



**COMMENTS SUBMITTED BY
THE FLEXIBLE PACKAGING ASSOCIATION**

**BEFORE THE
OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION
DOCKET NUMBER: OSHA-2021-0009**

**ON PROPOSED HEAT INJURY AND ILLNESS PREVENTION
IN OUTDOOR AND INDOOR WORK SETTINGS
89 Fed. Reg. 70689 (Aug. 30, 2024), as amended by
89 Fed. Reg. 94631 (Nov 29, 2024)**

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I. INTRODUCTION AND FPA BACKGROUND

Introduction – The Flexible Packaging Association (“FPA”), on behalf of its members, is submitting these comments on the August 24, 2024 proposed rule published by the Occupational Safety and Health Administration (“OSHA”), to identify and prevent “heat injury and illness (HII)” in indoor and outdoor workplaces. 89 Fed. Reg. 70689 (Aug. 30, 2024). FPA’s members regard the prevention of injuries and accidents to their employees as an imperative, and therefore, FPA is supportive of OSHA’s efforts to inform and educate employers, employees, and the public on issues and practices regarding the health and well-being of employees. Nonetheless, FPA has significant concerns with several requirements in the Notice of Proposed Rulemaking (“NPRM” or “Notice”), and it has other suggestions and questions, which are discussed in our following comments.

Background– FPA represents flexible packaging manufacturers and suppliers to the industry in the United States. Flexible packaging represents \$42.9 billion in annual sales; is the second largest, and fastest growing segment of the domestic packaging industry; and employs approximately 85,000 workers in the United States. Flexible packaging is produced from paper, plastic, film, aluminum foil, or any combination of these materials, and includes bags, pouches, labels, liners, wraps, rollstock, and other flexible products. Food packaging represents 44%, or \$19 billion, of flexible packaging’s portfolio in the U.S. If you add beverages and pet food, this rises to 52% or \$22.4 billion. Thus, FPA and its members are dedicated to the protection and preservation of food products as well as the reduction of food insecurity, foodborne illnesses, and food waste—and also the protection of their employees.

II. NEED FOR PROPOSAL

OSHA makes “preliminary findings” that all employers must adopt Heat Injury and Illness (“HRII”) prevention plans with the specified programs elements being proposed because of the number of heat-related illnesses and injuries, and also deaths, experienced by employees in outdoor and indoor work environments (referred to as “work sites” in this Notice) that can be prevented. 89 Fed. Reg. 70703/1. The NPRM also represents with candor that heat injuries owing to unsafe work environment are not easily enforceable by OSHA under the OSH Act’s General Duty Clause, and if they have been enforced successfully, rarely effect any workplace reforms. *Id* at 70704-70705. OSHA presents data supporting the conclusion that many more injuries occurred than have been recorded, and that the injuries will continue to occur because employees are resistant to rest breaks and/or admitting to Heat-Related Illnesses and Injuries because employers will think that they are lazy and/or that they will be fired. *Id.* at 70787-70789. That is a sad state of affairs in the closing first quarter of the twenty-first century, and FPA suggests it also may be indicative of the difficulty in reasonably “regulating” human behavior in the workplace.

FPA must note, on the other hand, that OSHA’s preliminary findings are, in most part, predicated on very limited academic literature, particularly given the span of 70-years since several studies on which this rulemaking relies were first published, including but not limited to a 1954 of South African gold miners utilized by OSHA in the rulemaking to support its proposed

“acclimatization requirements”. *Id.* at 70758 [*Wyndham et al.*]. The studies suffer from a dearth of empirical data and controls supporting their conclusions. This may not be uncommon for behavioral studies, which have little resemblances to epidemiological studies of occupational illnesses—themselves much-maligned for their lack of rigor. The number of heat-related illnesses recorded historically, the Notice also states, are under-represented in both the literature and OSHA enforcement, but OSHA declares that they are preventable if the proposed regulations are finalized and adopted by every employer. *Id.* at 70703-4. OSHA’s basis for the rulemaking, therefore, presents some potentially significant administrative law obstacles to finalizing the regulation, which FPA discusses below and which the Department of Labor should address before finalizing the rule.

In a nutshell, OSHA’s “preliminary conclusions,” see *id.* at 70768/1, 70802-70803, are that the federal government must issue the proposed regulations so that employees will be mindful of HRII issues and will take rest breaks and drink sufficient water, etc. to prevent HRII-related illnesses and possibly death *and* that employers—whom otherwise may hesitate to pay for such practices and/or might fire workers who take breaks or slow down on the job because of heat—will be required to pay employees their regular wage for breaks to ensure that employees take them. See, e.g., *id.* at 70704-70706. FPA observes that accepting this information for the purpose for which OSHA has offered it would be difficult, were it not for our members’ recognition of heat-related illnesses and injuries in certain work environments, particularly in specific industries where heat from blast furnaces, coking, and aluminum pots are well-recognized. FPA understands, however, that regulating all employers is much easier than regulating “industry-by-industry,” but respectfully points out that in doing so, OSHA disregards fundamental administrative law precedent to explore alternative methods of regulation as a reasonable alternative. See e.g., *Motor Vehicle Mfrs. Ass’n. of U.S., Inc. v. State Farm Mutual*, 463 U.S. 29 (1983), in which the Supreme Court ruled that an agency must explore alternatives and explain why the one selected is more reasonable than others.

On the other hand, FPA appreciates that the proposal, if finalized, would give employers significant discretion in identifying areas of a worksite where heat may be a potential and significant issue at individual facilities. This flexibility, and the absence of a burdensome oversight program for review and approval of individually-tailored “Heat Injury and Illness Prevention Plans (HIIPP),” is critical to the successful implementation of the program, in FPA’s view.

III. DISCUSSION OF FPA COMMENTS

Background: General Description of Flexible Packaging “Work Sites”- FPA’s comments and requests for clarification are based on the following configuration of most flexible packaging plants: Generally, worksites are separated into five activities: (1) the printing and production floor; (2) areas where plastic extrusion to form films, seals, and other packaging components takes place; (3) coating and ink mixing room (and supporting labs for sampling and analysis); (4) business and management areas including managers’ offices, conference rooms; and (5) warehousing and loading docks. The principle focus of FPA’s comments and requests

for clarification are the printing and coating areas and extrusion areas, which can be two-to-four stories, housing one or more presses or extrusion lines.¹ The buildings are typically heated and/or air conditioned, depending on the season, and they are equipped with fans and blowers that are designed to capture emissions from the flexible packaging presses, which are then vented through roof ducts to thermal and/or catalytic oxidizers for 98-99% pollution removal and destruction.

Each press may be two or three stories tall and contain numerous “stations” and decks where various coatings and inks are applied by enormous etched or lithographed cylinders that are raised and lowered by mechanical robots onto the presses where the substrate (a.k.a., the “web”) moves through multiple stations where individual cylinders apply graphics and coatings or inks and are dried and/or cured by a dedicated oven. The finished product then moves to winders and cutters at the end of each of the presses. There also are other areas with various stations for blowing film and extrusion of flexible packaging components, and their assemblage into packaging, which also are carried out on long process lines, with very large dies (in the case of extrusion), rollers, and ovens. Because of their size and inherent dangers of the presses and related-equipment like doctor knives and ovens, production equipment is “guarded” with safety alarms with interlocks that when breached shut down the ongoing process. Most presses and extrusion lines also have one or more dedicated operator stations on the work floor, which may or may not be enclosed and air conditioned. Employees on the elevated print decks may be most vulnerable to heat-related injuries.

A. FPA’s Comments on Proposed § 1910.148 (a) Scope of Application

Background - The proposed rule applies *to all employers*, with narrow exclusions for fire fighters and emergency response/medical activities. See proposed §1910.148(a)(3).² *Most importantly from FPA’s perspective*, the proposed standard does *not* apply to “work activities” for which there is no reasonable expectation of exposure at or above the proposed ambient “*initial heat trigger*” of 80 degrees F. See proposed § 1910.148(a)(2).

1. FPA believes that the employer’s discretion at the outset of preparing an HIIPP to delineate areas where it reasonable to expect that employees will be exposed to temperatures at or above the final rule’s heat trigger is a fundamental strength of the proposed rule

Proposed §1910.148(a)(2) provides that the standard does not apply to work activities for which there is no reasonable expectation of exposure at or above the “initial heat trigger;” as well as for work activities where there would be a short duration exposure of 15 minutes or less during a 60-minute period. Proposed §1910.148(c)(1) requires an employer to develop its HIIPP with site-specific information, and OSHA would require that the employer provides an

¹ Loading docks also are identified by members’ risk assessment as areas where heat concerns may exist.

² The rule’s sole accommodation for small workplaces with ten or fewer employees is that the Heat Illness and Injury Prevention Plan (HIIPP) need not be in writing. See *id.* at paragraph 148(c)(4)

opportunity for input from employees per §1910.148(c)(6). There does not appear to be any requirement for review of a draft HIIPP by OSHA officials at the state, regional or national level.

FPA applauds OSHA's decision to defer to employers to make these decisions since they know a worksite the best. By providing employee opportunity for input, there is a sufficient check on planning to ensure that areas where it is reasonable to anticipate heat exposures above the targeted level(s) are identified and delineated in the plan. Any review by OSHA and/or state officials would be time-consuming and unlikely to be productive, simply delaying the adoption of an HIIPP, making the plan available to employees – including translations – and training.

FPA notes that there was not a time period in the proposed regulation by which a site-specific HIIPP must be adopted and implemented. FPA suggests that a reasonable period of 24-months after the effective date of final promulgation of the rule would be reasonable, particularly since there will be many steps in producing the first plan, which will take a lot of managers' attention (in addition to their other responsibilities). Also, we suggest that the proposal should include an implementation date, which should include training for employees assigned to targeted areas of the worksite, before the program is officially initiated. Because implementation may vary greatly by the size of the worksite, number of employees, and indeed the number of targeted areas and their respective sizes, we recommend that OSHA should not set a specific time-limit on implementation of a program, and leave that issue to the employer. If there is a time limit on full limitation of the program, it should be generous and no shorter than a year.

2. While FPA does not take issue with the use of a “heat trigger” for delineating areas in which it is reasonable to expect exposures that could result in heat illness and/or injury, FPA does not support the use of the proposed 80°F “initial heat trigger,” defined in proposed § 1910.148(b).

FPA does not believe that OSHA has offered a satisfactory explanation for proposing the use of two heat triggers in planning and implementing an HIIPP. The use of two heat triggers is confusing, requires multiple measurements and two separate sets of actions, the second triggered by the high heat trigger (in the proposal of 90°F) piggy-backing off of the actions that must be implemented if the proposed initial heat trigger of 80°F is met or exceeded. These two sets of obligations are respectively detailed in proposed §§ 1910.148(e) and (f), and their fundamental difference is for mandatory paid 15-minute breaks for employees when the high heat trigger is reached or exceeded. (In contrast, the rules for areas that reach or exceed the initial heat trigger provide for rest breaks if needed, but it does not appear that they would be “paid breaks.”) FPA believes that the OSHA should not utilize the proposed *initial heat trigger* for general implementation of a company's HIIPP or in fact, use any initial heat trigger at all. Instead, as we discuss below, FPA recommends that OSHA utilize one heat trigger of 90°F in planning and implementing HIIPPs, or alternatively, that OSHA should adopt a range of high heat triggers and allow an employer to make a reasoned decision about which to apply based on a work site's location.

3. FPA requests clarification on several HIIPP applicability issues.

Identification of Affected Areas - First, we infer from the NPRM preamble that only certain “areas” of a building would be subject to a Heat Injury and Illness Prevention Plan (HIIPP), because in flexible packaging processes, there only would be a “reasonable expectation” of an employee’s exposure at or above the initial heat trigger *in those areas*. For example, there would not be a reasonable expectation that a forklift driver at ground level would be reasonably expected to be exposed at or above the heat trigger. Nor would operators of the robots placing the printing cylinders on the presses be reasonably expected to be exposed to temperatures at or above the initial trigger temperature. Moreover, since tasks on blown film extruders would not be reasonably expected to meet or exceed 15 minutes during an hour, these areas would not be covered by an HIIPP. Has FPA characterized OSHA’s intent properly, or must the HIIPP apply to an entire building in which only certain areas may exceed the proposed “heat trigger(s)?”

Second, we also infer that an area subject to an HIIPP may be described as at a certain height of a building or a room in a building, because in our industry, it only would be reasonable to expect that the heat trigger(s) would be exceeded at the higher elevations of a press near the roofline of a building during the entire year. We also would expect a heat trigger only to be met or exceeded during certain months during the year at northern work sites. If the proposed rule is adopted, would FPA’s members be able to apply the company HIIPP at work stations or to employees operating near the roofline, as opposed to the floor of the building? In other words, if an operator of a press is working near the roofline, would an operator on the floor need to be protected? What if an operator or a maintenance employee would only be expected to work limited period of time near the roofline (e.g., less than 15 minutes) where there might be a reasonable expectation that the heat trigger(s) would be exceeded, but he or she ends up needing to spend more time up near the roofline for a repair to equipment?

Indoor Monitoring Requirements- Related to those questions are issues related to the proposed conditions requiring monitoring the temperature of work site areas where an employer has a reasonable expectation that the proposed initial heat trigger of 80°F would be met or exceeded. The proposed regulation provides that an employer must deploy monitoring to determine if one or both temperature triggers are met or exceeded, but that the employer “can assume that the temperature at a work area is at or above both the initial heat and high heat triggers, instead of conducting onsite measurements or tracking local forecasts.” See proposed §1910.148(d)(5) (“*exemption from monitoring*”). Under that proposed section of the rule, it appears that the employer must implement all control measures outlined in proposed paragraphs (e) and (f) of the rule, even though it only would be reasonable to anticipate heat exposure in a specific area during certain seasons of the year. (For instance, many of FPA’s members’ flexible packaging plants are located around the Great Lakes where it only would be reasonable to expect the trigger temperature to be met or exceeded during July through early September.)

FPA submits that it is unreasonable for monitoring to be deployed when it is not reasonable to expect that a worker would be exposed to heat above a trigger, if the employer automatically implements proposed paragraphs (e) and (f) during the summer. Taking heat measurements

continuously requires sophisticated continuous monitoring and recordkeeping, so there is a viable reason to opt out of monitoring. On the other hand, implementing the HIIPP during the entire year for areas where there only may be seasonal exposures to temperatures meeting or exceeding the initial and/or high heat targets, requires additional staff, mandatory paid breaks every two hours, acclimatization, and other activities, which are neither necessary or practical for some worksites most of the year. FPA therefore recommends that OSHA modify the regulation if this rulemaking is finalized so that monitoring is only necessary at times of the year when a work site can reasonably anticipate that temperatures will meet or exceed the initial heat trigger. Further, if adopted, the proposed rule should be amended so that if an employer opts out of monitoring, the company only must implement the HIIPP at times when it is reasonable to anticipate that an area of a work site will meet or exceed the heat trigger(s) adopted in the final rule.

B. FPA’s Comments on Selected Proposed § 1910.148 (b) Definitions

FPA members have comments and/or questions on certain definitions that would trigger actions on the part of the employer, if they were to be adopted as proposed:

1. “Initial heat trigger” would be defined as “a heat index of 80°F or a wet bulb temperature equal to the NIOSH Recommended Alert Limit (RAL.)” If the initial heat trigger is reached, elements of an employer’s Heat Illness and Injury Prevention Plan (“HIIPP”) set forth in proposed §§ 1910.148(c) and (e) would be implemented, including water breaks, increased indoor ventilation including fans or air conditioning [or in cases of radiant heat sources, shielding and/or barriers], acclimatization for new or returning workers, rest breaks if needed, and effective communication with heat safety coordinators and supervisors. *Id.* at 71070-071. OSHA explains the basis for the proposed “initial heat trigger” at page 70743/1 of the Notice:

The observational evidence that OSHA identified suggests that the vast majority of known occupational heat-related fatalities occur above the initial heat index trigger, making it a sensitive trigger for heat-related fatalities. The vast majority of nonfatal occupational HRIIs also occur above this trigger.

FPA submits to OSHA that its evidence that most heat related injuries and fatalities occur over 80°F is not strong, or at least stronger than throwing a dart and picking 75°F or 85°F. More important, 80°F is not particularly well-grounded in the empirical data and refereed academic literature presented in the proposed rulemaking. For instance, although OSHA offers a NIOSH bulletin that was published in 1990’s as an accepted basis for the proposed definition of *initial heat trigger*; the RAL at issue is agency guidance and was not established during an administrative law rulemaking that was available for public notice and public comment or judicial challenge under the Administrative Procedures Act. It therefore, by itself, does not offer sufficient support for the proposal, which as it stands now would be vulnerable to a legal challenge based on “arbitrary and capricious” standards, and most particularly pursuant to *Loper Bright Enterprise v. Raimondo*, 144 S. Ct. 2244 (2024) (*a federal court should not defer to the expert judgment of an administrative agency*). Also, since there does not seem to have been a close examination of heat-related illnesses and injuries at temperature ranges between 70-90°F or 80-100°F, it does not

appear that OSHA examined alternative temperatures and/or temperature ranges related to the onset of heat-related illnesses and injuries in the workplace, which could further undermine the regulation if finalized as proposed. This is particularly problematic because in most areas of the south and in a significant number of work sites in the middle of the U.S., it is not uncommon for work areas, except for those in the northern part of the country, to exceed 80°F year-round.

FPA, therefore, respectfully suggests that while it appears that OSHA intended for employers have a choice other than to deploy HIIPP in all works sites in the country, if the proposal is finalized with an initial trigger temperature of 80°F, most if not all employers will be required to implement their HIIPP during the entire year (except for the provision for paid rest breaks and other particulars that apply only in areas that meet or exceed the high heat trigger). The draft Economic Impact Statement for the rulemaking, published in the NPRM, seems to argue otherwise, and therefore we would argue appears to be designed to hide a much broader regulatory agenda to require costly implementation of OSHA's heat standard in virtually all facilities.

FPA believes that a court would be less likely to question OSHA's judgment that heat-related illnesses and injuries are likely to occur above 90°F, because that is consistent with common knowledge for which courts accord judicial notice.³ For this reason, FPA suggests it might be significantly more defensible for OSHA to adopt one heat trigger of 90°F, rather than separate "initial" and "high" heat" triggers for implementing an HIIPP. Alternatively, it may be more defensible for OSHA to finalize a rule that identifies a range of temperatures such as 80-90°F or 85-95°F and defer to an employer to designate the trigger for implementation of each work site's HIIPP, assuming a court would give deference to an employer making such a decision based on regional temperatures. In either case, selecting one heat trigger of 90°F or a temperature range would lessen the confusion, apprehension and additional cost of implementing two sets of differing regulatory requirements based on two-heat triggers that are significantly different.

FPA urges OSHA to consider the alternative of establishing a heat trigger that is a range. This would better allow employers to identify the temperature at a particular worksite where it is reasonable to expect that employees may experience heat-related illnesses and injuries and design around a temperature point in that range. Because the employer would be required to commit to the number even though the worksite has some discretion in its choice, it can more reasonably align with employees' expectations in different parts of the country, and be enforceable by OSHA.

(2) High heat trigger would be defined as "a heat index of 90°F in proposed § 1910.148(b). At 90° F, additional HIIPP elements would need to be implemented that are set forth in proposed § 1910.148(f), including mandatory 15-minute rest breaks every 2-hours (which

³ Courts routinely take judicial notice of common facts that are not subject to reasonable dispute, without evidentiary or expert support. See, e.g., *Ohio Bell Tel. Co. v. Public Utilities Com*, 301 U.S. 292 (1937). See also *Aaron S. Bayer, Judicial Notice on Appeal*, *NATL LAW J. Dec. 8 (2003)* ("The use of judicial notice spans a wide spectrum of cases, from the most historically significant-such as Chief Justice Earl Warren's reliance in *Brown v. Board of Ed.*, 347 U.S. 483, 494 n.11 [1954], on scholarly publications documenting the effect of segregated schools on minority children-to the most mundane, such as the 2d U.S. Circuit Court of Appeals' judicial notice of the "traditional features of a snowman." *Eden Toys Inc. v. Marshall Field & Co.*, 675 F.2d 498, 500 n.1 [2d Cir. 1982].")

may include lunch breaks), a mandatory buddy system or supervisor and/or a heat safety coordinator for every 20-employees (i.e., a new position at a work site), as well as the administration of a “hazard alert” when shifts change.

As we have already stated, FPA believes that it is more reasonable to expect incidences of heat-related illnesses and/or heat related fatalities around the country when temperatures in work site areas are at or above 90°F. Also, if the trigger is set at 90°F, it is reasonable to expect that certain areas of the company may not have to implement an HIIPP year-round, particularly in northern regions of the country. For this reason, FPA suggests to OSHA that there should be one heat trigger of 90°F. Nevertheless, FPA feels that it would be more reasonable for OSHA to finalize a regulation that defines that heat trigger as a range of temperatures from which an employer could identify when an HIIPP would need to be implemented in an area of a work site. Alternatively, if the heat trigger is set as a range, and possibly even a range of 80-90°F, employers-with employee input-can have the discretion where and when to implement the employer’s HIIPP.

(3) “**Signs and symptoms of a heat emergency**” is defined as “the physiological manifestations of a heat-related illness that requires emergency response and includes loss of consciousness (i.e., fainting, collapse,) with excessive body temperature, which may or may not be accompanied by vertigo, nausea, headache, cerebral dysfunction, or bizarre behavior. This could also include staggering, vomiting, acting irrationally or disoriented, having convulsions, and (even after resting) having an elevated heart rate.” FPA suggests to OSHA that the proposed definition is confusing because it could be tied to “loss of consciousness,” such as fainting and collapse, but some heat emergencies do manifest as vertigo, high heart rate, disorientation, etc., *without* loss of consciousness. Yet, those symptoms also could be related to someone’s drinking or drug habits or even a heavy lunch, but nonetheless may also be related to heat exposure. Managers will have to consider emergency action, whatever the causation, because anyone of these symptoms alone or in combination may endanger an employee’s life, other employees’ safety, and the employer’s assets. FPA therefore suggests that the definition be rewritten to be inclusive but not limited to loss of consciousness. We also suggest that OSHA also should omit the phrase “may or may not be accompanied by” in the definition, which could confuse its application.

C. FPA’s Comments on Proposed § 1910.148 (c) “Heat Injury and Illness Prevention Plan (HIIPP)”

Proposed § 1910.148 (c), the requirement to prepare and implement an HIIPP, is the heart of the proposed heat rule, and FPA has broken it into elements in order to analyze it and to discuss certain proposed requirements that we believe are misplaced, unnecessary, and/or cryptic. We have divided the requirements into (1) Basic Elements of an HIIPP; and (2) Required Elements Pertaining to Indoor Worksites.

1. **Basic Elements of an HIIPP** – The proposed OSHA Heat Rule would require all employers to create a “site-specific” HIIPP that includes: (1) a comprehensive list of work activities covered by the plan; (2) all policies and procedures necessary to comply with the

OSHA heat rule; and, (3) the identity of the heat metric to be utilized (i.e., heat index or wet bulb glove temperature). Proposed § 1910.148 (c)(2). If an employer has employees who wear vapor-impermeable clothing, the employer also must evaluate and document heat stress hazards resulting from that clothing and implement policies and procedures “based on reputable sources” to protect employees from heat illnesses and injuries while they are wearing it. § 1910.148 (c)(3) Further, all HIIPPs also must designate and identify one or more “heat safety coordinators” for every 20 employees to monitor and implement HIIPP. See proposed § 1910.148 (c)(5).

A draft HIIPP and its implementation must be vetted with “non-managerial” employees and their organizers. See proposed § 1910.148 (c)(6). The NPRM states that once an HIIPP is adopted, the plan must be available to all employees, at all times, in all languages, which each employee, supervisor, and heat safety coordinator understands.” See Proposed § 1910.148 (c)(8)-(9). An employer also must review and evaluate, with input from employees and their organizers, the effectiveness of the HIIPP annually and also whenever a heat related illness or injury occurs which results in death, days away from work, medical treatment beyond first aid, or loss of consciousness.” Proposed § 1910.148 (c)(9).

(a) FPA is concerned that a list of activities “covered by the HIIPP,” is not as helpful as a list of locations in which activities may occur that are covered by the HIIPP.

FPA urges OSHA to consider how an employer can narrow the list of affected activities under the HIIPP so that the list is helpful, but not so extensive that it makes implementation of the plan falter. One issue is that in batching industries, like our own, where different products are made, sometimes with different configurations of equipment, there will be a temptation to describe in detail “the activity,” rather than the areas at a work site in which high temperatures may be reasonably anticipated. Work activities at flexible packaging plants typically change based on the types and run-times of particular packaging that is being produced, so unless the description of the activity is very generic, it will dwarf the description of the area of the production process that is affected by the HIIPP. Therefore, FPA recommends that the proposed requirement be replaced by a very basic description of the significant areas of the worksite to which the HIIPP may pertain (e.g., Building A, location of Presses # 1, 2, and 3; lab; mixing room A; extrusion area, etc.). Inclusion of a drawing of these locations seems like it would be critical to applying an HIIPP as well.

(b) OSHA should remove the mandatory requirements in proposed §§1910.148(c) [and (e)] with respect to specific types of Personal Protective (PPE), vapor resistant clothing and cooling PPE, from the basic requirements of HIIPPs. FPA believes PPE is better managed by the employer, apart from contents of the HIIPP, because it is tailored to specific processes and requires specific training.

In flexible packaging plants, PPE is equally essential to an employee’s protection *and to the* protection of the packaging’s intended use, and therefore ranges from steel-toed shoes, to protective clothing, protective head gear, eye gear, gloves-to-totally respirated clothing in pharmaceutical packaging production areas. For those reasons, FPA’s member’s plants are required to do an annual PPE assessment for the different work areas/job categories, so heat

protection would be assessed as part of this already existing process. Member companies also maintain manuals related to specific PPE utilized in certain work areas to protect workers, which range from steel-toed boots to special gloves to prevent cuts and lacerations from doctor blades to totally respirated clothing in pharmaceutical packaging areas.

Most PPE – not just vapor-resistant clothing or cooling PPE – has the potential to increase heat illnesses and injuries, but FPA does not believe that devoting special attention to these specific types of PPE, or any PPE at all, in the HIIPP is necessary or advisable. Most, if not all FPA members, conduct annual (or more frequent PPE evaluations) already, which take into account best PPE that is appropriate for specific tasks and circumstances. Information on PPE is available onsite elsewhere (and most often, in multiple areas, including in the area where PPE must be worn and where it is donned, as well as in a site’s OSHA coordinator’s office). Therefore, PPE and the procedures for utilizing and maintaining it, are best left to the employer pursuant to the procedures from its PPE vendor and the employer’s own assessments and observations, which are utilized to tailor how PPE is used in specific processes. For this reason, FPA urges OSHA to remove mandatory basic elements of the HIIPP in proposed §§ 1910.148(c) and (e) that are related to the use of specific types of PPE. At most, any mention of PPE in an HIIPP should be very generalized in nature (i.e., “consider the additional heat implications of PPE, if relevant.”)

(c) FPA does not support the creation of a class of “heat safety coordinators” for any purpose, much less as a requirement in an HIIPP, and in particular, FPA opposes the proposed rule’s requirement for a heat safety coordinator for every 20 employees.

FPA does not support the need for “heat safety coordinators,” because our members believe that existing supervisors and other managers are trained to monitor and implement, when necessary, measures for handling heat injuries and/or illnesses. In addition to supervisors that are trained to recognize heat related illnesses in production areas, many FPA members use the buddy system on the production floor, and one of the tasks of buddies is to identify illness and/or injury and call for appropriate measures including, but not limited to, medical assistance. A buddy system appears to be an acceptable substitute for a heat safety coordinator under proposed § 1910.148(f)(3)(i), but that conclusion is at odds with Proposed § 1910.148(c)(5), which FPA recommends be deleted if this rulemaking is finalized. We do not see the justification for a new lieutenant in the workplace to monitor every 20 workers for heat-related illnesses and injuries, when existing positions have this expertise. We also note that there can be negative consequences for all employees when additional managerial persons that are not integral to production processes are added to a worksite floor. Instead, floor managers/supervisors should be designated as heat safety coordinators, since this already is one of their functions in the flexible packaging industry.

Finally, it is not clear that OSHA developed a record for the requirement for a heat safety coordinator for every 20 employees, which is an entirely arbitrary number. In some production processes with numerous employees, this requirement could be onerous, while in other production processes, a heat coordinator would have to cover a large area of a worksite. Neither

staffing decision would necessarily be related to the likelihood of a heat illness or injury occurring. More important, FPA submits that the proposed requirement infringes on an employers' duty to determine when additional managers and supervisors are necessary to protect employees and also on general hiring decisions. To this end, OSHA should rely on established means of communication on a production floor rather than requiring additional hires to coordinate heat safety.

2. Required Elements Pertaining to Indoor Worksites.

The proposed OSHA Heat Standard lists additional requirements for indoor work sites, including the identification of each work area where there is a reasonable expectation that employees are or may be exposed to heat at or over the initial heat trigger in proposed § 1910.148 (d)(3). These include:

- Taking Temperatures – Describe specifically how the employer will determine the temperature in each area;
- Implementation when Initial Trigger Temperature is Measured – Include the timing for implementing the HIIPP when the temperature reaches the initial heat trigger of 80°F.;
- Water – Describe how an employer will implement its duty to provide a quart of cool water for each employee at an accessible location for every hour of work;
- Breakrooms Describe how the employer will meet its duty at indoor worksites to provide “shielded” cool indoor breakrooms with air movement, and if fans are utilized in lieu of air conditioning, with an appropriate assessment of the potentially deleterious use of fans at high humidity.
- Rest Breaks if Needed – An employer must assure that rest breaks are available when an employee needs them.
- Communication – The plan must provide an effective plan for employers, floor supervisors and/or heat safety coordinators, and employees to communicate periodically and when necessary, regarding heat stress, illness and/or injuries;
- Personal Protective Equipment – If an employer provides PPE, the equipment must be maintained at all times during use.
- Heat acclimation for New and Returning Employees – New employees and other employees returning after fourteen days of absence for any reason must be heat-acclimatized during the first week of work, meaning that on the first day the employee may only be exposed to heat above the initial trigger temperature of 80 degrees F, for 40% of his/her shift; 60% on the second day; and 80% on the third day. The employee must be paid for a full day, and OSHA presumes that other non-process related work can be filled in during the rest of the day such as training on heat illnesses and injuries, paperwork, etc.
- Placarding – The employer must describe how it intends to deploy placarding in areas where a reasonable expectation that employees are or may be exposed to heat at or over the high heat trigger must be placarded so that all employees can understand the inherent heat dangers of these areas.

- (a) FPA supports OSHA's reliance on employers to identify and designate areas in their worksites where there is a reasonable expectation that employees are or may be exposed to heat at or over the initial heat trigger

The applicability of the proposed rulemaking is complicated because some work areas that may be reasonably expected to exceed the proposed heat triggers are not rooms – they are spaces (e.g., the area above a flexible printing press and the roofline; specific stations on a press line where there are curing and/or drying ovens; and upper decks of blown film extrusion lines). On the other hand, in certain situations, it may be technically feasible and cost-effective to implementing all HIIPP requirements in rooms and/or entire buildings which have these “spaces,” if they can be reasonably predicted to exceed target temperatures, but only during months when temperatures. Indeed, as we commented above, the employer’s apparent discretion under the proposal to identify areas that should be subject to its HIIPP is in an element of the proposal that FPA supports.

FPA recommends that in a final regulation, OSHA should confirm the following three regulatory applicability interpretations:

1. First, the rule does not require the employer to monitor the entire worksite to identify which areas exceed the initial temperature trigger, but instead, has the ultimate discretion (with the input of employees during the adoption of the HIIPP) to identify worksite areas to which the HIIPP will apply.
2. Second, an entire building and/or an entire room need not be identified as “an area,” where it is reasonably expected to exceed the initial heat trigger, if it is not reasonable to expect that other distinguishable areas of the room would not be expected to exceed a heat trigger temperature.
3. Third, it is reasonable for an employer to conclude that some areas of a worksite need not be subject to monitoring (or an HIIPP), if they are air-conditioned or well-ventilated, and therefore, it would not be reasonable to expect their temperature would trigger implementation of the HIIPP.

- (b) FPA does not support the requirement in proposed § 1910.148 (d)(3)(B)(iii)-(iv), which would appear to impose an obligation on an employer to reevaluate the potential for heat injuries and/or illnesses when a new process or process machinery is installed, or when there is a substantial change in temperature to which employees may be exposed above the proposed initial heat trigger.

FPA does not believe that it is necessary for a worksite’s plan to be updated more than once a year, but proposed § 1910.148 (d)(3)(B)(iii)-(iv), appears to impose an obligation on an employer to reevaluate the potential for heat injuries and/or illnesses whenever a new process or process machinery is installed, with the input from employees. Also, proposed § 1910.148 (d)(3)(B)(iv) would appear to impose an additional duty to update the site’s HIIPP, when there are substantial changes in temperature to which employees may be exposed above the proposed initial heat trigger. In both situations, input from employees would be required.

FPA submits that both provisions are unworkable and unnecessary. First, in batching processes, there is the potential for constant changes and/or tweaks to process configurations. Second, even if entirely new “fabs” are added on a floor or to a process, it is unnecessary to undertake a reevaluation of the potential new equipment to meet or exceed the “initial heat trigger”- particularly with the input of employees--because that interferes with the manufacturing process and the way temperatures are gauged in a plant (with or without monitoring). OSHA should instead rely on the employers’ managers and supervisors to adapt to indoor environmental changes in a plant and act accordingly, without mandating changes to the HIIPP. Annual updates with review by employees and/or their representatives, in FPA’s view, are sufficient to preserve the robustness of a site’s implementation of its HIIPP.

D. Proposed § 1910.148(d) Identifying Reasonable Heat Hazards for Indoor Work

1. OSHA should clarify the rule’s proposed indoor monitoring requirements and when “areas” can be “exempted.”

FPA finds proposed §1910.148 (c)(3) [*Mandatory monitoring*] and proposed § 1910.148 (d)(5) [*Exemption from Monitoring*] confusing because those paragraphs can be read together to require that at a work site, an employer must either implement a heat monitoring plan to trigger implementation of an HIIPP or implement the standard at all times in all areas above the heat triggers. To do so would be very costly, and unnecessary to protect employees. FPA suggests that OSHA might avoid the confusion if §§1910.148 (c)(3) and (c)(5) are collapsed together in one subparagraph to require an employer the make the choice to implement either a monitoring plan *or* assume that the temperature *in a particular targeted work area* is at or above both the initial heat and high heat triggers at all times or only at certain times of the year (instead of conducting on site measurements or tracking local forecasts daily), in order to identify the area in its HIIPP. FPA requests that OSHA confirm that this understanding was the proposal’s intent. If it was not, FPA requests that OSHA consider this alternative as a more reasonable implementation response to avoid heat stress to certain employees that may be reasonably expected to be exposed to it.

E. FPA Comments and Concerns About Preventative Requirements in Indoor Work Sites at or Above the Initial Heat Trigger

Background - The proposed rule would require an employer to provide the following in areas where it is reasonable to expect employees are exposed to heat at or above the initial heat trigger:

- (1) Accessible cool drinking water;
- (2) Accessible break areas;
- (3) “Indoor work area controls (i.e., ventilation such as fans,⁴ air conditioners, and/or, in cases of radiant heat sources in the work area, shields or barriers to isolate radiant source);”

⁴ Provided that excessively humid temperatures that the use of fans is evaluated See proposed § 1910.148 (e)(4))

(4) acclimatization for new employees and existing employees not exposed within the prior 14-days to work heat stress; and,

(5) rest breaks if they are needed.

See proposed §§1910.148 (e)(2) - (e)(6). Proposed paragraph (e) also would require effective means of two-way communication between employees and heat safety coordinators/supervisors; and special considerations for ensuring the cooling properties of cooling PPE at all times during use. *Id. at* ¶¶(e)(9) - (e)(10)

1. FPA agrees that a worksite's HIIPP should emphasize that an employer should provide rest breaks that are needed, but OSHA should provide other clarifications regarding these rest breaks in targeted areas that are at or exceed the initial target temperature without attempting to over-regulate the rest breaks themselves.

Accessible Break Rooms and Rest Breaks – Proposed paragraphs (e)(4) and (f) would require employees working in designated heat areas to have “accessible” break rooms.” In contrast to rest breaks provided when temperatures are at or above the high heat trigger of 90°F, the rule stops short of requiring such breaks to be compensated and does not provide any procedures for requesting or granting them. FPA thinks this ambiguity is fine, and should be within the discretion of an employer to determine if they are paid breaks and any procedures for notifying a supervisor that one is needed. First, the point of the regulation appears to be that an employee knows that he or she may take a rest break, not to spell out how and when they can be taken. Second, it should be up to an employer to determine on a case-by-case basis if any needed rest break is compensated separately or as part of the regular shift in an area at or above the initial heat trigger. In other words, since the breaks would not be mandatory, nor would they elongate a regular shift, the critical element of the proposed rule is to make employees aware that they may take a break with impunity, not incentivize breaks because they are paid. Nonetheless, FPA requests that OSHA clarify the regulation itself (i.e., not just explain in the rule’s preamble), that rest breaks are available but it is up to the employer on a case-by-case basis to determine if they should be compensated. On the other hand, FPA believes that the regulation should not include specific procedures for how breaks are obtained and other extraneous detail about whether walking to and from the break room is included. *See*, proposed § 1910.148(f)(2) for employees working in areas that meet or exceed the high heat trigger.

Also, in contrast for employees working in designated areas at or above the high trigger temperature of 90°F, where an employer must allow and encourage employees to take rest breaks if needed, see proposed § 1910.148 (e)(8), it appears that the regulation is not creating a duty on the employer to ensure that employees take rest breaks in any particular circumstances in areas that meet or exceed the initial trigger temperature of 80°F. FPA requests confirmation that its understanding is correct in this regard, even if a heat safety coordinator and/or other supervisor’s job description includes a responsibility to monitor workers for heat-related illnesses and injuries.

2. OSHA's proposed acclimatization standard is problematic for several reasons, and OSHA should allow considerably more discretion for an employer to adjust elements of its worksite acclimatization plan.

OSHA's proposed acclimatization standard is designed to acclimate employees that will work in targeted areas above the initial heat trigger over a period of time *in all parts of the country*. Separately, and in addition, to that requirement, OSHA proposed the identical requirement in proposed § 1910.148(f) for acclimatization of new and returning in employees in areas the meet or exceed the proposed high heat trigger. In both cases, the regulation would limit a new employee's heat exposure above the initial target temperature of 80°F. for 20%, of his/her first day's shift; 40% of the second day; 60%, of the third day; and 80% of the fourth day. The same acclimatization standard also would apply to existing employees returning to work after being away for more than 14-days for any reason. As we discuss below, FPA suggests that employers should have far more discretion in tailoring acclimatization plans for each of their work sites.

As a general matter, FPA supports acclimatization conceptually, but finds the proposed standard to be almost ham-fisted and unsuitable for many, if not most, indoor work environments. First, the proposal ignores the realities of most manufacturing processes where employees rotate on different shifts in different areas of a worksite. For instance, it is not uncommon for employees working a night shift when it is cool, to take on a day shift in a different process area. Further, some employees also opt to work 10- or 12-hour shifts. (FPA assumes, in general, that these employees are already acclimated to the workplace, so further acclimatization is unnecessary.) On the other hand, from a practical standpoint, if OSHA were to adopt the proposed acclimatization standard, it may require wholesale re-tooling of how employees are scheduled, and possibly also make it much more difficult for employees to take on any different task that would require additional acclimatization and/or training. We oppose the proposal on these grounds because it is arbitrary and capricious.

Second, while FPA acknowledges that employees in different parts of the country may be acclimated to certain hot (or cold) temperatures, and if they are not acclimated to working in heat – particularly above the proposed high heat trigger level of 90°F. – it is reasonable to expect that some employees may be prone to heat-related illness and/or injury. Thus, some degree of acclimation to working in an area above the initial and/or high heat level, may be reasonable, depending on the location of a work site. It is far less clear whether four days of 20%, 40%, 60%, and 80% of a shift has any reasonable basis or is totally arbitrary. The closest thing to an empirical basis offered by OSHA as a basis for the proposed requirement appears to be *ad hoc* 1950, 1954, and 1966 observational studies of rectal temperatures and heart rates of a small sample of South African gold miners.⁵

Another reason that the proposed acclimatization standard punishes employers is that in most cases, an employer does not have the time or economic well-being to pay *existing* employees for a full-week's shift if they cannot work a significant chunk of the first work week, with the

⁵ See 89 Fed. Reg. at 70758/2 (citing Weiner, 1950; Wyndham et al., 1954, 1966)

prospect that the employee would be entitled to multiple acclimatization periods over the following year. OSHA reasons, and we *partially* agree, that a new employee will have more than enough training and paperwork to fill their downtime during their initial acclimatization period, although we want to emphasize that part of their training is likely to be in an area at or above the initial target temperature – which would appear to be precluded under the proposed rule. But keeping track and finding tasks for new employees, much less existing employees who may be shifting tasks back and forth within a manufacturing process with more than 14-day interims of heat exposures and also acclimating employees who have been on leave for two or more weeks, portends an administrative and potentially economic calamity for employers. For this reason, FPA does not support further mandatory acclimatization of existing employees.

Ultimately, FPA recommends that OSHA, employers, and their employees would be better served if in the final rulemaking OSHA does not mandate the proposed acclimatization plan. Rather, we suggest that OSHA requires that an employer adopt a site-specific acclimatization plan, and that OSHA provides – but does not mandate – the proposed one *as an example*. In that respect, the acclimatization standard adopted by an employer would be enforceable by OSHA, but the plan that is adopted would have a higher chance of being reasonably related to the workplace (and perhaps, less chance of limiting employee’s access to earning a living.) Importantly, as long as an employee understands their rights to take needed breaks and a supervisor/heat safety coordinator, and/or buddy, has eyes on the employee and all have requisite communication, OSHA’s objective would be satisfied. More importantly, if OSHA adopts FPA’s earlier recommendation that it would be more reasonable to adopt a single temperature range (e.g., 85-95°F) when the rule is finalized, instead of an initial temperature trigger *and* a high temperature trigger, an employer would be better able to tailor the plan for each of its worksites to accommodate the striking regional temperature differences between different regions in the United States.

F. FPA Comments and Concerns About Requirements in Targeted Indoor Work Sites at or Above the High Heat Trigger

Background - Proposed § 1910.148 (f)(1) requires that in addition to the controls for work areas that meet or exceed the initial heat trigger in proposed § 1910.148(e), an employer must implement additional measures when employees are exposed to heat at or above the high heat trigger. These include paid rest breaks of a minimum 15 minutes every two hours in an accessible break area (that may include a meal); observations for signs and heat related illness including but not limited to a mandatory buddy system or observation by a heat safety coordinator or supervisor with adequate communication; a hazard alert when the high heat temperature is met or exceeded regarding the importance of drinking water; employees’ right to take rest breaks at their election if needed; written procedures for administering and seeking emergency help; and for excessively high heat areas (above 120°F), placement of warning signs.

1. OSHA should clarify if mandatory employee rest breaks must be compensated if they are part of lunch breaks, if an employer does not already pay for these breaks.

FPA is confused whether all breaks including meal breaks must be paid for by the employer if the proposed heat standard is adopted. Paragraph (f)(2)(i) notes that meal breaks are not required to be compensated under existing law, but OSHA nonetheless appears to propose requiring heat breaks at or above the initial heat target level to be paid. FPA would appreciate clarification of the applicability of this note, even though we also renew our comment regarding paid breaks generally, i.e., that if they are mandated by law, it should be up to the employer to determine if they are paid as part of a regular shift, including if a shift can be elongated to take into account rest breaks.

2. OSHA should provide additional guidance on how employers should manage paid breaks during 10-hour and 12-hour shifts

For employees that work in high heat trigger work areas for an 8-hr. shift daily, the employee would have 45 minutes for three daily compensated breaks (really two additional paid breaks assuming that a meal break already is compensated by the employer). However, many employees work 10-12 hr. shifts, and based on the proposed requirement for a 15-minute paid break every two hours, they would receive up to 1-1/2 hrs. of paid breaks under the proposed federal regulation (and does not include an employee's time going to the break room and returning to his job). An employer's choice might be inclined to lengthen the work shift to "pay back" some or all of an affected employee's downtime, with a paid 12 hour shift possible becoming 14-15 hours. Has OSHA considered how an employer can balance the competing economic impacts of mandatory breaks with the obvious downsides to employees of extended work shifts?

While FPA does not oppose mandatory rest breaks, it does object to OSHA's proposal that they are paid, particularly during elongated shifts. The NPRM rationalizes that if breaks are not paid, employees will not take them, and they will then have a higher incidence of heat-related illnesses and injuries. See discussion at 70789/1. While it is reasonable to expect that "mandating" breaks by law for employees that are exposed to high heat should help to alleviate the number of incidences of heat related illness and injury, there is no real evidence that also paying for the breaks is needed to require an employee to take them. But lengthening an employee's time at work to accommodate the economic consequences of the breaks on the productivity of the work site will be resisted by affected employees. Moreover, we are concerned that paying certain employees for breaks and not paying the rest of the staff will sow unhappiness in the workplace. FPA therefore would support mandatory rest breaks and leave it up to the employer to decide how, or if, an employee receives additional pay if he or she is required to take them but does not work additional time. (It also may be worth noting for OSHA that certain job salary structures likely already take heat exposure in certain processes into account.)

G. FPA Comments and Concerns About Preventative Requirements for a Heat Illness and Emergency Response and Planning

Background - Proposed § 1910.148 (g) requires that as part of a worksite's HIIPP, an employer must develop and implement a heat emergency response plan that includes emergency

telephone numbers; directions for contacting a supervisor and emergency medical services; individuals designated to ensure that heat emergency procedures are invoked; and a description of how to transport employees to a place where they can be reached by emergency medical provider with a precise address and directions to the work site which can be provided to emergency dispatchers. This portion of the HIIPP also must contain directives that if an employee is experiencing signs and symptoms of heat-related illness, the employer must relieve the employee from duty; monitor them; ensure they are not left alone; provide the employee with means to reduce their body temperature; and offer the employee medical services before ending monitoring. Third, the plan must provide that an employer must take “immediate action” if an employee is experiencing signs and symptoms of a heat emergency by contacting emergency medical services immediately and taking immediate actions to reduce the employee’s body temperature before medical services arrive.

1. FPA commends OSHA for its thoughtful analysis of the requisite steps and actions that should be put in place when an employee evidences signs and symptoms of a heat injury or of a heat emergency.

FPA believes that the proposed preventative requirements for a Heat Illness and Emergency response and planning are essential elements of a worksites HIIPP. While we understand the need to underscore its importance by creating a separate and distinct regulatory requirement, by the same token, these requirements should not be “buried” at the end of the heat standard, if it is finalized. Rather, FPA suggests that these provisions be moved to what is currently proposed § 1910.148 (c), which lists the basic elements of all HIIPPs.

2. The definitions of “heat injury,” “heat illness,” and “heat emergency,” should be consistent in OSHA’s Heat Standard with other OSHA requirements.

To comply with other OSHA requirements, work sites have fully-trained Emergency Response Teams to assist in any type of medical emergency. Heat illness recognition and response training is already required as part of basic First-Aid training, so some or all of the proposed requirements in this section of the proposed regulation appear to be redundant with those requirements. Hence, one issue presented is whether OSHA intends for this section to require new or additional training? Another is whether the difference between a heat-related illness or injury and a heat emergency are discussed consistently in all of OSHA’s programs as being distinguishable by a loss of consciousness? FPA recommends that it would be helpful for OSHA to incorporate references from other OSHA programs in the final rule, which at least would avoid arguments regarding potentially different interpretations of the same or similar requirements.

Second, FPA is unclear whether the elements of a site’s emergency plan extend to definitions or other directives that must be listed in a site’s HIIPP, other than the procedures to be followed in moving an injured employee to a designated space for transport to a hospital and/or other medical site. The majority of the paragraphs in paragraph (h) seem to require training, break rooms, emphasis on issues such as the importance of accessible cool water near designated areas where heat related illnesses and where injuries could be reasonably expected to occur –

including the expectation that none is to be conducted at the expense of the employee. It is unclear that any of these requirements need be in a site's actual HIIPP. Please confirm that FPA has a proper understanding of paragraph (h), and in a final rule distinguish which elements of these requirements must be specifically included in its HIIPP.

H. FPA Comments on Proposed § 1910.148 (h)

Background - Proposed § 1910.148 (h) requires (1) initial employee training prior to any work at or above the initial heat trigger; (2) ensuring that supervisors and heat safety coordinators that supervise employees in targeted worksite areas above the initial heat trigger understand the contents of an employer's HIIPP and the policies and procedures developed to implement them, including procedures for monitoring heat conditions and procedures that must be followed if an employee exhibits signs and symptoms of heat-related illness. The employer also must assure that each employee receives annual training on these issues and that supervisors and heat safety coordinators additionally receive training on the employer's policies and procedures related to heat illness and injuries. Third, supplemental training is mandated when a heat-related injury or illness occurs at the worksite that results in death, days away from work, medical treatment beyond first aid, or loss of consciousness or, finally, if there are changes in the employer's policies or procedures or the employee's job tasks change in a targeted heat area or an employee does not manifest an understanding of the importance of heat injuries and illnesses.

The proposed heat standard also stipulates that training must be presented in a language and at a literacy level that each employee and manager understands and that there is an opportunity for questions and answers. Training must be implemented at no cost to employees, and include paying employees their normal rate of pay for when compliance requires employee time.

1. FPA is concerned that employers must be able to demonstrate in real time that all required HIIPP-related materials are provided in all languages and at literacy levels of all employees (or at least employees working in affected "high heat-related areas").

FPA understands the need for comprehensive training on heat injuries and illnesses for employees who are exposed to heat in the workplace, particularly after a heat-related injury or death, and we also agree that annual training will be necessary. Both requirements are costly, but costs can be somewhat mitigated if the requisite training is included with other annual and periodic training. We would appreciate if OSHA would confirm that heat-related illness and prevention training can be offered as part of other ongoing training programs at a work site.

Our most significant concern about proposed § 1910.148(h), however, is the requirement for all training and presumably training materials to be provided in every employee's language and literacy level. As an initial reaction, FPA does not regard the proposed requirement to be either feasible or reasonable. We suggest that the rule should provide that an employer should make all reasonable efforts for its HIIPP and HIIPP training to be understood, as with all other directions for operating process equipment and safety standards observed at a worksite.

From a practical perspective, FPA also is concerned about the requirement to be able to communicate orally and in writing in all languages and at all literacy levels shared by employees. Frankly, we also are troubled about the cost of making all the required heat-related plans and training materials and placarding in all languages for all levels of employee's literacy. Fortunately, there are electronic applications that could be utilized economically to translate an employer's HIIPP and produce required placarding for "high-heat areas." However, they probably would be less useful in translating training materials and translating and responding to input effectively to non-English and non-Spanish speakers. Of most concern is the requirement to make sure all of these materials exist (i.e., at the correct level of literacy and in the right language) at the time an employee begins work. We would appreciate additional information and insight on how OSHA anticipates the proposed requirements being implemented and any experiences based on the implementation of other OSHA programs in this manner.

2. FPA has significant concerns about discrimination and bias claims resulting from the proposed language and literacy requirements.

There also is an obvious concern about dwelling too much in the hiring process on a prospective applicant's literacy and their nationality that could be mistaken for some employment discrimination and/or employment bias against an applicant rather than information gathering triggered by OSHA requirements. OSHA should seek further counsel on these legal requirements before finalizing the rule, so it can advise affected entities about how to avoid the appearance of discrimination challenges for hiring decisions when a prospective employee might be concerned about questions during an interview having to do with these legally prohibited areas of inquiry.

I. FPA Recommends that implementation dates for various parts of the initial implementation of the heat standard need to be included in the rule, such that the plan can be vetted with employees during its conception, translated, and sufficient training can take place.

Pursuant to proposed § 1910.148 (k), OSHA's Heat Standard would become effective sixty days after publication in the Federal Register. Sixty days is not sufficient to prepare and implement an HIIPP, much less implement the proposed rule's requirements and adequately train employees and supervisors and other managers at manufacturing plants of any size. Smaller plants will probably have to hire expert consultants to shepherd them through a final regulation's requirements, larger plants which may even have a team (i.e., not just a single safety coordinator) would be hard pressed to put such a program in place at a large plant – and even one that already recognizes and has heat illness and injury protocols.

To provide adequate time for planning, vetting a plan's requirements with employees and managers, and implementing a final heat standard, OSHA must include implementation deadlines in the final regulation. FPA recommends that companies have at least a year to prepare their HIIPP, and an additional year for training.

IV. Conclusion and Contacts

FPA appreciates this opportunity to provide comments and suggestions regarding its understanding of OSHA's proposed heat standard. We would be happy to answer any questions that staff may have regarding FPA's comments, and these can be directed to FPA Director of Government Affairs John Richards at FPA at (410) 694-0824 or jrichard@flexpack.org and he will find the appropriate person to field them. Also, FPA has found that it is useful for regulators to visit a flexible packaging plant to understand the worksite. If anyone at OSHA is interested in visiting a flexible packaging plant, please let John know and he will arrange such a site visit at a mutually convenient location and time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan T. Felton". The signature is written in a cursive, flowing style.

Dan Felton
President & CEO