For example, warehouse workers have stated that their employers make it difficult to take breaks, and workers in various industries have died due to inadequate break times. To be effective, rest breaks should be mandatory at the 80°F threshold, and they must be paid—just as they are at the high-heat threshold of 90°F.

AFOP also urges OSHA to eliminate the exemption for indoor sedentary workers, particularly those who stand, walk, or lift occasionally, as defined by OSHA (up to one-third of the workday). This could include warehouse workers or employees at seated stations in manufacturing facilities, regardless of the temperature. These workers need heat illness protections, and at the very least, this exemption should only apply if the workplace temperature is below the high-heat threshold. If temperatures exceed 90°F, the exemption should not apply.

2. Hydration: Employers should provide access to water and electrolytes.

To mitigate the effects of heat stress, workers must be given access, at no cost to themselves, to quantities of water sufficient to maintain adequate levels of hydration. The baseline is one cup of cool water per 15 to 20 minutes. Workers should be provided with more water in higher heat and more strenuous work. If workers are sweating for more than two hours, they should also be given electrolytes.

3. Monitoring: Employers should monitor heat exposure and symptoms of illness.

Employers must monitor both environmental heat exposure and employee workloads to ensure that no worker is exposed to heat stress at or above the NIOSH heat stress limits. Additionally, employers must institute a medical monitoring program to protect workers from heat-related illnesses.

4. Prevent Retaliation: Workers must be protected from employer retaliation when asserting heat safety rights.

Employers consistently retaliate against agricultural laborers and other workers who raise concerns about heat exposure. Indeed, systemic retaliation against workers who report

health and safety hazards is well documented. A 2009 report by the United States Government Accountability Office revealed that 67 percent of occupational health practitioners surveyed observed that workers feared disciplinary action for reporting injuries or illnesses. This fear is particularly acute among Black, immigrant, and low-wage workers who not only face higher rates of workplace injury and illness but are also more likely to experience retaliation. A survey of low-wage workers in 2009 found that 50 percent of those who reported an injury to their employer experienced illegal retaliation, including termination, involvement of immigration authorities, or being discouraged from filing for workers' compensation.

Given the widespread nature of health and safety-related retaliation, AFOP urges OSHA to establish a clear, enforceable provision that explicitly prohibits employer retaliation against workers who assert their rights under this rule. Such a provision would provide critical protection for workers seeking to exercise their rights, offering stronger safeguards beyond those currently available under existing legal protections.

5. Worker Information and Training: Employers should provide training on the dangers of heat stress.

All workers and supervisors who work in areas where there is a reasonable likelihood of heat illness must be trained in measures to prevent and mitigate that risk. Worker information and training should be in place to ensure that all workers and supervisors understand heat stress and the ways to minimize illness related to it.

All agricultural growers should be required to undergo basic heat stress prevention training and be certified in meeting basic heat-mitigating measures, like adequate breaks, water, electrolytes, shade, emergency equipment, and medical rescue planning. OSHA should make this training a requirement for all farms that receive federal agricultural supports.

AFOP recommends that OSHA revise Section (h), "Training," to read that, "Prior to any work at or above the heat trigger, the employer must ensure that each employee receives a copy of the employer's Heat Injury and Illness Prevention Plan and is trained in and understands its contents, including, but not limited to, the following: (list as in proposed regulation)."

6. Heat-related Surveillance and Record-keeping: Employers should maintain records that detail heat-related incidents, injuries, and deaths.

Employers should prospectively obtain and analyze data on all heat-related injuries and deaths, environmental and physiological measurements related to heat and other heat-related information. These records will allow employers to make improvements that will

guard against heat stress illness and death. As workers are in the best position to observe safety hazards, employees must be allowed to question heat stress prevention strategies without fear of reprisals.

Lastly, the final standard should be expanded and strengthened to better capture the full extent of work-related heat illnesses, prevent these illnesses, and improve worker protections:

- **Heat Incident Log:** Require all employers covered by the standard to maintain a written heat incident log as part of their heat illness and emergency response plan. This log should record all heat-related incidents identified by the employer or reported by a worker or their representative, regardless of whether they meet the criteria for an OSHA-recordable heat illness or injury. Workers and their representatives must have the right to access and copy this log. Such a log would help employers and workers identify heat-related hazards and conditions, enabling prospective measures to prevent future incidents.
- **Definition and Criteria:** Include a clear definition and criteria for work-related heat illnesses that must be recorded on OSHA Injury & Illness 300 log. This definition should broadly encompass all heat-related illnesses described in the Health Effects section of the preamble to the proposed heat standard and presume that these conditions require medical treatment beyond first aid.
- **Emergency Reporting:** Require that all work-related heat cases necessitating emergency care be reported to OSHA within eight hours under OSHA's severe injury reporting regulation.

AFOP is grateful for the opportunity to submit these comments and strongly urges the agency to ensure these points' inclusion in the final heat standard. If the agency has questions or requires any additional information, please contact AFOP Health & Safety Director Melanie Forti at forti@afop.org or AFOP Executive Director Daniel Sheehan at sheehan@afop.org.

Sincerely,

Melanie Forti
Director of Health & Safety