Washington State Tree Fruit Association

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To: Washington State Department of Labor and Industries via: Carmyn.Shute@Lni.wa.gov

Date: August 15, 2022

Re: Ambient Heat Exposure Rule

I am writing on behalf of the Washington State Tree Fruit Association (WSTFA) to provide feedback to the Department of Labor and Industries regarding the proposed Ambient Heat Exposure Rule.

WSTFA represents the growers, packers, and marketers of apples, pears, cherries, and other tree fruits in Washington State. As producers working outside to grow, harvest, and pack fresh fruit, our members will be affected in many ways by the adoption of this rule. Heat, and particularly extreme heat, is a serious safety concern. However, we believe that the formation and implementation of rules to address this issue must be science-based and reasonable. Below, for your consideration, are suggested edits to the department's draft proposal for permanent rulemaking.

The department has provided limited workers compensation claims data, and what was provided did not adequately explain whether the existing permanent or temporary emergency rules were even in force, or being properly followed, in those cases. This additional data is necessary to determine whether the indicated adverse outcomes could have been prevented through enforcement of the current permanent or temporary emergency measures, and thus whether department has any justification for moving forward with the measures in the ambient heat pre-proposal. The department should further provide an analysis of heat related workers compensation claims before and during the implementation of any control mechanisms, and by industry, so stakeholders can better analyze and provide industry-specific advice to the department for permanent rules, if needed. Without better data, the burden on the department to formulate a nexus between injury and the proposed prevention measures has not been overcome, calling into question the justification for the current rulemaking action and the specific measures proposed therein.

Furthermore, the department's presentation contains a table that, if adopted with the proposed heat and clothing variables, would limit productive work anywhere from 5-45 minutes per hour. This action will assuredly result in significant lost productivity. It is the department's obligation under RCW 19.85.030 to prepare a "small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry…" As the economic impacts of this proposed rule clearly exceed this threshold, we expect the department to conduct the aforementioned study and to allow adequate time to comment on the impact study findings, and any proposed mitigation methods as is required of the department throughout the remainder of the statute. This will also allow stakeholders to provide more thorough comments

on the significant, but difficult to predict, impact of unlimited employee-initiated cool-down periods contained in the draft proposal.

While we will have additional comments based on receipt of the impact study and data requested above, we would also like to address two other concerns:

1. Many temporary workers come from areas of extreme heat. On the department's rulemaking page there is an article from the CDC that was included as a resource document, as well as listed inside the draft rulemaking proposal. The article states that "Employers should have an acclimatization plan for new and returning workers, because lack of acclimatization has been shown to be a major factor associated with worker heat-related illness and death." The CDC research does not say that workers who are already acclimated to extreme heat should be acclimatized. There is no scientific reason to mandate a 14-day supervision period of newly assigned workers who are originating from locations of extreme heat in excess of the conditions they will be working. Likewise, any newly assigned worker who is transferring from outdoor work for another local employer should be classified as already acclimatized.
2. As we've stated in previous comments, many seasonal agricultural workers move between multiple employers in rapid succession. This can cause workers to go through trainings repeatedly each year. Employees should have the option to provide proof of annual approved training from another Washington employer so that this redundant expense can be completely eliminated while maintaining high safety standards. In addition, the proposal to make the heat exposure rule effective year-round creates unnecessary confusion. The current rule is effective from May 1 to September 30 and creates a clear understanding of when training is required. By proposing a twelve-month rule and a significant reduction in threshold temperatures, the amount and burden of redundant training required for temporary seasonal workers will be significantly increased.

Thank you for the opportunity to comment. We encourage you to take our members' concerns into consideration, and we are available to provide additional information or explanation as needed.

Sincerely,

Jon DeVaney
President
Washington State Tree Fruit Association