



October 30, 2025

The Honorable David Keeling
Assistant Secretary of Labor
Occupational Safety and Health Administration
Department of Labor
200 Constitution Avenue N.W.
Washington, D.C. 20210

VIA ELECTRONIC SUBMISSION TO <https://www.regulations.gov/commenton/OSHA-2021-0009-25504>

RE: Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings Proposed Rule, Docket (OSHA-2021-0009)

Dear Assistant Secretary Keeling:

The National Restaurant Association appreciates the opportunity to submit these post-hearing comments on OSHA's proposed *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings* standard.

Founded in 1919, the National Restaurant Association is the leading business association representing the U.S. restaurant and foodservice industry, which encompasses more than one million establishments employing 15.7 million people. In 2025, restaurants are projected to generate \$1.5 trillion in sales, making the industry one of the largest contributors to the U.S. economy and a source of employment for one in every ten workers. Most restaurants are small businesses: ninety percent employ fewer than 50 people, and seven in ten are single-unit operations running on margins of just 3–5 percent. These realities leave operators particularly sensitive to regulatory costs and administrative burdens.

Our comments expand on the Association's testimony during OSHA's informal rulemaking hearing and focus on three key points:

1. The Proposed Rule would impose disproportionate burdens on small businesses;
2. OSHA already has sufficient authority and tools to address heat-related risks; and
3. A collaborative, flexible approach would better advance shared safety objectives.

I. The Proposed Rule Would Disproportionately Burden Small Businesses

Small businesses make up the overwhelming majority of restaurants in the United States. As mentioned, more than nine in ten employ fewer than 50 workers, often without dedicated HR or

compliance staff. The Proposed Rule's requirements, including written Heat Injury and Illness Prevention Plans, acclimatization tracking, rest-break scheduling, and extensive recordkeeping, would create ongoing administrative demands and costs far beyond the capacity of many operators.

Prescriptive rest-break intervals tied to fixed heat-index triggers would be unworkable in an industry where workflow and customer volume fluctuate from minute to minute. Restaurant operators need the flexibility to manage staffing and service without risking inadvertent non-compliance.

Likewise, the engineering, documentation, and monitoring provisions substantially underestimate compliance costs and feasibility. Restaurants occupy a wide range of facilities, many of them small, leased, or located in dense urban areas where structural modifications are impractical. Although the rule does not explicitly require the use of new technology, its monitoring and documentation expectations would effectively compel employers to purchase temperature-tracking tools or other equipment to demonstrate compliance. This added expense would present a significant challenge for small businesses, which are already facing rising costs and operating on thin profit margins.

Should OSHA move forward despite these concerns, the agency should consider a small business exemption or a simplified compliance pathway that recognizes the limited resources of small business operators. Such an approach would align with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act (SBREFA), which require agencies to consider less-burdensome alternatives for small entities.

II. OSHA Already Has the Authority and Tools It Needs

The Occupational Safety and Health Act already empowers OSHA to address recognized workplace hazards, including heat, through the General Duty Clause in Section 5(a)(1) of the Act. Using that statutory authority, OSHA has also developed programmatic initiatives, such as the National Emphasis Program (NEP) on Outdoor and Indoor Heat-Related Hazards, which enable the agency to focus enforcement and compliance assistance on workplaces presenting an elevated risk. Together, these mechanisms provide OSHA with the flexibility to respond effectively to potential hazards without requiring an additional nationwide standard.

Restaurant operations vary significantly across the United States, with differing physical layouts, staffing patterns, and available infrastructure. A uniform federal rule cannot account for this diversity. The flexibility embedded in OSHA's existing authority enables the agency to evaluate conditions on a case-by-case basis and tailor its actions accordingly. For these reasons, additional rulemaking is neither necessary nor proportional. OSHA's existing authority already provides a proven mechanism to address unsafe conditions when they arise.

III. A Collaborative and Flexible Path Forward

The Association supports OSHA's goal of preventing heat-related injuries and illnesses and believes the agency can achieve this objective through education, outreach, and collaboration, rather than new prescriptive regulations.

Building on that shared objective, and as noted in our January comments, common industry practices to help manage workplace heat include improving ventilation, encouraging hydration, and providing access to cooling tools where appropriate.

Expanding and refining the agency's Heat Illness Prevention Campaign to include industry-specific, practical guidance would enable employers to strengthen existing practices without incurring additional administrative burdens. Specifically, OSHA could:

1. Promote outreach and training through coordinated efforts with national and state trade associations, small business coalitions, and other relevant industry and workforce organizations;
2. Encourage voluntary, performance-based approaches that align with OSHA's safety objectives without imposing new procedural requirements; and
3. Engage stakeholders in developing scalable templates that employers can implement without specialized compliance staff.

This cooperative model would enable OSHA to continue targeted enforcement where genuine hazards exist, while promoting broad awareness through partnerships and education. It would also conserve agency resources and avoid unnecessary burdens on small employers, ensuring that regulatory efforts strengthen workplace safety without imposing excessive costs or complexity.

Conclusion

The National Restaurant Association appreciates OSHA's consideration of these post-hearing comments and urges the agency to withdraw the Proposed Rule. OSHA currently possesses the established authority and enforcement mechanisms needed to address heat-related hazards through the General Duty Clause and existing programmatic initiatives such as the NEP. A collaborative and flexible approach, grounded in current authority and centered on education, will enable the agency to focus resources where they are most needed while avoiding unnecessary burdens on small businesses that form the backbone of the U.S. restaurant industry.

Sincerely,



Jordan Heiliczer
Director of Labor and Workforce Policy
National Restaurant Association