



**ASSOCIATION OF
METROPOLITAN
WATER AGENCIES**

LEADERS IN WATER

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January 14, 2025

Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Avenue NW
Washington, DC 20210

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

Submitted electronically

Dear Assistant Secretary Parker:

The Association of Metropolitan Water Agencies (AMWA) is pleased to have the opportunity to provide comments to the Occupational Safety and Health Administration (OSHA) regarding the *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings* proposed rulemaking. AMWA is an organization of the largest publicly owned drinking water systems in the United States. Member utilities collectively provide clean drinking water to over 160 million people. As large public water agencies, AMWA utilities are major employers in their communities, providing meaningful, safe, and respectable careers to thousands of individuals across the nation. The Association has long demonstrated a commitment to ensuring the health and safety of employees of publicly owned drinking water systems and is pleased to provide feedback on this proposed rulemaking on behalf of its members in OSHA State Plan¹ states, where public employers will be subject to this proposed rulemaking if finalized.

¹ OSHA. (2025). State Plans. <https://www.osha.gov/stateplans>.

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OSHA's commitment to worker safety and health, particularly as research² predicts increases in the occurrence of extreme heat events across the nation over the next three decades. AMWA has a longstanding commitment to helping water systems understand and mitigate risks from increasing temperatures, including by collaborating on a 2020 report, "It's Hot and Getting Hotter: A Report for Utilities on Heat Impacts,"³ which detailed impacts of extreme heat on utility employees and infrastructure, quantifying the number of days each year over the next half-century that will exceed daily average temperatures above 90 °F for five case study utilities.

Simultaneously, because AMWA members hold worker safety as an utmost value, they have been leaders in developing and implementing robust heat injury and illness prevention plans, particularly those in regions that consistently experience extreme heat.³ While some utilities do not have a published guideline or standard, nearly all large public water systems have practices that largely align with the requirements outlined in this proposed rulemaking. For example, most have standard procedures of ensuring access to fluids for outdoor staff, train supervisory staff to recognize the signs of heat illness, and implement practices like providing employees breaks to cool off in air-conditioned vehicles and under shade while at worksites. Most water utilities place emphasis on these actions particularly when a heat index or heat advisory is issued by the National Weather Service, as these issues are based on local conditions where workers are most likely to be at risk. Furthermore, AMWA believes it is an indication of the commitment of large, publicly owned water systems to their workers' safety that no national dataset has documented specific risks to workers in water utilities, despite utilities requiring year-round maintenance and construction work outdoors. For these reasons, the Association is well-positioned to provide overarching comments on the efficacy of this proposed rulemaking, and responses and recommendations to specific elements of the proposal.

I. AMWA's prevailing comments and concerns regarding the *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings* proposed rulemaking

AMWA utilities in states with OSHA State Plans that cover public employees are in-scope employers and will be subject to the final rule. These include AMWA members in Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

While AMWA recognizes the importance and necessity of instituting worker protections in response to heat risks, the Association believes that the proposed rule should be revised to adjust

² First Street Foundation. (August 15, 2022). The 6th National Risk Assessment: Hazardous Heat. <https://assets.riskfactor.com/media/National%20Risk%20Assessment%20Hazardous%20Heat.pdf>.

³AMWA and Water Utility Climate Alliance (WUCA). (September 2020). It's Hot and Getting Hotter: Implications of Extreme Heat on Water Utility Staff and Infrastructure, and Ideas for Adapting." <https://www.amwa.net/system/files/linked-files/Heat%20Impacts%20copy.pdf>.

the initial and high heat trigger level. As further described below, the initial heat trigger level, which the proposal defines as a heat index of 80 °F or a wet bulb globe temperature (WBGT) equal to the National Institute for Occupation Safety and Health (NIOSH) Recommended Alert Limit (RAL), is alone an inappropriate measure with which to trigger actions and recordkeeping, given regional variation in the nation’s year-round temperatures and individual workers’ acclimatization to their regions.

OSHA should reconsider the use of a one-size-fits-all approach to the initial and high heat trigger levels. Instead, the Association encourages OSHA to allow employers to incorporate region-specific trigger levels that more adequately protect workers while reducing burdens. Allowing each employer to develop their own specific initial and high heat trigger heat index temperatures, based on reasonably-expected local conditions, in the Heat Injury and Illness Prevention Plans (HIIPP) described in proposed 29 CFR §1910.148(c) and following the requirements in 29 CFR §1910.148, would provide more appropriate protections for employees. The use of the National Weather Services’ (NWS) Heat Index tools⁴, which outline heat outlooks, advisories, watches, and warnings, in coordination with local officials, would be a better method of addressing real heat concerns for individuals at a local-specific level.

Finally, OSHA’s Fact Sheet⁵ on the proposed rulemaking should be revised to accurately align the recordkeeping requirements with the proposed rulemaking. As presented, the fact sheet’s table would lead viewers to incorrectly assume that recordkeeping of all elements of the proposed rulemaking, including the identification of heat hazard levels, HIIPP, procedures, training, and response procedures, is required by this proposed rulemaking. While the prose above clarifies that employers must have and maintain only indoor monitoring data, AMWA encourages OSHA to clarify that in the table below.

II. AMWA Comments on Specific Elements of the proposed rulemaking

AMWA recommends that OSHA redevelop this rulemaking to allow employers to establish relevant initial and high heat triggers based on state and regional conditions. The initial heat trigger level – a heat index of 80 °F or a wet bulb globe temperature (WBGT) equal to the National Institute for Occupation Safety and Health (NIOSH) Recommended Alert Limit (RAL)⁶ – and high heat trigger level – heat index of 90°F or wet bulb globe temperature equal to the NIOSH Recommended Exposure Limit – are inappropriate measures, given regional variation in the nation’s year-round temperatures and individual workers’ acclimatization to their regions. Many regions of the nation experience daily temperatures that exceed a heat index of 80 °F for at least

⁴ National Weather Service. (2025). Heat Forecast Tools. <https://www.weather.gov/safety/heat-index>.

⁵ OSHA. (2024). Proposed Rule: Fact Sheet: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings. <https://www.osha.gov/sites/default/files/publications/heat-rulemaking-factsheet.pdf>.

⁶ *Notice of proposed rulemaking: Heat Injury and Illness Prevention*, 89 F.R. 70698 (proposed August 30, 2024). <https://www.federalregister.gov/documents/2024/08/30/2024-14824/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>.

half or more of the year, which as a result have minimal effects on acclimatized employees. For example, using the average daily temperatures of the warmest recorded months in Phoenix, Arizona⁷, demonstrates that, even with low relative humidity of 10% to 30%, residents of Phoenix would experience daytime temperatures exceeding a Heat Index of 80 °F from May to October each year. Conversely, a heat index of 80 °F may be safety- or life-threatening for employees in cities like Fargo, North Dakota, or Fairbanks, Alaska, which do not frequently experience such temperatures. AMWA therefore recommends OSHA revisit the appropriateness of both an initial heat trigger level of 80 °F heat index and a high heat trigger level of 90 °F heat index through alternate tools, like the NWS’s Heat Index tools and advisories.

Furthermore, AMWA is concerned that definitions in 29 CFR §1910.148(d), identifying heat hazards, as written, lack enough specificity to be useful to employers. Specifically, 29 CFR §1910.148(d)(2) declares that employers must monitor with “sufficient frequency” to determine with reasonable accuracy employees’ exposure to heat but does not define sufficient frequency. OSHA additionally requests feedback on the accuracy and specificity of tools in the preamble to this proposed rulemaking. AMWA encourages OSHA to retain employer flexibility in determining heat hazards and cautions that overly prescriptive frequency (e.g., every hour) may prevent employers from adequately and efficiently understanding when they are required to institute requirements under this proposed rulemaking.

Additionally, throughout the lengthy proposal, several other elements of requirements at or above the initial and high trigger levels lack clarity. Specifically, the following elements are not characterized through definitions, metrics, or examples:

- The proposed 29 CFR §1910.148(c)(5) calls for the designation of heat safety coordinators, and 29 CFR §1910.148(h)(2) calls for the training of heat safety coordinators. Neither element explains whether heat safety coordinators must be considered a “competent person” pursuant to OSHA’s definition.⁸ AMWA recommends OSHA clarify this in a manner that is not restrictive to employers.
- The proposed 29 CFR §1910.148 (e)(2)(ii), OSHA does not define the term “suitably cool,” which could be subject to interpretation. Therefore, a definition, specific metrics, or examples of “suitably cool” conditions would provide needed clarity to entities subject to this proposal.
- The proposed 29 CFR §1910.148 (e)(7)(ii) requires employees who have been absent from work for 14 days to be re-acclimatized. OSHA should specify whether this is 14 calendar days or 14 business days.

⁷ National Oceanic and Atmospheric Administration/ National Weather Service. (August 25, 2023). Annual and Monthly Record data for Phoenix. <https://www.weather.gov/psr/PhoenixRecordData>.

⁸ 29 CFR 1926.32(f). [https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.32#1926.32\(f\)](https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.32#1926.32(f)).

If OSHA moves forward with a final rulemaking, AMWA recommends that OSHA address these definitions in a manner that provides clarity to employers while avoiding overly restrictive mandates.

One additional matter that AMWA recommends OSHA consider in guidance separate from this rulemaking is a focus on research and best practices for worker safety in nighttime conditions of high heat. The Notice of Proposed Rulemaking cites various studies on preventing heat-related injuries for daytime outdoor workers but lacks any research on nighttime heat risks. Using temperatures as of October 2024 in Las Vegas, Nevada, as an example, there were 22 nights with lows of 90°F or higher and 85 nights with lows of 80°F or higher; combined with average humidity for the area, these conditions frequently surpass the rulemaking's proposed heat trigger thresholds at night throughout the late spring and summer seasons. In regions of the nation with lower summer temperatures but higher humidity, nighttime heat index temperatures may also exceed these trigger levels for much of the year. AMWA therefore recommends OSHA consider the use of more research in nighttime heat risks and consider developing further guidance and tools outside of this rulemaking.

Lastly, OSHA solicits comment on the adequacy of the proposed effective and compliance dates. OSHA aims to ensure that protective measures are implemented as quickly as possible, while also providing employers with sufficient time to implement these measures. AMWA encourages OSHA to consider a longer implementation timeline given that, if finalized, the rule would require major changes and clarifications to its provisions. Proposed 29 CFR §1910.148 (k)(2) would require employers to comply with all requirements of the standard just 90 days after the effective date of a final rule (i.e., 150 days after the date of publication of the final standard in the Federal Register). AMWA does not believe this is an adequate amount of time for all covered employers to understand the final rule, for OSHA State Plan states to develop guidance for employers, and for employers to obtain the necessary devices and recordkeeping tools to meet the requirements of the rulemaking.

III. Conclusion

AMWA thanks OSHA for the opportunity to provide comment on the proposed rulemaking, *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*. While the Association agrees with the goal of protecting workers from the risks of extreme heat, AMWA believes the rulemaking should be significantly altered to achieve demonstrable benefits to worker safety, and clarity for employers. As proposed in the rule, the heat trigger levels would not appropriately reflect the conditions of our nation's various regional climate differences. Furthermore, some elements of the proposed rulemaking's requirements are overly vague and will likely impose an undue burden on employers without tangible benefits to worker safety. While AMWA members remain committed to protecting worker safety from heat, the proposed rulemaking requires alterations to have the highest impacts on protecting workers from extreme heat.

Assistant Secretary Douglas L. Parker

January 14, 2025

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AMWA appreciates OSHA's consideration of these comments. If you have any questions about this letter, please contact Jessica Evans, AMWA's Senior Manager of Government Affairs and Sustainability Policy at evans@amwa.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Dobbins". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Thomas Dobbins
Chief Executive Officer
Association of Metropolitan Water Agencies

cc: Stephen Schayer, Director, Office of Physical Hazards & Others