

INEDA | SERVING AG, CONSTRUCTION AND OUTDOOR POWER
EQUIPMENT DEALERS ACROSS IOWA AND NEBRASKA

regulatory ALERT

OSHA Proposed Standard on Heat Injury, Illness Prevention

ISSUE

AUGUST 20, 2024 – OSHA has been working on a [heat stress standard](#) since President Biden took office in 2021. On July 2, it released a proposed rule on **“Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings”**. The regulatory text is [attached](#). The attached proposed rule has not yet been published in the Federal Register. When publication occurs, it will be open to public comment for 120 days. This is not yet in effect, and almost certainly will face legal challenges should it be finalized as proposed. AED, along with our construction and agriculture sector partner organizations and the broader business community, will continue to argue that a one-sized-fits-all heat standard is unworkable, and geography and the uniqueness of specific industries must be considered.

SUMMARY of the PROPOSED OSHA HEAT RULEMAKING

The proposed heat standard covers nearly all employers regulated by OSHA, including those in general industry, construction, maritime, and agriculture sectors. The proposed rule requires employers to develop a “Heat Injury and Illness Prevention Plan” with site-specific information to identify, monitor, and control heat hazards in the workplace. The proposed standard requires employers to implement specific control measures if the temperature reaches an Initial Heat Trigger (a heat index of 80°F) with additional controls required when the temperature reaches a High Heat Trigger (a heat index of 90°F). OSHA’s fact sheet is [here](#).

If operating under the Initial Heat Trigger (a heat index of 80°F), employers must provide employees with the following:

- Sufficient amounts of cool drinking water in readily accessible locations;
- Paid rest breaks in area(s) with cooling measures;
- Indoor work area controls (such as air conditioning or fans); and
- If provided by the employer, personal protective equipment (PPE) with cooling PPE that is maintained at all times during use.

If operating under the High Heat Trigger (a heat index of 90°F), employees must be provided with the controls required for the Initial Heat Trigger along with the following:

- Mandatory paid rest breaks of 15 minutes at least every two hours (unpaid meal break may count as a rest break);
- A system for observing employees for signs and symptoms of heat-related illness; and
- A hazard alert reminding employees to drink water and take breaks.

HISTORY

OSHA has long tackled heat related injury and illness under its general duty clause, issuing [technical guidance](#) regarding heat stress prevention in 2016 and adopting a similar [National Emphasis Program](#) in 2022. This 2024 proposal dedicated standard explicitly identifies the hazard when conditions have reached unsafe levels of heat exposure and provides clear parameters to mitigate the risks that heat stress poses for employees.

It remains to be seen whether the new standards will become final under the current administration, and the outcome will likely largely depend on the results of the upcoming election. If there is a change in administration, a final heat rule could be challenged through the Congressional Review Act (CRA), which act could be used in the next presidency to block recently completed rules and regulations.

ADDITIONAL BACKGROUND

OSHA's proposed rulemaking comes as other jurisdictions consider similar requirements. Joining Minnesota, Oregon, and Washington, California [adopted](#) a similar rule for indoor workers earlier this year. And, in March, Phoenix's City Council also [adopted](#) similar heat protection requirements for city contractors.

In Florida, however, Gov. Ron DeSantis recently signed [House Bill 433](#) into law that preempts cities and counties from adopting heat stress prevention requirements, joining Texas in barring local governments from adopting such measures. Regardless of local action, if OSHA finalizes the proposed standard, these requirements must be adhered to by employers as enforced by state agencies in state plan states which are required to have matching standards, and by OSHA in the remaining jurisdictions.

ACTION

INEDA and Associated Equipment Distributors (AED) have a formal agreement to collaborate on federal advocacy efforts. Together we are advancing dealer interests in Washington, D.C.

If you have specific questions about the proposed rule and its application to your company, please contact your attorney for further guidance. While the outcome of a heat rule plays out, OSHA is continuing to prioritize heat-related inspections under its National Emphasis Program (NEP)—Outdoor and Indoor Heat-Related Hazards, launched in 2022. Heat remains a high priority issue for OSHA nationwide. Regardless of whether the newly proposed rule takes effect, employers should consider working with their counsel to review and update their heat illness prevention programs to help address heat hazards and minimize enforcement risk.