WASHINGTON FARM BUREAU

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Ms. Shute:

On behalf of the Washington Farm Bureau, please accept the following comments regarding the most current draft of the Department of Labor and Industries' Ambient Heat Exposure permanent rulemaking. As you will see, many of the comments below are similar or identical to comments submitted on previous drafts of the Ambient Heat Exposure rules. Unfortunately, the Department has so far chosen not to incorporate any of the suggested changes submitted by the Farm Bureau and other stakeholder groups.

1. The Department has not sufficiently demonstrated the need for additional Ambient Heat Exposure rules beyond those implemented in 2008. An average of about one HRI claim per week was accepted between 2006 and 2017 – an extremely low incidence rate considering the millions of hours worked in all industries throughout the state during that twelve-year period. The current rules seem to be very effective when viewed in terms of hours worked versus claims accepted.

2. Employer responsibilities for employee acclimatization is a major new addition to the Ambient Heat Exposure rules. However, many of the requirements under this section seem to ignore the Department's own "science" and, instead prescribe a "one size fits all" approach that will add new burdens to employers and employees while providing questionable benefit. For example, the Department's proposal fails to recognize whatsoever the current state of acclimatization of "newly assigned" employees. Many of these workers, especially in the agricultural workforce, have been working and or living in warmer and/or more humid conditions than those that they will experience with the "new" employer, and, based upon L&I's own information, should be considered acclimatized upon arrival at the new jobsite. Why should "close observation" of these already acclimatized employees be necessary? The Department's latest draft <u>still</u> requires close observation of "newly assigned" employees for 14 days regardless of whether these workers have been working and/or living in warmer conditions.

3. The new proposed "trigger temperatures" are arbitrary and unnecessarily low, especially for those wearing "all other clothing". The current emergency rule's trigger temperature of 89 degrees seems to be effective, whereas a trigger temperature of 80 degrees for all except those in non-breathable clothing is bordering on ridiculous. A temperature of 80 degrees in eastern Washington would be considered a refreshingly cool day during most of the summer. The Department loses credibility among employers and workers when proposing such trigger temperatures. The Department's

latest draft still includes the arbitrary 80-degree trigger temperature for all areas of the state.

4. There is great concern about the Department's proposal to require preventive cool-down periods "as necessary". There is no limit on these employee -initiated cool down periods, and these periods are required to be paid for by employers. While nearly every employer would certainly allow a worker to take a break to prevent overheating, there are currently no protections for employers when workers take advantage of the open-ended language in the rule that would allow unlimited breaks for any employee with the threat of a fine for discrimination or retaliation against an employer that questions the validity of excessive preventive cool down periods. This must be addressed in future drafts of the rule. The Department, in its latest draft has not addressed the potential abuse of the unlimited breaks by employees.

Thank you once again for your consideration of these comments on the latest draft of the proposed rule. We would be happy to meet with Department staff to further discuss and/or clarify our comments. As the rulemaking process moves forward, we also anticipate the submission of additional comments as questions or concerns arise.

Regards,

Rosella Mosby
President