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Transcript of Day 1

Monday, June 16, 2025

OSHA Heat Injury and Illness Prevention Hearing

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

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OSHA'S INFORMAL RULEMAKING HEARING

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FOR HEAT INJURY AND ILLNESS PREVENTION IN OUTDOOR AND

11

INDOOR WORK SETTINGS

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Day 1 of 12

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Monday, June 16, 2025

15

9:30 a.m.

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PARTICIPANTS

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PRESIDING:

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STEPHEN HENLEY, Chief Administrative Law

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Judge, Office of Administrative Law Judges, United

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States Department of Labor

7

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OSHA PANEL:

9

ANDREW LEVINSON

10

BRENDA FINTER

11

DEIRDRE GREEN

12

GARY ORR

13

JESSICA STONE

14

STEPHEN SCHAYER

15

TIFFANY DEFOE

16

ZOE PETROPOULOS

17

OFFICE OF THE SOLICITOR OF LABOR:

18

DANIEL MOCZULA

19

LINDA WILES

20

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22

1	PARTICIPANTS, IN ORDER OF TESTIMONY:	
2	AMERICAN FEDERATION OF LABOR AND CONGRESS	
3	OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)	
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ALSO PRESENT:

MARIAM CARLON, Abt Global

1 P R O C E E D I N G S

2 JUDGE HENLEY: We are on the record. The hearing
3 will come to order.

4 This is an informal public hearing on the
5 Occupational Safety and Health Administration's
6 proposed rule for heat illness and injury prevention in
7 outdoor and indoor work settings. The Notice of
8 Proposed Rulemaking was published on August 30, 2024 in
9 volume 89 of the Federal Register, beginning at 70698.
10 I am Stephen Henley, Chief Administrative Law Judge for
11 the United States Department of Labor, and I will be
12 presiding over today's hearing.

13 The purpose of the hearing is to receive, from
14 interested parties, oral testimony as well as other
15 information pertinent to the proposed rule. After this
16 hearing and the post hearing comment period have
17 closed, OSHA will review the entire record in
18 determining the content of the final rule. My role as
19 presiding judge is limited to conducting the hearing to
20 ensure that a complete and accurate record is made, and
21 that all interested parties receive a fair hearing and
22 have the opportunity to submit their information.

1 The hearing schedule and OSHA's procedures
2 governing this hearing are available on the website at
3 www.osha.gov/heat-exposure/rulemaking. These documents
4 were sent to people and organizations who filed a
5 timely notice of intention to appear at this hearing.

6 A few words about the nature of the hearing.
7 Despite its informal nature, it is governed by rules,
8 both OSHA's rules governing hearings at 29 CFR Part
9 1911 and the hearing procedures issued specific to this
10 rulemaking. These rules are meant to ensure that
11 everyone has a fair opportunity to speak and express an
12 opinion about the proposed rule. To that end, they
13 also allow me to hold witnesses to their allotted
14 times, limit undue repetition or excessive argument,
15 and generally keep the hearing on schedule.

16 Any written comments you have submitted to the
17 docket are already part of the record of this
18 rulemaking. In the rare case where witnesses wish to
19 provide any other documents that have not already been
20 entered in the docket, they should provide them by
21 email to oshaevents_dsg@dol.gov before the witness
22 begins their testimony, so that they can be entered as

1 exhibits in the record.

2 Because all pre-submitted documents are already
3 part of the record, your oral testimony should
4 concentrate on presenting the highlights of your
5 written comments or clarifying your written submission.
6 Hearing participants may also submit additional
7 evidence or statements for a period of 90 days from the
8 end of the hearing, which will be September 30, 2025.
9 At that point, the record for this rulemaking will
10 close.

11 Today after each speaker or panel of speakers
12 completes giving oral testimony, OSHA representatives
13 will have an opportunity to ask questions of the
14 speaker or panel. When OSHA has finished asking
15 questions, there will be an opportunity, as time
16 permits, for persons who filed a timely notice of
17 intention to appear to question the witness or panel.
18 Participants may only direct questions to witnesses
19 with whom they have no organizational affiliation.

20 This is a process I intend to follow. After OSHA
21 has finished asking questions of a witness or panel, I
22 will ask participants who wish to ask questions of the

1 witness to identify themselves by pressing the raise
2 hand button in Webex, or by -- three on their phones
3 for those who have called in.

4 Based on the hearing schedule and the number of
5 participants who wish to ask questions, I will
6 determine the order in which participants will question
7 the particular witness or panel and any time
8 restrictions on that questioning. If there are more
9 questions then we have time for today, it may be
10 possible to ask additional questions after the
11 conclusion of the final witness's testimony.

12 Further, if witnesses are unable to answer a
13 question during today's hearing or would like to expand
14 on the answers provided, they are welcome to use the
15 post-hearing comment period to submit such information.

16 I would also like to remind you that this
17 proceeding is being recorded and transcribed by a court
18 reporter. To ensure that the reporter is able to
19 provide an accurate record of all the testimony,
20 questions, and responses, please try to remember to
21 provide verbal responses to all questions. The court
22 reporter may have a hard time seeing if you only nod or

1 shake your head in response to a question.

2 In addition, please remember to identify yourself
3 before beginning your testimony and before asking or
4 answering a question. And do not worry, I know many
5 participants are not accustomed to doing these things.
6 I will try to remind you as we go along. The
7 transcript of the hearing will be uploaded to the
8 hearing docket on regulations.gov, approximately two
9 weeks following the hearing. Finally, I believe Ms.
10 Wiles from the Solicitor's Office may have a few
11 exhibits to enter into the record before we get to our
12 first witness.

13 MS. WILES: Yes, Linda Wiles from the Solicitor's
14 Office. Thank you, Your Honor. I would like to offer
15 as Exhibit 1 the master index of the complete record of
16 this rulemaking as of today's date. This should be
17 included in the hearing record. This is not a copy of
18 all the documents that have been submitted to -- this
19 is not a copy of all the documents that have been
20 submitted to the docket. Rather, it's a list of all
21 the documents that are a part of the public docket of
22 this rulemaking, docket number OSHA-2021-0009.

1 All of the documents listed here are available for
2 inspection and, as permissible, copying at the OSHA
3 Docket Office. In addition, all of the documents are
4 listed in the docket index for this rulemaking at
5 www.regulations.gov, the federal e-rulemaking portal.

6 JUDGE HENLEY: Thank you, Ms. Wiles. The master
7 index will be made a part of this record.

8 MS. WILES: Linda Wiles from the Solicitor's
9 Office again. Thank you. I also have an additional
10 few other exhibit related requests.

11 First, I would like to reserve Exhibit number 2
12 for a complete list of exhibits, which will -- we will
13 prepare after the close of the hearing.

14 Second, I would like to mark copies of two other
15 documents for entry as exhibits. I am marking a copy
16 of the hearing procedures as Exhibit number 3, and a
17 copy of the hearing schedule as Exhibit number 4. I
18 request that these documents be entered into the record
19 as well for this hearing.

20 JUDGE HENLEY: I will reserve Exhibit number 2 for
21 the complete list of hearing exhibits as requested.
22 Hearing procedures will be entered into the record of

1 this proceeding as Exhibit number 3, and the schedule
2 will be entered as Exhibit number 4.

3 MS. WILES: Thank you, Your Honor.

4 JUDGE HENLEY: Now, unless there are any further
5 announcements or other housekeeping matters, I believe
6 that we can proceed with public testimony. The
7 expected speaking order is currently displayed on the
8 screen. Our contractor, Mariam, will introduce each
9 speaker in turn and promote them to be panelists.

10 A reminder again, when you are called to testify,
11 please state your name and affiliation for the record.
12 Speak slowly and clearly so our court reporter can
13 record these proceedings accurately. Mariam?

14 MS. CARLON: The first speaker will be American
15 Federation of Labor and Congress of Industrial
16 Organizations. The group consists of Rebecca Reindel,
17 Chenay Arberry, and Ayusha Shrestha. Please state your
18 name and affiliation for the record before you begin
19 and any time you give further testimony as you're all
20 in one room.

21 JUDGE HENLEY: Ms. Reindel, Ms. Arberry, Ms.
22 Shrestha, can you hear me?

1 MS. CARLON: You have been promoted to panelists,
2 so --

3 JUDGE HENLEY: Ms. Reindel?

4 MS. ARBERRY: One moment. We're having technical
5 difficulties on Rebecca's end.

6 JUDGE HENLEY: Okay.

7 MS. REINDEL: Can you hear me okay?

8 JUDGE HENLEY: Ms. Reindel, is that you -- Rebecca
9 Reindel?

10 MS. REINDEL: This is Rebecca Reindel. Thank you.

11 JUDGE HENLEY: Yes, we can hear you.

12 MS. REINDEL: Okay. Do you need to see me or are
13 you okay?

14 JUDGE HENLEY: If you would like to be seen, just
15 turn on your camera.

16 MS. REINDEL: Sorry. We're taking care of that.
17 My computer wouldn't allow me to unmute -- or I mean,
18 I'm not sure I was promoted because I couldn't unmute,
19 so I'm on my colleague's. Okay, great.

20 JUDGE HENLEY: There you go.

21 MS. REINDEL: Great. Wonderful. Good morning,
22 everyone. Thank you for allowing us to testify today.

1 Sorry, one more technical difficulty. Apologies.

2 I'm Rebecca Reindel, and I'm the Safety and Health
3 Director at the National AFL-CIO. I'm joined on this
4 panel by my two AFL-CIO colleagues. We represent 63
5 national labor unions and their 15 million worker
6 members across a wide variety of U.S. industries, where
7 workers are exposed to heat hazards at work and who
8 need workplace specific protections, including
9 construction, manufacturing, airports, corrections,
10 schools, transit, hospitality, entertainment,
11 warehouses, the postal service, and many other
12 industries.

13 In 2022, the AFL-CIO and many unions commented on
14 OSHA's advance notice of proposed rulemaking to protect
15 workers from heat exposures on the job. In January of
16 this year. We also commented on OSHA's proposed heat
17 rule issued last year. The AFL-CIO has a long history
18 of supporting the promulgation of federal OSHA
19 standards. We have been involved in the development of
20 heat standards in states, and have supported collective
21 bargaining agreements and workplace campaigns related
22 to workplace heat protections.

1 This hearing was scheduled by the Biden
2 administration, and we are glad to see that it is still
3 an opportunity for stakeholders to testify in the next
4 stage of rulemaking. But this hearing is not a final
5 standard, and we urge the Trump administration to build
6 a final standard based on last year's comprehensive
7 proposal and on the evidentiary record, as the agency
8 is required to do.

9 I will be leading our panel, and my colleagues
10 will offer key areas we believe need to be strengthened
11 in the final rule so that workers can be adequately
12 protected. Additionally, since many of our unions will
13 raise specific issues and case examples directly from
14 their own membership, and our testimony will focus on
15 some overarching issues and positions.

16 The promulgation of a national heat standard to
17 protect workers is critically overdue. Heat has been a
18 long-standing hazard in workplaces, which has only been
19 made worse by climate change in ways already
20 substantiated in the record. But working in hot
21 environments has long been recognized as hazardous to
22 workers. This is why, in 1972, NIOSH published its

1 first criteria document for a recommended standard to
2 protect workers from heat. These recommendations were
3 updated in 1986 and again in 2016.

4 By publishing and continuing to update these
5 recommendations, as NIOSH is required to do, the agency
6 recognized the need for an enforceable standard, not
7 just guidance.

8 JUDGE HENLEY: Ms. Reindel, this is Judge Henley.
9 You're frozen, if you can hear me.

10 MS. REINDEL: Also had guidance for employers and
11 workers on water, rest and shade.

12 JUDGE HENLEY: Ms. Reindel?

13 MS. REINDEL: Yes?

14 JUDGE HENLEY: You froze for a couple of seconds.
15 You may want to back up about 15 seconds and repeat
16 your testimony.

17 MS. REINDEL: Right.

18 JUDGE HENLEY: Now I believe you're muted.

19 MS. REINDEL: Okay.

20 JUDGE HENLEY: There you go.

21 MS. REINDEL: All right. Thank you judge.

22 Appreciate it.

1 NIOSH published its first criteria document for
2 recommended standard in 1972 to protect workers from
3 heat. These recommendations were updated in 1986 and
4 again in 2016. By publishing and continuing to update
5 these recommendations, as NIOSH is required to do, the
6 agency recognized the need for an enforceable standard,
7 not just guidance, for more than 50 years now.

8 So not only have we known about heat hazards and
9 exposures for decades, we've also known about the
10 commonsense control measures needed to reduce these
11 exposures. And this is for both outdoor and indoor
12 workers. OSHA has also had guidance for employers and
13 workers on water, rest and shade. Yet none of these
14 recommendations --

15 JUDGE HENLEY: Sorry, speaker froze. And Ms.
16 Reindel, you froze again for about eight seconds this
17 time. That's okay. It --

18 MS. REINDEL: Okay. I'm going to -- maybe -- I'm
19 going to stop my video and see if that helps.

20 JUDGE HENLEY: I think -- yeah, that's a good
21 idea. Let's go off camera and see if that'll help.

22 MS. REINDEL: So a federal standard is needed,

1 And some specific workforces, like those in the U.S.
2 Postal Service, are not covered by any state OSHA
3 standards. The lack of a federal OSHA standard leaves
4 these workers at high risk to heat exposures on the
5 job, with no protections, and many have died.

6 A recent example of this includes one of our
7 letter carriers who, just a few weeks ago, had heat-
8 related symptoms while out on their route not far from
9 Washington, D.C., in Wheaton, Maryland. Maryland has a
10 heat standard, issued last year by Maryland State OSHA
11 plan. But it is federal OSHA who has coverage over the
12 U.S. Postal Service, and the general duty clause has
13 not been able to adequately protect postal workers from
14 job heat exposures. These high-risk workers need a
15 federal heat standard to protect them. States cannot
16 do it.

17 Since this rulemaking started four years ago,
18 we've already lost several hundred workers to work
19 related heat exposure by DOL's own counts, which are
20 only a fraction of the real problem. And many, many
21 others have suffered debilitating heat illness.

22 The AFL-CIO strongly supports OSHA's proposed rule

1 and its comprehensive approach. We believe OSHA's
2 approach in this standard is generally quite reasonable
3 and straightforward. We do have a few recommendations
4 to make the rule stronger, and we will get into those
5 later in our testimony.

6 The proposed OSHA heat standard is not one size
7 fits all. It actually is quite pragmatic and a smart
8 approach by the agency. The proposal does several
9 things that industries should like, such as it creates
10 a common elements of a heat program across workplaces
11 that are specifically designed to be adaptable and
12 flexible to each industry and worksite. It helps
13 multi-state employers comply with one set of
14 requirements across different geographic regions,
15 rather than a patchwork of different frameworks. It
16 includes incentives for employers to avoid exposure
17 monitoring by assuming inclusion in the rule following
18 high heat triggers. It has less strict requirements on
19 acclimatization than what formal recommendations have
20 even advised. And it provides some specific
21 instructions and guidance to help employers.

22 Having some specificity in the rule does not mean

1 it's overly prescriptive. And in order to protect
2 workers, you must have some minimum requirements that
3 require some specificity. Otherwise, it is not
4 practicable or enforceable. OSHA must include some
5 specifications that ensure employers are not harming
6 the goal of such a standard. That is, to reduce
7 significant risk.

8 But for instance, if water isn't cool enough to
9 cool the body down or shade is provided in a hot car or
10 fan use above a certain temperature is permitted, these
11 all increase the body temperature, not decrease it. So
12 these will have the opposite effect of the goal of the
13 standard and they are necessary. Letting employers
14 address heat however they want with no rules whatsoever
15 is what we have now in most places. And it is still
16 not working. Water, rest, shade is simply not enough.

17 And here, OSHA is providing a classic risk
18 assessment approach. We hear that heat is different.
19 It's not different. You conduct a risk assessment to
20 identify the hazardous exposures, you identify the
21 control measures needed, and you implement them. We
22 know heat exposure sources. We know the multitude of

1 control measures available.

2 In summary on this, OSHA proposed heat standard
3 sets a strong framework for employers to follow with
4 critical elements that are necessary to --

5 JUDGE HENLEY: Ms. Reindel.

6 MS. REINDEL: Okay. I think I'm back.

7 JUDGE HENLEY: We lost you for about five to ten
8 seconds at the end there.

9 MS. REINDEL: Okay. It is -- simply put, it is
10 normal for OSHA standards to require employers to
11 adequately plan to prevent workplace exposures. This
12 is how we save lives.

13 After more than 50 years of OSHA setting and
14 enforcing workplace safety and health standards, some
15 of the big industries we have seen objecting to heat
16 standards should be quite familiar with the common
17 elements of OSHA standards, if they are following the
18 law on other hazards. If anything, the proposal on
19 heat is a more flexible approach than we have seen in
20 many OSHA standards. History shows us that OSHA
21 standards actually cost less than estimated in the
22 final rule, and they actually force technology, and

1 they are meant to do just that.

2 And OSHA heat standard, just like other OSHA
3 standards, will create a demand in the market for
4 information, more efficient ways of doing things,
5 technologies, control measures, and other tools for
6 employers. But on heat, many of these have already
7 been around for decades. And we also know that once a
8 standard is issued, employers usually welcome a uniform
9 model to follow.

10 It is OSHA's responsibility to set a standard that
11 protects workers and prevents heat-related incidents,
12 not just responds to them. And because heat is a
13 recognized workplace hazard and employers control the
14 working conditions, hot working conditions are the
15 employer's responsibility to address. This is why we
16 need a federal standard.

17 Lastly, I would be remiss if I didn't leave today
18 without mentioning the major agency missing from this
19 national heat hearing -- the National Institute for
20 Occupational Safety and Health, or NIOSH. In the past
21 two months, the administration fired 85 percent of
22 NIOSH staff who do the critical scientific research and

1 intervention work on the effects of workplace heat
2 exposures on the body, existing and developing
3 workplace control measures, and technologies that help
4 employers and workers monitor conditions in their
5 workplaces.

6 Of the small number of staff who were recently
7 reinstated, none are those who develop criteria
8 documents for a recommended standard and do not include
9 many of those experts who would be testifying here
10 today. NIOSH has testified at federal OSHA hearings
11 for decades about their work on a specific --

12 JUDGE HENLEY: Ms. Reindel, we lost you again.

13 MS. REINDEL: Hi, I noticed I went out.

14 JUDGE HENLEY: We can hear you.

15 MS. REINDEL: I'm back?

16 JUDGE HENLEY: Yes.

17 MS. REINDEL: NIOSH has testified at federal OSHA
18 heat hearings for decades about their work on a
19 specific hazard. The firing of NIOSH experts has
20 eliminated their participation in this hearing, and has
21 removed our right of stakeholders to ask NIOSH key
22 questions about their expertise. It is a huge loss to

1 OSHA, to the other witnesses participating in this
2 hearing, and to the evidentiary record.

3 In closing, we recognize a federal OSHA standard
4 will not cover every employer or worker in America, but
5 a federal standard would create a floor for many to
6 comply with and for others to strengthen. Thank you
7 for your time. When we take questions from our panel,
8 I will lead and direct them to the most appropriate
9 person. And I'll now turn this over to my colleague,
10 Chenay Arberry.

11 JUDGE HENLEY: Thank you, Ms. Reindel. Ms.
12 Arberry, if -- if you can identify yourself and then if
13 you'd like, you can turn the camera off.

14 MS. ARBERRY: Great. I apologize our --

15 JUDGE HENLEY: We're frozen again.

16 MS. ARBERRY: To address heat exposures and the
17 importance of requiring participation of workers and
18 their representatives in the employer's implementation
19 of the heat standard.

20 JUDGE HENLEY: Ms. Arberry. This is Judge Henley,
21 I apologize. I -- I -- I -- you were frozen right
22 there at the beginning, when I believe you introduced

1 yourself in the beginning of your remarks.

2 MS. ARBERRY: I apologize. I can start from the
3 beginning.

4 JUDGE HENLEY: Please.

5 MS. ARBERRY: So as I stated before, I'm Chenay
6 Arberry, the Senior Safety and Health Specialist at the
7 AFL-CIO. I appreciate the opportunity to provide
8 testimony on the need for OSHA to adopt a comprehensive
9 heat injury and illness prevention standard, the need
10 for OSHA to require employers to use a hierarchy of
11 controls to address heat exposures, and the importance
12 of requiring participation of workers and their
13 representatives in employers' implementation of the
14 heat standard.

15 Nothing short of a comprehensive standard will be
16 acceptable to workers in America. A piecemeal,
17 patchwork approach has not and would not adequately
18 protect workers. Heat stress is not just about the sun
19 or the temperature; it's about the working environment,
20 humidity, work surfaces that reflect, absorb, or block
21 heat. It is also about physical burdens on the bodies,
22 one -- one's workload and the adaptation period

1 necessary to adjust to different workloads. It's also
2 about cooling the body down through access to necessary
3 hydration and shade. And it's about how employers
4 prepare for, prevent, control, and respond to
5 exposures.

6 Today, I will highlight a few key areas of a
7 comprehensive standard approach. Both outdoor workers
8 and indoor workers are harmed by extreme heat at work,
9 but many indoor workers under our umbrella would be
10 excluded from OSHA's proposed rule, but deal with
11 significant heat exposure at work that their employers
12 still have not addressed. These are workers in
13 manufacturing plants, post offices, schools, and others
14 who may fall under OSHA's proposed sedentary exclusion.

15 Under OSHA's proposed rule, these workers would be
16 able to work at, say, 120 degrees or more with no
17 requirements on their employers because they are
18 excluded from this rule, with no temperature limits.
19 But they need to be covered under a federal standard.
20 They need to have the same temperature triggers that
21 everyone else has. Many of these workers move on the
22 job more than OSHA can predict, and extreme heat has

1 dangerous effects even while sedentary.

2 Second, a written plan. A proactive plan that's
3 in writing is key for everyone to be involved, aware,
4 and held accountable.

5 Third temperature triggers. This is a common-
6 sense public health approach for inclusion of those at
7 risk with increasing requirements as conditions worsen.

8 Four, acclimatization. The majority of heat-
9 related worker deaths have occurred during the first
10 few days on the job. Mandatory acclimatization
11 protocols protect new and returning workers.

12 Five, control measures. Preventing and mitigating
13 heat exposures based on a risk assessment and requiring
14 engineering controls to reduce workers heat exposure at
15 the source.

16 Six, mandatory breaks. This is both necessary for
17 reducing significant risk, and there's evidence that
18 shows productivity actually increases when human bodies
19 have had a chance to cool down and rest. One word of
20 caution here though on fan use during breaks. As we
21 cited in our written comments, fan use above 90 degrees
22 does not cool the body down and can actually have the

1 opposite effect.

2 So fans on breaks need to have strict requirements
3 to make the problem worse. But OSHA's proposal allows
4 for fan use in break areas. Blowing hot air on workers
5 during breaks is not -- will not cool them down
6 effectively before returning to work. So we believe
7 that OSHA needs to tweak the instructions of fan use
8 during breaks to reflect this reality and propose --
9 and the purpose of a cooling break.

10 Seventh and last, training. Both workers and
11 supervisors must receive regular adequate training in
12 order to -- in order for the plan to be effective,
13 including on reporting heat hazards, illnesses, and
14 monitoring -- and -- sorry, I thought I froze -- and
15 monitoring and -- and emergency response procedures.

16 The second area I would like to highlight today is
17 addressing the source exposure of heat hazards.
18 Addressing the significant risk of heat through a
19 federal OSHA standard requires that the agency goes
20 beyond only focusing on the body's physiological
21 response to heat.

22 As with all other -- as with all other OSHA

1 standards and -- and in industrial hygiene 101, OSHA
2 standards must require employers to control and reduce
3 the source exposure to the hazard where feasible.
4 Addressing both the exposure and the response is
5 critical and has been OSHA's approach for decades. The
6 best way to do this is for employers to mitigate
7 exposures to heat using the hierarchy of controls, and
8 there are many control measures beyond water, rest, and
9 shade that reduce heat exposure.

10 For instance, if there is -- where there is a
11 machine giving off radiant heat, employers can take
12 measures to install guards or barriers to block that
13 heat. Where the -- where there are hot surfaces,
14 employers can take measures to reduce exposure to them,
15 or to change the surface color or cording -- or coating
16 to reflect heat rather than absorb it.

17 The hierarchy of controls has never been
18 prescriptive. It does not mean that every control will
19 be applicable in every workplace. However, the
20 hierarchy requires employers to walk through the
21 categories of heat exposure -- heat exposure sources in
22 order. And for decades, OSHA has required employers to

1 use a hierarchy to implement these controls to the
2 greatest extent feasible.

3 It is pure myth that heat is different. In
4 NIOSH's first criteria document for a recommended heat
5 standard, and --

6 JUDGE HENLEY: I think we lost you, Ms. Arberry.
7 Ms. Arberry?

8 MS. ARBERRY: Yes. I'm here.

9 JUDGE HENLEY: Yeah we lost --

10 MS. ARBERRY: I'm still here.

11 JUDGE HENLEY: We lost about ten seconds of your
12 testimony.

13 MS. ARBERRY: I apologize. I will backtrack that.
14 Can you hear me now?

15 JUDGE HENLEY: Yes.

16 MS. ARBERRY: In NIOSH's first criteria document
17 for a recommended heat standard in 1972, the agency
18 recommended engineering controls. The recently passed
19 ANSI standard on heat in construction explicitly uses
20 the hierarchy of controls. The body's heat burden is
21 cumulative, created by different heat exposures.
22 Preventing the exposure to begin with, where feasible,

1 is key.

2 Without the hierarchy, employers will bypass some
3 very obvious sources of heat exposure. And in that
4 vein, we strongly support OSHA's proposed requirement
5 to ensure any PPE is properly evaluated for
6 contributing to heat stress. OSHA should also -- also
7 provide employers, workers, and their representatives
8 with visual tools and guidance on the different areas
9 of the hierarchy of controls for heat exposure, so that
10 everyone is on --

11 JUDGE HENLEY: I think lost you again, Ms.
12 Arberry, briefly. Ms. Arberry?

13 MS. ARBERRY: Yes, I'm here.

14 JUDGE HENLEY: Yeah. We lost you again -- briefly
15 lost.

16 MS. ARBERRY: Apologies. I did not catch that.

17 JUDGE HENLEY: You're back with us. Or maybe not.

18 MS. ARBERRY: Hello?

19 JUDGE HENLEY: Yeah. Ms. Arberry, can you hear
20 me? This is Judge Henley.

21 MS. ARBERRY: I can hear you. You're quite
22 glitchy.

1 JUDGE HENLEY: Yeah, I think that may be on your
2 end.

3 MS. ARBERRY: I'm -- I think I should -- okay.
4 Now I can see that you're back.

5 And in that vein, we strongly support OSHA
6 proposed requirement to ensure any --

7 JUDGE HENLEY: And now I think you're frozen.
8 Mariam, do you have any suggestions that maybe on their
9 end, they can look into. It seems to be a chronic
10 problem.

11 MS. CARLON: Yeah, I was about to come off mute.
12 I want to confirm that she can hear me. Ms. Arberry,
13 are you able to hear me? Or Ayusha, if you're in the
14 same room and you're able to come off of mute, are you
15 able to hear me?

16 JUDGE HENLEY: I think they're all using the same
17 laptop.

18 MS. CARLON: Yeah. There's still about ten
19 minutes left in your testimony. It's possible that we
20 could have somebody call in and use the phone instead.
21 And I'm happy to have them switch to that method. I
22 just want to confirm someone can hear me to do that.

1 JUDGE HENLEY: Yeah, Yeah, let's see if they
2 rejoin us.

3 MS. CARLON: Yeah, let's see if we can get one of
4 them back.

5 MS. ARBERRY: I can hear --

6 MS. CARLON: Chenay can you hear me now? Are you
7 able to hear me, Ms. Arberry? Okay. I just got a note
8 that they're calling, so go ahead and promote them once
9 they call me.

10 JUDGE HENLEY: So let me -- let me -- if you are
11 able to, put them on speaker.

12 MS. CARLON: Absolutely. If they're calling in
13 the individual that just sent me that note, Ms. Cain,
14 could you tell them to use star three to raise hand so
15 I can just confirm the number that's calling in?

16 JUDGE HENLEY: Right. Do you think they can hear
17 at this point?

18 MS. CARLON: Looks like they have somebody
19 advocating for them in the chat.

20 JUDGE HENLEY: Could you put that in the chat?

21 MS. CARLON: Yeah. Yeah. Ms. Cain is speaking
22 for them in the chat. So let's see if she can pass

1 that note.

2 JUDGE HENLEY: If they're able to speak by phone,
3 would they need to turn off their link?

4 MS. CARLON: Yeah, I'll just mute the -- so
5 there's no -- you're right. So there's no feedback,
6 I'll just mute the computer.

7 JUDGE HENLEY: Thank you. Mariam, are you still
8 with us?

9 MS. CARLON: Yeah. I'm getting word in the chat
10 that she's calling in, but I need to be able to
11 promote. So I'm just letting them know how to do that.
12 I just want to make sure I promote the correct phone
13 number.

14 JUDGE HENLEY: That would help.

15 (Laughter.)

16 MS. CARLON: Got it. All right. Chenay, you
17 should now be unmuted. Go ahead.

18 MS. ARBERRY: Hi, all. I deeply apologize for --
19 can you hear me?

20 MS. CARLON: Yes.

21 MS. ARBERRY: Hi. Yes, deeply apologize. I think
22 our whole office building is having connectivity

1 issues. I will pick up where I left off.

2 JUDGE HENLEY: That's fine, Ms. Arberry, you can
3 proceed.

4 MS. ARBERRY: Okay. Thank you.

5 In NIOSH's first criteria document for a
6 recommended heat standard in 1972, the agency
7 recommended engineering controls. The recently passed
8 ANSI standard on heat and construction explicitly uses
9 the hierarchy of controls. The body's heat burden is
10 cumulative, created by different heat exposures.
11 Preventing the exposure to begin with where feasible is
12 key. Without the hierarchy, employers will bypass some
13 very obvious sources of heat.

14 And in that vein, we strongly support OSHA's
15 proposed requirement to ensure any PPE is properly
16 evaluated for contributing to heat stress. OSHA should
17 also provide employers, workers, and their
18 representatives with visual tools and guidance on the
19 different areas of the hierarchy of controls for
20 exposure, so that everyone is on the same page.

21 Finally, the AFL-CIO strongly supports
22 requirements for the active participation of workers

1 and their representatives in the final heat rule --
2 rule. We commend OSHA for including this requirement
3 in developing and implementing the written heat plan,
4 such as identifying heat hazards, where and when the
5 work environment meets the heat trigger, and feasible
6 control options.

7 We also commend OSHA for including, reviewing, and
8 updating the heat plan regularly, especially after
9 heat-related incidents, and developing and implementing
10 the emergency response plan. However, employers must
11 also be required to permit workers and their
12 representatives to access exposure monitoring records
13 so that they can be aware of changes in working
14 conditions and help mitigate exposures associated with
15 those current changes.

16 And lastly, access injury and illness records to
17 identify patterns and gaps in preventative measures.
18 These provisions are not only consistent with OSHA
19 standards and worker representation rights, they are
20 fundamental to ensuring the rule is properly enforced
21 and delivers real protections.

22 Thank you. And I will now turn it over to my

1 colleague, Ayusha, on this line.

2 MS. SHRESTHA: Thank you. Thank you, Chenay.

3 Hello, I am Ayusha Shrestha, a safety and health policy
4 assistant at the AFL-CIO. Can everyone hear me
5 properly?

6 JUDGE HENLEY: Yes, we can.

7 MS. SHRESTHA: Great. I appreciate the
8 opportunity to provide testimony on two other key areas
9 that should be strengthened from the proposed rule; the
10 need for record keeping requirements and the need for
11 clear, anti-retaliation provisions in a final OSHA heat
12 standard.

13 We cannot rely on current systems for capturing
14 the full scope of heat incidents at work. Heat-related
15 illnesses and injuries are extensive in workplaces, but
16 surveillance of these is poor. Also, localized and
17 national efforts to compile or report heat-related
18 deaths or severe illness also neglects reporting by
19 industry and or occupation, which is critical for
20 employers, researchers, and authorities to identify
21 areas where intervention and more resources are needed.
22 And without a thorough mechanism to systematically

1 capture and track heat events, employers are operating
2 blind to actual risks associated with heat at their job
3 sites.

4 Yet OSHA's proposed standard on heat has no
5 requirement for employers to record and report
6 incidents of heat-related illness and injury. Under
7 OSHA's existing record keeping rule, many heat-related
8 illnesses, especially those being treated with what is
9 commonly considered first aid or those resulting in
10 temporary job modifications lasting less than one
11 working day, are not recordable. For heat exposures,
12 these incidents are substantial warning signs. Our
13 written comments earlier this year include our three
14 main recording and reporting recommendations that we
15 urge OSHA to include in its final rule. I will only
16 touch on them briefly from my testimony today.

17 First, OSHA should require all employers covered
18 by the standard to maintain a written incident log -
19 heat incident log. This log would capture all heat-
20 related incidents, regardless of whether the incident
21 meets the current threshold of OSHA reportability. The
22 log needs to be actively updated and maintained as a

1 part of the employer's written heat illness prevention
2 and emergency response plan. It must be accessible to
3 workers and their representative. When consistently
4 maintained, such logs assist employers and workers
5 identifying heat-related hazards through pattern
6 recognition.

7 Second, the final standard must include clear
8 definitions of work-related heat illness that can be
9 recorded on OSHA 300 logs. OSHA should provide
10 appropriate criteria that parallel the full spectrum of
11 heat-related conditions listed in the preamble, such as
12 heat cramps, heat stroke, heat exhaustion, heat
13 syncope, amongst other injuries - amongst other
14 conditions.

15 Third, OSHA should require that all work-related
16 heat cases that require emergency care be reported to
17 the agency within eight hours as a part of OSHA's
18 existing Severe Injury Reporting Regulation.

19 In summary, having these records in writing
20 assists employers and workers identifying heat-related
21 exposures and the conditions - and for taking actions
22 to put measures in place to prevent these hazardous

1 exposures.

2 In addition to strong record keeping requirements,
3 OSHA's final heat standard must include clear and
4 enforceable anti-retaliation measures. Similar anti-
5 retaliation measures are found in other OSHA standards,
6 because workers are often penalized for reporting
7 injuries and illnesses, for reporting where hazards
8 exist, for taking preventative actions to control a
9 hazard, and for otherwise exercising their rights
10 described in a specific safety and health standard. In
11 hot working environments, specifically, many workers
12 are retaliated against for speaking up about -- about
13 sources of heat exposures, requesting engineering
14 controls or water, taking cooldown breaks, logging heat
15 incidents, or needing appropriate care in emergency
16 situations. A standard is only as strong as a worker's
17 ability to safely use it.

18 Furthermore, when and if medical evaluations
19 occur, there must be strict confidentiality protections
20 to ensure privacy between a worker and their medical
21 provider. It should remain an individual worker's
22 choice to share medical information with their

1 employers. Workers must feel empowered to act, not
2 fear punishment for protecting themselves and their
3 colleagues. If anti-retaliation measures are not
4 cemented into the standard, it will be left up to
5 individual employers' interpretations and will leave us
6 no further than where we are now, where there are
7 significant problems. No worker should have to face
8 the decision to choose between their lives and their
9 livelihoods.

10 Thank you. That concludes the AFL-CIO's testimony
11 for today.

12 JUDGE HENLEY: Thank you Ms. Shrestha. And thank
13 you, AFL panel. Do the OSHA representatives have
14 questions for this panel?

15 MR. LEVINSON: Yes, Your Honor, we do. Andrew
16 Levinson for OSHA. To the AFL panel, let me remind
17 you, you can either answer now and/or in post hearing
18 written comments to any of the questions that we have
19 for you.

20 In your written comments, you recommended that
21 OSHA mandate employers prioritize the hierarchy of
22 controls when implementing heat injury and illness

1 prevention programs. Can you further explain how you
2 envision such a requirement working, particularly for
3 outdoor workplaces where water, rest, and shade does
4 not conveniently fall into the hierarchy of controls?

5 Also, can you talk about your advocacy for cooling
6 personal protective equipment? And do you have any
7 information on the feasibility of maintaining the
8 cooling properties of PPE during employees' work
9 cycles?

10 MS. REINDEL: Thank you. This is Rebecca Reindel.
11 I'm happy to take that question. Just to start, and
12 for all of these -- first of all, apologies for our
13 technical incapacibilities today, but we're happy to
14 follow up in more detail. I would just like to say, on
15 your question, we think that water, rest, shade, of
16 course, are critical and important. We think there do
17 need to be specific measures around there. The way
18 that the proposed standard laid these out as it relates
19 to other parts of the hierarchy of controls such as
20 engineering controls, are inconsistent and leave quite
21 a few gaps.

22 And so for instance, in the proposal, engineer --

1 some engineering controls, such as radiant heat
2 exposures, are mentioned as one option in indoor
3 working environments only, not in outdoor working
4 environments. We know there are engineering controls
5 that some employers have used where they -- this of
6 course would not be relevant in every single work site,
7 but there are some where they have changed the surface.
8 We know, you know, there are certainly issues in
9 engineering control options in settings like airports,
10 out on a tarmac, where there can be better engineering
11 controls implemented. We can provide more specific
12 examples.

13 But the engineering controls is a hierarchy, so it
14 needs to be walked through in order. And -- and water,
15 rest, shade accompanies and is part of this -- this
16 hierarchical approach. But we do think there's a big
17 gap of where engineering controls have been left out of
18 feasible control measures for outdoor settings, and
19 also for indoor settings, where the requirement to
20 examine engineering controls is -- is optional. So if
21 you have air conditioning inside, you don't have to
22 address sources that are getting off -- giving off

1 heat. And so there -- I think there's -- or fan use.
2 And so there seem to be options that completely leave
3 out the ability for employers to do some pretty
4 fundamental corrections that would, you know, reduce
5 the actual heat exposure before the workers have to
6 take breaks, for instance.

7 And then also, would just like to add that I
8 think -- if I'm remembering the proposal correctly
9 there -- at the initial heat trigger, you know, there
10 are not mandatory break requirements. And so there
11 also are not mandatory engineering controls. So we're
12 not even requiring breaks in settings that we're not
13 requiring engineering controls. So I think OSHA needs
14 to tweak that and think through that a little bit more
15 clearly. But we are happy to follow up in post
16 hearing.

17 MR. LEVINSON: In your written comments, you
18 indicated that the heat standard should include
19 additional procedures for extreme heat conditions. Can
20 you provide, now or in post-hearing comments, any more
21 specific recommendations on how or when control
22 measures for extreme heat should be incorporated.

1 MS. Reindel: Sure, we'll be happy to follow up
2 with those.

3 MR. LEVINSON: The next question is from Dr.
4 Stephen Schayer.

5 DR. SCHAYER: Hi. Thank you so much for your
6 testimony. I'm Stephen Schayer from OSHA, Directorate
7 of Standards and Guidance. So I have a question about
8 performance-oriented standards. We've received many
9 written comments that OSHA should adopt a performance-
10 oriented standard, rather than specifying when and how
11 control measures must be implemented. So my question
12 is, if OSHA were to adopt a performance-oriented
13 standard that required employers to develop a heat
14 injury and illness prevention plan that incorporated
15 several elements, say like water, rest, shade and
16 training, would you envision a minimum specification
17 for any of the elements for when and how they should be
18 implemented?

19 MS. REINDEL: We would be happy to also follow up
20 in that post-hearing comments. But the programmatic
21 standard approach that OSHA took in its proposal is
22 actually what has been recommended for 50 years. And

1 we think are - we believe are - is still quite relevant
2 today. It's a comprehensive approach and it - such a
3 performance-oriented approach, it's unclear what
4 metrics would be used to understand how those would be
5 effective. We have proven control measures in this
6 programmatic approach that I think lay out pretty clear
7 where - you know, what employers need to do and how
8 they can monitor and ensure that it's working.

9 In the -- in the approach that you referenced,
10 it's not clear to me that all of those -- you know,
11 that those provisions that work together would really
12 be -- would really be effective. We are happy to give
13 that more thought, but we do think that the
14 programmatic approach that OSHA proposed is the most
15 effective. And it's also in line with recommendations
16 now, for so long, as to how to effectively control the
17 sources of heat exposure. Remember, we have to
18 control -- I know when OSHA sets a standard, they have
19 to control the -- the exposure to those sources of
20 heat. And that's really what we need to be focused on
21 here and not -- you know, some items that might meet a
22 checklist. We need to make sure that what we're doing

1 is effective.

2 DR. SCHAYER: Okay. Thank you very much. Yes.
3 And any information you could provide in your post-
4 hearing comments on how OSHA could ensure that a
5 performance-oriented standard is protective would be
6 very helpful.

7 I did have one second question, which is about
8 record keeping. So in your testimony today, you
9 recommended that OSHA require employers to maintain a
10 written heat incident log to record all heat-related
11 incidents that are identified by the employer or
12 reported by a worker or their representative. Just to
13 clarify, are you advocating this approach for all
14 covered industries, and, if so, do you have any
15 information that you could share now or again in your
16 post-hearing comments on the costs and economic
17 feasibility of such a requirement?

18 MS. REINDEL: We're happy to follow up on your --
19 your specific questions. We do intend this to be
20 across industries. Part of the reason for such an
21 incident log is to identify the trends for early
22 intervention, and to track where this is happening.

1 And so if -- if industries are exempt from such a
2 requirement, we would not be able to sufficiently track
3 where such incidents are occurring.

4 And the incident logs aren't meant to be punitive,
5 but it is meant to be a tool that employers can use,
6 that workers and their representatives can use, to say
7 specific -- you know, specific shifts, specific
8 occupations, specific tasks or time of day, we see an
9 increase in -- in these types of incidents. And so we
10 know that that's an area that we need to be more
11 specifically directing our interventions towards. We
12 are happy to follow up a little bit more on that in the
13 post hearing.

14 DR. SCHAYER: Okay. Thank you very much. We
15 appreciate that.

16 MR. LEVINSON: The next questions, Your Honor,
17 come from Brenda Finter from OSHA.

18 MS. FINTER: Hi, this is Brenda Finter, and I am
19 from OSHA Directorate of Standards and Guidance. Good
20 morning. My first question is about drinking water.
21 Under what specific conditions, if any, do you believe
22 that electrolyte supplement should be required for

1 employers to provide?

2 MS. REINDEL: I think OSHA has provided a lot of
3 guidance on this in many of its heat campaign
4 materials, which are pretty good. We are happy to
5 follow up on that and a little bit more -- a little bit
6 more specificity. But we do need the -- I think the
7 focus needs to be maintained on hydration and we know
8 that that comes in different ways. But we're happy to
9 follow up a little bit more on that.

10 MS. FINTER: Okay, thank you. Next question, have
11 the members of your affiliated unions worked at
12 employers who have tried cooling fans, and if so what's
13 their experience with fans? If not, are there any
14 alternatives currently being used to keep employees
15 cool?

16 MS. REINDEL: we have several really great members
17 who will be -- affiliates who will be speaking during
18 the next two and a half weeks. And so I would just
19 encourage you to ask those of some of those more
20 specific industries, because I think they're going to
21 have some, you know, specific examples for you.

22 MS. FINTER: Okay. And then one last question

1 from me. In your written comment, you discuss
2 prioritizing and investing in technologies that
3 mitigate extreme heat. Are there any other advances
4 you are aware of that are either currently available
5 now, or just on the horizon, that might make cooling
6 the work environment more technologically feasible?

7 MS. REINDEL: There certainly are several
8 organizations. I know ANSI has been working on a lot
9 of information. NIOSH was working on a couple areas
10 around this. But I -- we would need to follow back
11 with you on providing detail that probably isn't worth
12 going into in great length here, but we'll -- we'll
13 mark it down and follow up with you.

14 MS. FINTER: Okay. Thank you.

15 MR. LEVINSON: Thank you, Your Honor. Your Honor,
16 the next questions from OSHA come from Dr. Gary Orr

17 DR. ORR: Thank you, Andy. This is Gary Orr, OSHA
18 Directorate of Enforcement Programs. So a couple of
19 questions, and you may have touched on these already.
20 And if so that's -- you can just say that. But I want
21 to specifically talk a little bit more about cooling
22 devices and cooling PPE and if there's things that

1 you've observed in the workplace. And also what are
2 workers experiences with cooling PPE?

3 MS. REINDEL: Sure. I'm happy to provide an
4 example actually on this, we -- well -- well several --
5 but one comes to mind. You know, a lot of workers do
6 not -- they have to -- they have to walk beyond or
7 travel beyond where they receive their cooling PPE to
8 their work site. And PPE -- cooling PPE doesn't
9 always -- I know there are different -- there are --
10 there is some utility to it in certain cases.

11 But there are situations we've had, for instance,
12 where an employee has worked in a manufacturing plant
13 and it takes them 25 minutes to walk to the other area
14 of their manufacturing plant and to go up several
15 levels into a crane. And by the time they get up into
16 their crane, the cooling PPE has essentially worn off.
17 That's a first-hand experience of one of our members.

18 We've seen this in other settings too, but I
19 think -- I've actually talked to some about this and
20 their response is a little bit of a laugh in the sense
21 that, you know, that would never be effective, because
22 it wouldn't even really be effective for me, on this

1 particular job, to last for the duration that I need it
2 to.

3 And you know, we can -- we can provide other
4 examples in the docket, but I think, if you're using it
5 as a supplement to other control measures in certain
6 settings, it's certainly possible. We do want to make
7 sure that the heat burden on the body due to PPE, and
8 cooling PPE when it wears off, is -- is not -- is not
9 excessive and is not overburdening the body. And we
10 noticed that in the OSHA's proposed rule, they do quite
11 a good job of making sure that cooling PPE does not
12 stay on workers longer than it can be effective.

13 DR. ORR: So thank you. I've got a question on
14 sort of a different area. I don't think you've touched
15 on this recommendation to establish lone worker
16 observation protocols. Could you tell me a little bit
17 more about your thoughts on that?

18 MS. REINDEL: Sure. We have a little bit more
19 information we can follow up in the record. We have a
20 lot of experience around lone workers in different
21 industries. And these have to do around, you know, the
22 structure of work, the technologies, the communication.

1 We know that it's -- it's certainly an issue in heat,
2 where you don't have a buddy system or you don't have
3 regular communication. And we know that workers are
4 often found too late when there are cardiovascular
5 events. So we're happy to provide a little bit more
6 detail. I know -- I know, we submitted some to the
7 record previously, but we can certainly follow up.

8 DR. ORR: And if you could just add in that what
9 kind of triggers you might have where these
10 observations might start. If you could add that,
11 that'd be great.

12 MS. REINDEL: Will do. Thank you.

13 DR. ORR: Thank you.

14 MR. LEVINSON: Your Honor, we have one final
15 question that we wanted to just have read into the
16 record. Zoe Petropoulos.

17 DR. PETROPOULOS: Yes. This is Zoe Petropoulos
18 with the Directorate of Standards and Guidance. So we
19 just ask that you consider this as you prepare your
20 post hearing comments. We heard from many commenters
21 that they opposed the exemption of indoor sedentary
22 workers. If you are aware of any literature or data

1 that demonstrates that these workers are at risk of
2 heat-related injuries and illnesses, can you share
3 those in your post hearing comments?

4 MS. REINDEL: Sure, happy to. I -- happy to put
5 those in our post hearing comments, but I do also want
6 to flag here that we have these kinds of situations
7 related to the previous example I mentioned where we
8 know a lot of indoor settings heat rises, right?
9 Everybody knows that, I think from their -- their homes
10 and offices and other settings. We have workers who
11 work on many different levels of plants. And sometimes
12 we have workers who work at desks, who are on -- on the
13 shop floor, working amongst the hot machinery and hot
14 settings.

15 And so there's no -- not having a temperature
16 trigger for those types of indoor workers. We also
17 have some -- you know, we have workers who, for
18 instance, work in postal centers, who were set up
19 during COVID to mail test kits. But they were meant to
20 be temporary facilities; they're still running. They
21 have no air conditioning, they're working in very hot
22 conditions, and they're considered indoor, sedentary

1 workers. So we certainly have a host of examples for
2 you, and we will be happy to follow up in the post-
3 hearing.

4 MR. LEVINSON: Thank you. Your Honor, that
5 concludes the questions from the OSHA panel.

6 JUDGE HENLEY: Thank you. Do we have any
7 questions from the office of the Solicitor?

8 MS. WILES: Yes, Your Honor. This is Linda Wiles
9 from the Solicitor's Office. I did have one question.
10 It's a request to clarify in your post hearing
11 comments. During Ms. Shrestha's comments and
12 testimony, she had mentioned record keeping
13 requirements and an anti-retaliation component to the
14 rule that the AFL-CIO was proposing. And she also
15 mentioned confidentiality. I wondered if you could
16 clarify in your post-hearing comments how you envision
17 that working in terms of keeping record or obtaining
18 information from employees about it -- their symptoms
19 and potential HRIs that they're experiencing, but also
20 maintaining confidentiality and protecting them from
21 potential retaliation. I would love to hear some
22 further comments or elaboration on your proposal around

1 that.

2 MS. REINDEL: Sure. We'll be -- we'll be happy to
3 submit that.

4 MS. WILES: That's all for me, Your Honor.

5 JUDGE HENLEY: All right. Thank you. Mariam, how
6 many participants do we have who wish to ask questions?

7 MS. CARLON: We have three individuals. Oh, we
8 actually have four individuals with raised hands right
9 now, Judge.

10 JUDGE HENLEY: Can you promote the first one,
11 please?

12 MS. CARLON: Absolutely. The first individual is
13 Scott Schneider. Please state your name for the
14 affiliation before asking your question.

15 MR. SCHNEIDER: And my name is Scott Schneider,
16 and I'm currently a retired, so I'm not affiliated with
17 any -- any particular group. And I had a quick
18 question for the panel. And that question is about the
19 importance of employers assessing the effectiveness of
20 engineering controls that are being used and -- and why
21 engineering controls are more effective -- are
22 considered more effective than -- than PPE or

1 administrative controls.

2 MS. REINDEL: Sure. This is Rebecca again. OSHA
3 is tasked with the responsibility of reducing
4 significant risk. And we know that this is most
5 effective when we prevent exposure to the source of the
6 hazard and then, of course, walking through the
7 hierarchy.

8 I know we talked about this a little already with
9 OSHA, but just to stress that it does -- not exposing
10 somebody to heat to begin with helps support and
11 alleviate some of the cooling down measures that are
12 needed. Both are necessary, but it does make cooling
13 off more efficient. And we know that we have to
14 address the hazard at the source.

15 So if you're working next to a very hot machine,
16 that's -- with radiant heat that's, just giving off
17 heat. And you are then also trying to provide -- to
18 make sure this person is cooled down at -- at higher
19 frequencies because, you know, you could just also
20 prevent the exposure by using barriers, using radiant
21 heat blocks, and also providing breaks that allow this
22 person to cool down.

1 But it's not like the body can take on -- you know
2 there is a maximum of heat that the body can take on.
3 Also, this is what's recommended in the NIOSH criteria
4 documents that we've mentioned. And the ANSI
5 construction standard actually walks through the -- the
6 use and the utility of using engineering controls
7 and -- and then also other measures in tandem.

8 So we do believe that all of the approaches are
9 needed. We need to both reduce the exposure and also
10 provide efforts to ensure the body is cool and can stay
11 cool throughout -- throughout work.

12 MR. SCHNEIDER: Thank you very much.

13 JUDGE HENLEY: Thank you, Mr. Schneider. Mariam,
14 can you promote questioner number two, please?

15 MS. CARLON: Yes. The next person is Marc
16 Freedman.

17 JUDGE HENLEY: Freedman, if you could state your
18 name and identify any association.

19 MR. FREEDMAN: Yes. Thank you, Judge. My name is
20 Marc Freedman. I'm with the U.S. Chamber of Commerce.
21 I had two questions. Let me just ask them together and
22 the folks from the AFL-CIO can decide how they want to

1 respond. And they pick up on some thoughts expressed
2 by the Solicitor's Office just a moment ago.

3 At the end of the AFL-CIO statement, there was a
4 comment made about employees needing confidentiality
5 protections. And I was wondering how the AFL-CIO would
6 reconcile that concept of employee confidentiality with
7 their support for OSHA posting the record keeping logs
8 that are required to be submitted to the agency -- the
9 300, 301s, and 300A's, which contain extensive
10 information about employees. And OSHA, has
11 supported -- I'm sorry, the AFL-CIO has supported OSHA
12 putting that information on the internet.

13 The second question relates to the mention that
14 the heat incident logs should be used as a tool for
15 employers. And I was wondering how the AFL-CIO would
16 feel about putting those logs under privileged
17 protection so that they would not be available to OSHA
18 inspectors. That would enhance the idea that they
19 could be used as a tool, as opposed to something that
20 would be available to inspectors and then required to
21 be submitted in the record keeping -- in the records
22 that are required to be submitted to OSHA, which are

1 then posted on the internet. So I'm just trying to
2 identify some tensions there that I thought might be in
3 the remarks from the AFL-CIO. Thank you very much.

4 MS. REINDEL: Sure. Thank you, Mark. This is
5 Rebecca again. On your first question related to
6 confidentiality, you know, we're happy to follow up on
7 both of your questions in the record. What I'll say is
8 the -- the logs and the reporting to OSHA -- OSHA only
9 reports out summary information from many employers.

10 And so we're -- we've always stressed that this
11 information should be made public, and that comes out
12 of the -- the OSHA 300 logs and that this information
13 is necessary to identify trends about where severe
14 injuries are occurring in industries, occupations, and
15 tasks. We don't think that these two areas conflict
16 with each other. And it's not confidential information
17 that OSHA reports on its website. And so we do think
18 that that's in alignment.

19 On your second question, which I'm forgetting now.
20 Oh related to the --

21 MR. FREEDMAN: It -- it was about the -- the idea
22 of the incident logs and whether --

1 MS. REINDEL: Yes.

2 MR. FREEDMAN: They should be protected under
3 privilege so that they're not available to OSHA
4 inspectors and also not required to be submitted with
5 the recordkeeping logs.

6 MS. REINDEL: So we do - sorry, I was trying to
7 look at my notes here. We - I think, you know, we're
8 talking about a couple different things. One is this
9 heat incident log, and one is talking about the - the
10 300 logs. The 300 logs is what the inspectors will
11 look at. And the heat incident log should also be made
12 available to workers' representatives. So they aren't
13 just for the employer, but they are for workers and we
14 know that our representatives also need access to that.
15 But you know, we're happy to follow up with these. You
16 know, we don't believe anything that we said here today
17 is in direct conflict - in conflict with either of
18 those - with either of those answers. But we will
19 follow up in more detail in the record. Thank you.

20 JUDGE HENLEY: Thank you, Mr. Freedman. Mariam,
21 if you can promote questioner number three, please.

22 MS. CARLON: Yes. The next questioner is Chris

1 Cain.

2 MS. CAIN: Good morning. Can you hear me?

3 JUDGE HENLEY: Yes. Ms. -- Ms. Cain or Mr. Cain?

4 MS. CAIN: Miss. Thank you.

5 JUDGE HENLEY: Yeah. Thank you, Ms. Cain. If you
6 can identify yourself and any association you're with.

7 MS. CAIN: Thank you. Yes, I will. Chris Cain,
8 I'm the safety and health director for North America's
9 Building Trades Unions. I'll call it NABTU going
10 forward. The -- the questions I had about -- were
11 about worker retaliation -- retaliation, particularly
12 against workers. But what are -- the questions are
13 both about the types of things that workers have been
14 retaliated about, if the panel can expand on that. And
15 what types of retaliation have you seen against
16 workers?

17 MS. REINDEL: Sure. This is Rebecca again. So
18 workers, even union members, have faced retaliation
19 when they do a host of activities. One is when they're
20 reporting unsafe working conditions. And all of these,
21 I should say, up front, I believe are -- are relevant
22 to heat. And also -- so reporting unsafe working

1 conditions, reporting their work-related injuries, when
2 they have to refuse dangerous tasks or trying to comply
3 with OSHA standards, when they're requesting safety
4 information or participating in OSHA inspections.
5 These are common. But we -- but we know that they're
6 all quite relevant to heat.

7 There's also the results of this retaliation. I
8 mean, retaliation can result in termination, demotion,
9 suspension, deportation, blacklisting for future
10 employment, moving, being moved to a - a less desirable
11 job or a more dangerous shift, having denial of
12 benefits and - and other actions. I hope I answered
13 your question.

14 MS. CAIN: I -- I think you did. But there's also
15 fear of retaliation if workers seek medical care as it
16 relates to an injury or an illness at work. Is there
17 any way that OSHA can deal with fear of retaliation
18 for, you know, describing symptoms or seeking medical
19 care in the heat standard, in the final rule?

20 MS. REINDEL: Sure. So there's certainly great
21 concern around that and around using medical
22 information to retaliate against workers, as you

1 mentioned. And usually this is an effort to reduce
2 employer obligations under the standard or workers'
3 compensation or disability costs. For instance, in
4 Silica, where there were medical surveillance
5 requirements, medical exams, there were measures to
6 ensure the only written information the employer
7 received from the medical professional was with the
8 permission of the employee.

9 And so if OSHA does require any kind of medical
10 exams here or when workers need medical care from heat
11 exposure at work, the results of those exams should
12 remain confidential and only limited information
13 transferred to the employer that is relevant to -- to
14 the -- to their -- to their job. Thank you for the
15 addition and the clarification.

16 MS. CAIN: All right, thank you. Thank you,
17 Judge.

18 JUDGE HENLEY: Thank you, Ms. Cain. Mariam, if
19 you can promote questioner number four, please?

20 MS. CARLON: Yes. And we actually have an update.
21 This will be our final questioner. The final
22 questioner is Ellie Barber? Barbara?

1 MS. BARBARASH: Hi, Ellie Barbarash. Thank you.

2 Can you hear me?

3 JUDGE HENLEY: Yes. Yes, ma'am. If you could --
4 there you go. Ellie, if you could state your name
5 again for the record and any association you belong to.

6 MS. BARBARASH: My name is Ellie Barbarash. I'm
7 the Senior Health and Safety Advocate at the American
8 Federation of State, County, and Municipal Employees,
9 also called AFSCME. Thank you for your time and for
10 your work on this, all of you.

11 This is a question for the panel, and it's about
12 assessment. We've mentioned and you've mentioned
13 engineering controls, and there have been questions
14 from OSHA about engineering controls applied outside
15 and examples of them. Can you talk about the need for
16 employer assessments for engineering controls and can
17 you -- are there -- is there anything else you could
18 share now about forms of engineering controls for
19 outside workers, around issues of heat that kind of
20 hinge upon the initial assessment of the hazard? Thank
21 you.

22 MS. REINDEL: Sure. Thank you, Ellie. I think --

1 you know, I mentioned this during my testimony -- this
2 is Rebecca -- that what OSHA is proposing to do here is
3 require employers to do a risk assessment. And we do
4 those all the time. Industrial hygienists, employers,
5 and representatives do a risk assessment in the
6 workplace to determine where the hazards are.

7 If you are in an outdoor environment and you
8 can -- and -- and you identify that there are, you
9 know, sources of exposure, we know that -- we're not
10 being naive here, we know you cannot change the sun.
11 Excuse me. But you can change how it reflects off
12 surfaces, barriers that are needed. And there are, you
13 know, different work sites that we're happy to provide
14 in our -- our follow up, in the post-hearing. But
15 those that -- that -- that block the heat, that
16 mitigate the heat exposure, that reflect the heat off
17 of the surface -- we've seen employers, you know, paint
18 a surface a different color. We've seen employers put
19 up barriers.

20 And -- and then, beyond engineering controls,
21 there are other administrative controls where we know
22 that some workers or some work sites, they will work in

1 the shade. When the sun is at this part of the day,
2 they'll work in shade. They will switch and work in
3 another part of the -- of the worksite when it's a
4 different part of the day. So again, it's about an
5 assessment and walking through each step, identifying
6 where workers are getting the greatest sources of heat
7 exposure, and identifying control measures that fall
8 along the hierarchy, including the engineering controls
9 along the way. But we are happy to provide more
10 specific examples in -- in writing.

11 MS. BARBARASH: Thank you very much. And thank
12 you, Judge Henley.

13 JUDGE HENLEY: Thank you, Ms. Barbarash. If I
14 understood Mariam, that's it for the participants for
15 this panel, correct?

16 MS. CARLON: That is correct, Judge.

17 JUDGE HENLEY: Any follow up questions from our
18 OSHA representatives?

19 MR. LEVINSON: No, Your Honor. No questions.

20 JUDGE HENLEY: Any from the solicitor?

21 MS. WILES: No, Your Honor. Thank you.

22 JUDGE HENLEY: I'd like to thank the AFL-CIO panel

1 for their testimony this morning. And you are excused.

2 MS. REINDEL: Judge, thank you very much for your
3 patience with our technical difficulties.

4 JUDGE HENLEY: You're welcome. Mariam, if you can
5 promote our second panelist, please.

6 MS. CARLON: Yes, I can. The next speaker will be
7 Marc Freedman. Please state your name and affiliation
8 for the record.

9 JUDGE HENLEY: Mr. Freedman, can you hear me?
10 This is Judge Henley. I can see you. I can't hear
11 you.

12 MR. FREEDMAN: There we go.

13 JUDGE HENLEY: Okay.

14 MR. FREEDMAN: I'm clicking all the buttons,
15 trying to get them to work. All right. Thank you.
16 Good morning, OSHA representatives and Judge Henley.
17 I'm Marc Freedman, vice president of workplace policy
18 at the U.S. Chamber of Commerce. I manage various
19 subjects, including OSHA, and I oversaw the submission
20 of our comments on the proposed standard for heat
21 injury and illness prevention.

22 My - my remarks will focus on the problems with

1 the proposed standard, suggestions about a better
2 approach, and how OSHA can assist employers in their
3 efforts to protect employees from overexposure to heat.
4 At the outset, I want to make clear that employers
5 should protect employees from heat-related injuries and
6 illnesses in both indoor and outdoor work environments
7 where there is extreme heat or extended exposure to
8 heat. But OSHA's steps to address the issue beyond
9 their current guidance of rest, water, and shade must
10 be both consistent with the agency's regulatory
11 authority and feasible for the country's millions of
12 employers in different climates.

13 As I've been granted the first employer
14 representative speaking slot, I want to be the first --
15 I guess, the first employer side -- to use the term
16 you'll be hearing throughout these proceedings; OSHA's
17 proposed standard is a one size fits all approach. The
18 proposed standard makes no allowances for differences
19 in geography, workplaces, employee sensitivity to heat,
20 nature of the job or task, or any of the other many
21 variables associated with determining how to protect
22 employees from overexposure to heat. To state the

1 obvious, 90 degrees, the high heat threshold, has
2 different impacts in different locations. 90 degrees
3 in Phoenix is not the same as 90 degrees in New Orleans
4 or Houston or Portland, Maine, or even here in D.C.

5 Even if the wet bulb globe method is used to
6 consider humidity, whether an employee would be
7 affected by extended exposure to such high heat is
8 highly speculative. And 80 degrees, the initial heat
9 threshold, is inconsequential in many parts of the
10 country and is so easily met there is no concept of a
11 trigger.

12 In addition to that, accommodating an array of
13 variables, the proposal creates unworkable requirements
14 for small employers and certain industries, while
15 providing little evidence that these burdens will keep
16 workers safer. To OSHA's credit, they convened a small
17 business advocacy review panel to solicit input from
18 small entities that would have to comply with the
19 proposed standard. Unfortunately, OSHA then proceeded
20 to dismiss the large majority of the recommendations
21 and concerns from these small businesses, including
22 those related to the proposal being an inflexible, one

1 size fits all approach. I'm sure the SBA Office of
2 Advocacy that follows me will discuss this in more
3 detail.

4 One of the most unworkable workable provisions is
5 the mandatory 15-minute rest breaks every two hours if
6 the high heat trigger is met, apparently for as little
7 as 15 minutes in any 60-minute period. This means that
8 every employee is so exposed must be given a 15-minute
9 break every two hours, regardless of whether they are
10 suffering symptoms or even want such a break.

11 Mandating this break would be highly disruptive to
12 many workplaces, such as construction, restaurants, and
13 manufacturing. Or consider airline baggage handlers
14 and the impact mandatory 15-minute breaks would have on
15 moving passenger luggage into the terminals, or loading
16 bags onto connecting flights or loading cargo onto
17 planes with tight schedules. Furthermore, employees
18 who are not experiencing any symptoms may want to
19 continue with their work to complete their tasks,
20 rather than stop -- stopping for an arbitrary, required
21 break.

22 Finally, in some workplaces, such as working on

1 telecommunications towers or tree work, interrupting
2 work to take a break means having to descend and remove
3 PPE, thereby creating more risks and making a 15-minute
4 break longer than just 15 minutes. The cumulative
5 effect of the many specifications, including the
6 extensive record keeping requirements, would be to
7 increase administrative burdens such that employers and
8 their supervisors have less time to focus on
9 eliminating other hazards in the workplace.

10 The proposed standard reads like a checklist for
11 enforcement, with each requirement a potential
12 citation. Among these are the specifics for
13 exemptions, heat illness and injury prevention plan,
14 hazard identification and monitoring, break areas,
15 acclimatization, record keeping, and mandatory rest
16 breaks when high heat trigger is reached. Further
17 details on the specific requirements and how they
18 create burdens without assuring protection is contained
19 in the comments we submitted to the docket, which are
20 appended to this statement.

21 The reality is that regulating exposure to heat is
22 a very challenging goal. Heat is a hazard that is not

1 inherent to the workplace, in much the same way
2 exposure to COVID-19 was not inherent to the workplace,
3 when OSHA issued its vaccine mandate regulation that
4 was struck down by the Supreme Court.

5 Furthermore, courts, quote, "expect Congress to
6 speak clearly when authorizing an agency to exercise
7 powers of vast economic and political significance",
8 end quote. This is exactly the kind of power that the
9 Secretary claims here over a significant issue. The
10 proposal would impose substantial compliance costs on
11 virtually every business in America, even though the
12 OSH Act does not directly authorize a standard
13 protecting against heat. The history of heat issues
14 predates the OSH act, and Congress could have
15 identified it as a specific hazard for OSHA to
16 regulate, or Congress could have done so since the act
17 was passed. But this has not happened, despite there
18 being a long-standing quote "documentation of
19 occupational heat-related illness beginning in ancient
20 times and from the 18th century throughout - through
21 the regulatory interests in the 20th century", end
22 quote. And that's from OSHA's NPRM.

1 So OSHA will be entering a legal minefield if it
2 proceeds to issue a heat exposure standards. Contrary
3 to OSHA's claim that the proposed standard is a
4 performance standard, it contains a particularity of a
5 specification standard. If this was actually a
6 performance-oriented standard, employers would be held
7 accountable for the end goal of protecting employees
8 from overexposure to heat, rather than the myriad of
9 specific requirements contained in the proposed
10 standard. In fact, the OSH Act favors performance
11 standards, quote, "whenever practicable, the standard
12 protecting against toxic materials or harmful physical
13 agents shall be expressed in terms of objective
14 criteria and the performance desired".

15 The Chamber suggests that if OSHA decides to move
16 forward with a standard, the agency develops a
17 performance oriented one that directs employers to
18 develop a heat injury and illness prevention program
19 that includes identified components, but acknowledges
20 that what is reasonable and necessary to abate heat
21 hazards and protect employees may vary across
22 industries, employer size, and geography. This

1 adaptability will ensure that any promulgated
2 regulation is practical and achievable across the wide
3 variety of American businesses.

4 Key to developing a more flexible and adaptable
5 standard is changing the heat threshold triggers. The
6 proposal has an initial trigger, a heat index of 80
7 degrees Fahrenheit or a wet bulb globe temperature
8 equal to the NIOSH recommended action level, and the
9 high heat trigger, a heat index of 90 degrees
10 Fahrenheit or a wet bulb globe temperature equal to the
11 NIOSH recommended exposure limit, neither of which are
12 adjusted for local conditions as reflected of the one
13 size fits all nature of the proposal.

14 Alternatives already exist. For example, Nevada,
15 clearly a hot weather state, has adopted a standard
16 without a specific heat trigger. Under Nevada
17 standard, employers must, quote "prepare a one-time
18 written job hazard analysis to assess working
19 conditions that may cause occupational exposure to heat
20 illness", end quote. Nevada's standard goes on to
21 require the employer to take various measures if a
22 determination is made that a heat illness hazard

1 exists. Among these are training, measures to mitigate
2 the risk of heat illness, rest breaks when needed,
3 provision of water, means for cooling, designating a
4 person to handle emergency responses, and monitoring by
5 the designated person, quote, "to the extent
6 practicable", end quote. Specifics on how these
7 measures are to be implemented are left to the
8 employer, consistent with a performance-oriented
9 standard.

10 If OSHA insists on requiring a specific heat
11 trigger, there should be only one to simplify what
12 employers must do. That threshold must be higher than
13 a mere 80 degrees, which, even when humidity is
14 considered, is not a threat. Weather data, including a
15 quote, "feels like", unquote, number considering
16 humidity is widely available with high localization.
17 Employers should be able to rely on this data instead
18 of conducting their own measurements and monitoring.

19 For indoor settings, which are likely more stable,
20 than Nevada approach seems to make sense. The employer
21 would have to do a one-time assessment as to whether a
22 heat hazard exists. Constant monitoring of each work

1 area, as required under the proposed standard, is
2 excessive, as is the requirement to keep those
3 temperature records for six months.

4 One of the problems with the proposed standard's
5 one size fits all approach is that it treats employees
6 as if they are fungible, one just like the other. But
7 employees can differ greatly with respect to their
8 susceptibility to heat illness and injury. Specific
9 personal characteristics such as age, gender, physical
10 fitness, mental health, lifestyle experience,
11 preventive behaviors, and physical exertion play a
12 fundamental role in heat tolerance. Individuals with
13 chronic illnesses such as heart problems, high blood
14 pressure, or who may take specific medications can be
15 at increased risk of heat-related illness and injuries.
16 Often these personal characteristics of workers are not
17 evident to their employer.

18 In fact, even well-meaning inquiries can place an
19 employer at risk for violating other federal statutes,
20 such as the ADA and the Age Discrimination in
21 Employment Act. The chamber noted this tension between
22 employers benefiting from knowing employee's health

1 issues and the privacy protections in the comments that
2 we submitted to the ANPRM. We recommended that OSHA
3 work with the Equal Employment Opportunity Commission
4 to develop guidance allowing job-related health
5 inquiries in our comments. Under the ADA, employers
6 are allowed to include physical requirements as
7 essential elements for job descriptions. Just as
8 requiring the ability to lift something, the same thing
9 could be done for exposure to heat.

10 Let me - let me conclude by saying OSHA should
11 expect to have much confusion if they move forward, and
12 they should look for ways to help employers comply, one
13 of which would be reviewing compliance programs issued
14 by associations that could be tailored to specific
15 industries. The - the proposal is an unworkable, one
16 size fits all approach, and if OSHA moves forward, it
17 must do something that is performance-oriented and
18 flexible for the very many employers who will have to
19 comply with it. Thank you very much, and I welcome
20 your questions.

21 JUDGE HENLEY: Thank you, Mr. Freedman. Do we
22 have questions from our OSHA representatives?

1 MR. LEVINSON: Yes, Your Honor, we do.

2 MR. FREEDMAN: I'd be disappointed if you didn't.

3 MR. LEVINSON: Thank you very much, Mr. Freedman.

4 And again, you can either answer now or in post-hearing
5 comments or both.

6 In your comments, you describe -- in your written
7 comments, you described an alternative options for
8 acclimatization. Can you elaborate more on the options
9 that you've described and how you believe they are more
10 flexible than what was outlined in the proposed
11 standard?

12 MR. FREEDMAN: With apologies for not having what
13 we said in our comments directly in my head, I'm not
14 going to give you the detailed answer at this point. I
15 think our basic thrust was, as OSHA laid out the
16 acclimatization process, it was fairly specific and
17 restricted. It -- it -- you know, it said you had to
18 ramp up employees over a certain amount of time or
19 treat them as if they've been exposed to the high heat
20 trigger.

21 And our feeling is that that's not necessarily
22 what every employee is going to need, as I said, in

1 various other contexts. And so the basic point is
2 employers should be given more flexibility with how
3 they acclimatize employees to the -- to the different
4 levels of heat they'll experience.

5 MR. LEVINSON: Thank you. The proposed rule
6 provides flexibility for maintaining temperature
7 records in a written form or electronically. Many
8 electronic monitoring devices are readily available on
9 the market that are easy to use and have storage
10 capacities to retain records for the proposed six
11 months. Do you think that using electronic monitoring
12 devices would make the proposed recordkeeping
13 requirements less burdensome?

14 MR. FREEDMAN: I'm not sure that removes the
15 burden to constantly create records. Whether you store
16 them electronically or they are captured
17 electronically, the requirements still exist under the
18 OSHA proposal that you have to constantly be recording
19 what the temperature exposures are. I think our
20 feeling is that shouldn't have to be as -- as frequent
21 a record keeping requirement.

22 As I suggested, you know, under the Nevada

1 standard, if you do a one-time assessment and you
2 decide that there's a heat injury risk there, that's
3 your -- that's the requirement, you've figured out that
4 you've got a risk. Why you have to keep updating
5 that -- that heat threshold I think is -- is not --
6 whether it's electronic or manual or however that is
7 reported, the requirement is still that the employers
8 have to record that -- that heat exposure on a -- on a
9 very frequent basis.

10 MR. LEVINSON: Thank you. The next question comes
11 from Dr. Stephen Schayer.

12 DR. SCHAYER: Hi. Thank you, Mr. Freedman, for
13 your testimony today. Just wanted to follow up with
14 you. So in your testimony, you recommended that OSHA
15 should consider a more performance-oriented standard
16 that directs employers to develop a heat injury --

17 MR. FREEDMAN: If OSHA decides to move forward.
18 Let me just be clear.

19 DR. SCHAYER: Right.

20 MR. FREEDMAN: I mean, you know, I think there's
21 still a question. And -- and I'll count myself among
22 those who are somewhat surprised to see this hearing

1 kept on the schedule. So, you know, OSHA has a
2 decision about whether to move forward with the
3 standard. If they do, then we would certainly
4 recommend it be a performance-oriented standard. Sorry
5 for interrupting.

6 DR. SCHAYER: No worries. So just as a follow up
7 to that -- so in such a performance-oriented standard,
8 would you envision there to be a minimum specification
9 for any of the components such as water, rest, shade,
10 or training for when and how they should be
11 implemented?

12 MR. FREEDMAN: I think our feeling is that there
13 should be requirements for employers to perform those
14 different components. How they do that should be left
15 up to the employers, where I think it's going to vary
16 depending upon location, industries, and specific
17 workplaces. You know, to -- to finish off a thought I
18 didn't get a chance to express very fully at the end, I
19 think there's a great opportunity for OSHA to work with
20 various industry groups to provide industry specific
21 guidance on how those types of employers would comply
22 with -- with a heat standard.

1 So you could imagine some compliance program
2 issued by an industry trade association that is
3 tailored to those types of workplaces, that says if you
4 do the components in this program as they have been
5 laid out, you will be in compliance with the OSHA heat
6 standard.

7 And, you know, consequently, that would leverage
8 OSHA's limited resources and get information into
9 the -- the employer domain that it would be helpful to
10 them to know how to comply with the standard and by
11 extension, protecting their employees. I think
12 there's, you know, a lot of -- a lot of ways that you
13 can develop information that helps the specific
14 employers and their training requirements, which, you
15 know, is different than just OSHA saying, here's what
16 you have to do in all the various ways.

17 DR. SCHAYER: Thank you. And I think you just
18 answered my follow-up question, too, which was what --
19 you know, what could employers use as a basis to ensure
20 that the plan they come up with is protective? So --
21 appreciate that. But if you have any further comments
22 on this that you could share in your post-hearing

1 comments, we'd appreciate it.

2 MR. FREEDMAN: Well, let me just go back to the
3 basic concept of performance orientated -- orientation
4 standard. It is not that employers are being let off
5 the hook. It is that employers are being held
6 accountable for the ultimate goal of protecting their
7 employees, as opposed to the way that the proposal
8 reads, which is you've got to check off all these
9 different requirements. That's, I think, where the
10 value of a heat standard lies, making sure that
11 employers are protecting their employees. And a
12 performance-oriented standard puts the emphasis on that
13 goal, rather than the myriad of other goals that are
14 contained in the proposal.

15 DR. SCHAYER: Thank -- thank you very much.
16 Appreciate your comments.

17 MR. LEVINSON: Your Honor, the next comments come
18 from Dr. Tiffany DeFoe, who's joining us online.

19 DR. DEFOE: Hi, this is Tiffany. I am trying to
20 get my -- this is Tiffany Dafoe with the Directorate of
21 Standards and Guidance for OSHA. I'm trying to get my
22 video on. Mariam, is that something you can help with?

1 It doesn't seem to be starting on my end.

2 MS. CARLON: You should be able to just start
3 video and -- from your computer.

4 DR. DEFOE: Can you see me?

5 MR. FREEDMAN: She's in a witness protection
6 program?

7 MS. CARLON: We can see you, but there is a little
8 bit of a shadow for the most part. But we can
9 technically see you.

10 DR. DEFOE: Okay. Very good. Perfect.

11 JUDGE HENLEY: Just identify yourself for the
12 record so we know who you are?

13 DR. DEFOE: Yes. So this is Tiffany DeFoe. I'm
14 with the Directorate of Standards and Guidance with
15 OSHA. Mr. Freedman, again, thank you for your
16 testimony and for your comments. In your - in your
17 written comments - or in the Chamber's written
18 comments, it stated that if OSHA moves forward with a
19 rule that requires employees to be allowed and
20 encouraged to take paid rest breaks as needed to
21 provide - to prevent overheating, that that could
22 result in opportunities for misuse, and it could expose

1 employers to claims of retaliation if they try to
2 address misuse.

3 I have a couple of questions on this. One, is
4 there information that you're aware of, such as
5 instances of employers who offer at-will breaks to
6 prevent overheating and have experienced misuse, or
7 perhaps industry surveys or studies on this issue?

8 MR. FREEDMAN: I don't have direct evidence on
9 that point. Our -- our point of including that in the
10 comments was to identify a problem we thought that that
11 provision would create. And so, you know, currently we
12 don't have the requirement that employers must provide
13 breaks. And so we don't have the setup that the --
14 that was envisioned in the proposal.

15 DR. DEFOE: Thank you. And furthermore, in terms
16 of approaches, you would suggest to support employers
17 in addressing situations that could come up where they
18 believe employees' use of at-risk breaks exceeds what's
19 really needed to prevent heat injury and illness. Are
20 there any specifics that, either now or in your -- your
21 later submissions, you could suggest if OSHA should
22 move forward with the rule?

1 MR. FREEDMAN: I'm trying to think through what
2 you're looking for on that. I don't -- again, we're --
3 we're not dealing with current conditions. I mean,
4 we're talking about what would be required under the
5 proposal. So I don't have examples other than our
6 concerns that this is what it would create.

7 DR. DEFOE: Okay. Well, maybe I'll refine a
8 little bit by saying that one of the other commenters
9 suggested that OSHA -- that -- they raised a similar
10 concern. This was the Employer's Heat Illness
11 Prevention Coalition. And they had a suggestion that
12 OSHA should provide some guardrails in the form of
13 nonmandatory guidance about what would be typically
14 expected in terms of rest break use to prevent
15 overheating. And again, it's -- it's totally fine to
16 submit things later if you want to take some time to
17 think about it, but we'd be interested in knowing if
18 this is an approach the Chamber would agree with.

19 MR. FREEDMAN: Well, I -- I certainly believe that
20 OSHA should prepare -- if they issue a standard, they
21 need to be prepared to issue extensive guidance. You
22 know, just as a sort of obvious comment, all the

1 commentary in the preamble falls away when this goes
2 into the Code of Federal Regulations. That commentary,
3 you would imagine, could be the basis for some specific
4 guidance, you know, FAQs or that -- that type of style.
5 So I would imagine -- I would hope -- OSHA understands
6 the need to provide, you know, specific help
7 understanding where the limits are with some of these
8 provisions, if that's where they -- they end up.

9 DR. DEFOE: Thank you. And you also noted in both
10 your written comments and your testimony that the
11 proposed schedule for 15-minute mandatory rest break
12 every two hours when the temperature is at or above the
13 high heat trigger wouldn't be feasible for all
14 employers. Would you please further discuss how you --
15 you suggest OSHA should modify the proposed rest break
16 timing requirements to help provide more flexibility
17 while still being protective?

18 MR. FREEDMAN: Well, you know, I think you're
19 going to hear from a lot of different groups later on
20 to this -- these proceedings about the problems that
21 that mandatory 15 minute, every two-hour rest break is
22 going to create. I tried to highlight a few industry

1 scenarios just touching on them, but I know a lot of
2 other groups after me are going to -- are going to go
3 into that in more detail.

4 Again, I think I would come back to how the Nevada
5 standard talks about this. They say rest breaks as
6 needed. I understand, and I think we support the idea
7 that employees are going to need to take breaks, you
8 know, under certain circumstances. But an arbitrarily
9 determined 15 minute, every two-hour schedule doesn't
10 really speak to employees' needs. It creates an
11 obligation. It -- it's very disruptive. And it can be
12 a real problem for various employers and workplaces to,
13 you know, continue producing and -- and -- and
14 performing as they need to.

15 I mean, think of the obvious situations like
16 restaurants and -- and such, where you have to be, you
17 know, producing meals on a very tight schedule. For an
18 employee to have to take 15 minutes every two hours
19 could really disrupt the way the restaurant operates.
20 The examples abound. The point here is flexibility is
21 the key. Keeping rest breaks to when they are needed
22 is -- is, I think, really where the focus should be.

1 DR. DEFOE: Thank you. Thank you very much. Mr.
2 Freedman.

3 MR. LEVINSON: Your Honor, the next questions come
4 from Brenda Finter.

5 MS. FINTER: Sorry about that. I thought I was
6 next -- next after next, if that makes sense. I'm
7 Brenda Finter with OSHA, Department of --Directorate
8 of Standards and Guidance. My first question is, in
9 your written comments, you express concern with the
10 requirement for pre-cooling vehicles used as break
11 areas. What requirements for using a vehicle as a cool
12 down area for a break should be implemented or
13 included?

14 MR. FREEDMAN: Well I think what we're looking at
15 there is the same tension that we've identified
16 throughout, which is whether OSHA should be telling
17 employers exactly what they should be doing versus
18 allowing employers to figure out what makes sense. And
19 certainly going into an air-conditioned vehicle could
20 be an option and, you know, under the right
21 circumstances that -- that may be the best option. But
22 for OSHA to tell employers this is one of the things

1 that they have to be providing, I don't think is really
2 going to suit all the different workplaces.

3 MS. FINTER: Thank you. And then one more
4 question. The submitted comment mentioned that there
5 are some situations where required communication could
6 introduce additional injury risks, such as tree
7 trimming, working at heights, and driving. So two
8 parts to this question. Is there an alternative means
9 of communication that would protect workers and how --
10 how do they communicate to workers on the ground or
11 supervisors during this period?

12 MR. FREEDMAN: That may be a very challenging
13 question. I think, again, I'm going to fall back on
14 the idea of whether it's required -- whether OSHA
15 requires it in a specific schedule or allows employers
16 to determine as needed. And maybe there's a way for an
17 employer to tell an employee, I'm going to check in
18 with you at a specific hour, please be available. I --
19 you know, that's an option. That's one concept that
20 could work. But that should be something that the
21 employer develops consistent with their workplaces and
22 how their employees are -- are situated. I think the

1 idea that OSHA is going to say you must have a specific
2 way for reaching employees, again, gets into that
3 specification question versus a performance orientation
4 question.

5 MS. FINTER: Okay, thank you. That's all I had.

6 MR. LEVINSON: Mr. Freedman, I have one question
7 and then we'll have one more for the -- the record.
8 This is one you'll ultimately want to --

9 MR. FREEDMAN: Excuse me. The other ones aren't
10 for the record?

11 (Laughter.)

12 MR. LEVINSON: Sorry. Sorry -- to read into the
13 record for later. They're all for the record. If OSHA
14 went to a completely performance-oriented approach, how
15 would an OSHA inspector know when an employer had done
16 enough to adequately protect workers? I'm assuming
17 that you don't think that the mere existence of a
18 single incident would be enough to determine whether or
19 not there had been a violation of a performance-
20 oriented standard. And so how do we prevent arbitrary
21 and capricious decisions by an OSHA inspector, if there
22 are no benchmarks other than a -- a completely

1 performance-oriented approach.

2 MR. FREEDMAN: Well, I think if you go back to my
3 statement and what we submitted in the record, we would
4 expect that there would be some components that
5 employers would have to, you know, produce. They would
6 produce those consistent with their workplaces. So an
7 OSHA inspector could look at -- look to see how an
8 employer had addressed those -- those requirements and
9 determine whether they were done adequately, consistent
10 with the workplace. So that's one way that an
11 inspector would be able to evaluate how an employer had
12 met their performance orientation obligations.

13 Then the second one, of course, and inspectors are
14 going to look at the -- the records of -- of injuries,
15 and they're going to see whether there are injuries
16 related to heat. And so that would be, you know,
17 another way to evaluate whether the -- the employer had
18 done the appropriate -- had met the -- had met the
19 obligations under performance orientation.

20 You know, one other comment in this vein, with
21 respect to the training requirements, the standard --
22 the proposed standard talks about annual updating of

1 training and whenever there's an incident. I think the
2 more important way to do that would be to focus any
3 kind of refresher training on what was learned from an
4 incident not just -- you know, you have to do refresher
5 training, but let's focus on why there was an incident.
6 And if there's a lesson to be learned from that that
7 can be applied to other workplaces, then it should be
8 communicated to the -- to the other workplaces under
9 that employer. As the standard reads, you have to
10 conduct a refresher training throughout all the
11 different workplaces, which really may not serve any
12 specific interest. The question is identifying the
13 reason why there was an incident and learning from
14 that, and using that as the -- as the basis for
15 refreshing your training.

16 So to answer your question, Andy, and to get back
17 to the main theme here, performance orientation says
18 employers are going to be held accountable for the
19 ultimate goal of protecting employees. An inspector
20 could determine that through records and make sure that
21 they have the appropriate provisions in their heat
22 injury illness prevention plan.

1 MR. LEVINSON: Thank you very much, Mr. Freedman.
2 The next question, the final one, is to be read into
3 the record by Zoe Petropoulos.

4 DR. PETROPOULOS: Yeah. Let me just ask that you
5 consider this in your post-hearing comments. So in the
6 Chamber's comment on the proposal you wrote, quote,
7 "the requirements regarding fans are complex and vague.
8 Many employers will not be equipped to determine if fan
9 use is harmful when ambient temperatures exceed 102
10 degrees Fahrenheit", end quote. Can you describe what
11 a reasonable alternative approach to the one OSHA has
12 proposed might look like, and a description of the
13 evidence or data that would underpin that approach?

14 MR. FREEDMAN: Well, as I remember our comments
15 about fans, one of the things that we were reacting to
16 was that the language didn't say what was harmful use
17 of fans. And so, at the very least, if OSHA thinks
18 there's supposed to be -- if OSHA wants to restrict
19 employers' use of fans, they need to indicate when that
20 would be harmful. There -- it wasn't clear from the
21 proposal, you know, when -- it just said, don't use
22 fans if they're harmful. Well, nobody said what

1 harmful means.

2 So that would be one question that OSHA needs to
3 address. We can certainly elaborate on the questions
4 of when fans would be helpful and -- and you know, what
5 we think about their overall use in some written
6 responses. But I do remember that that was one of the
7 questions we had based on the proposal.

8 DR. PETROPOULOS: Andy, is it okay if I follow up
9 really quickly? We wrote in the summary of proposed
10 requirements a section on kind of what we would
11 envision employers to use. And so I can get the page
12 number and follow up if that would be helpful for your
13 comments on that specifically.

14 MR. FREEDMAN: But again, let me come back to an
15 earlier point. All that great commentary, the NPRM and
16 the preamble, falls away when this goes into the Code
17 of Federal Regulations. So if it doesn't say in the
18 CFR what an employer is supposed to do, it's going to
19 be very hard to expect them to understand what OSHA is
20 talking about.

21 DR. PETROPOULOS: Thank you.

22 MR. FREEDMAN: Unless it's left to a performance

1 orientation.

2 MR. LEVINSON: Thank you. Your Honor, this
3 concludes the questions from the OSHA panel.

4 JUDGE HENLEY: Thank you. All right. Questions
5 from our solicitor representatives?

6 MS. WILES: Yes, Your Honor, just one follow up
7 question. Thank you, Mr. Freedman, for your testimony
8 today. I heard you mention Nevada's new standard a
9 couple of times in your testimony, and I have to admit,
10 I'm not intimately familiar with their new rule. But
11 there was one thing that you had mentioned about job
12 hazard analysis. And their rule requires an initial
13 job hazard analysis.

14 And if I understood your comments correctly, it
15 seem to -- you seem to suggest that there is not a
16 requirement to continuously monitor once the job hazard
17 analysis is conducted. And I wanted to just ask you if
18 you would agree that a annual hazard analysis needs to
19 be conducted, or perhaps a -- a new analysis needs to
20 be performed when there are changed circumstances in
21 the work environment. I'm thinking, for instance, of
22 employers that don't have fixed work locations where

1 there might be different work environments that they're
2 exposed to, and how you would envision this requirement
3 to apply for them.

4 MR. FREEDMAN: Right. Thank you. My sense is
5 that there are going to be -- the -- the employer is
6 going to have to update the analysis based on specific
7 conditions changing. Right. I mean, if you've got,
8 you know, different conditions in -- in -- in an -- you
9 know, outside workplace or even an indoor workplace,
10 those could change too -- yeah, I would expect that
11 you'd have to do a new assessment to determine what the
12 risk is.

13 MS. WILES: Thank you.

14 JUDGE HENLEY: Thank you. Mariam, how many
15 participants do we have who wish to ask questions of
16 this panelist?

17 MS. CARLON: We have one, Your Honor.

18 JUDGE HENLEY: You could promote the individual
19 please.

20 MS. CARLON: All right. Mr. Schneider, please
21 state your name for the record.

22 JUDGE HENLEY: Mr. Schneider, can you hear me?

1 This is Judge Henley.

2 MR. SCHNEIDER: I -- I apologize. Yes. Scott
3 Schneider, for the record. And I had --

4 MR. FREEDMAN: Hi Scott.

5 MR. SCHNEIDER: Hi, Marc. I had a couple
6 questions. You -- you talked about doing a job hazard
7 analysis. And what -- what criteria would -- would --
8 should employers use to determine if a risk exists, to
9 do that job hazard analysis? What should they use?
10 What do you recommend?

11 MR. FREEDMAN: Well, again we're going to say that
12 employers are going to be able to identify heat
13 hazards, they're going to be based on local conditions,
14 and the nature of the tasks at hand. You know, again,
15 they will be held accountable for their identifying of
16 the hazards and protecting their employees. This isn't
17 getting -- giving employee -- sorry, employers a free
18 pass. This is making sure that they identify the
19 hazards and take appropriate measures.

20 MR. SCHNEIDER: So they could use whatever
21 criteria they feel are appropriate. They don't have
22 to -- they wouldn't -- you wouldn't recommend that they

1 follow the established criteria that are from NIOSH or
2 from --

3 MR. FREEDMAN: Those criteria are available for
4 employers to -- to reference. What I would want OSHA
5 to steer away from is saying explicitly, under these
6 conditions -- under some specific set of conditions,
7 this -- this automatically determines that you have a
8 hazard. That's why I don't think -- I don't think
9 that's an appropriate approach. I would -- I would
10 leave it to the employers to determine what a hazard
11 looks like in their workplaces. And they can certainly
12 reference NIOSH materials or other sources of
13 information that are available to them.

14 MR. SCHNEIDER: So you said that -- that, you
15 know, they should be judged based on -- on the outcome.
16 And-- but you -- would you agree that OSHA standards
17 are meant to be preventative?

18 MR. FREEDMAN: I agree they should be
19 preventative. And I think under this structure, as --
20 under a performance orientation, they -- this would be
21 a preventative standard.

22 MR. SCHNEIDER: So but -- but they wouldn't be

1 cited unless there was a heat incident perhaps, unless
2 they could show that somebody got sick or ill as a
3 result. So how would how is that -- isn't that
4 reactive as opposed to preventive?

5 MR. FREEDMAN: Well, if an OSHA inspector comes in
6 and sees that the employer has not put in place an
7 appropriate plan for their workplace, they could be
8 cited under that concept as well. And certainly they
9 could be cited under any kind of heat incident, which
10 could also happen under a specification standard.

11 MR. SCHNEIDER: And how would how -- would an
12 inspector know -- determine what's appropriate.

13 MR. FREEDMAN: Are you through with your few
14 questions yet or how are we going here?

15 MR. SCHNEIDER: Oh, I'm sorry.

16 JUDGE HENLEY: If -- if you want to ask -- if you
17 want to follow up on that last question, that'll be it,
18 Mr. Freedman.

19 MR. FREEDMAN: Scott, can you repeat that
20 question?

21 MR. SCHNEIDER: Well, I -- I'd rather just focus
22 on one other question that I have. You -- you said

1 that you thought that 80 degrees was not a threat. And
2 I'm wondering what the basis of that comment was or how
3 did you determine that you felt that 80 degrees was not
4 a threat?

5 MR. FREEDMAN: I think if you talk to employers
6 and you ask them what happens at 80 degrees, they're
7 going to tell you employees are not exposed to any kind
8 of injury or illness threat at 80 degrees.

9 MR. SCHNEIDER: So that's not based on any
10 scientific literature that you've read?

11 MR. FREEDMAN: It's based on the -- on what I hear
12 from my employers, from my members, about where
13 temperatures matter.

14 MR. SCHNEIDER: Okay. Thanks very much.

15 JUDGE HENLEY: That was it. Mariam, any
16 additional participants?

17 MS. CARLON: We actually do have one more.

18 JUDGE HENLEY: Can you promote them, please?

19 MS. CARLON: Yes, Your Honor. Ms. Barbarash,
20 please state your name for the record.

21 MS. BARBARASH: Hello, this is Ellie Barbarash
22 from the American Federation of State, County, and

1 Municipal Employees. Sir, I just have one question and
2 that is, you mentioned that employers -- you felt
3 employers should provide rest breaks as appropriate and
4 that it would be flexible. And I'm just wondering if
5 you could describe the parameters of what appropriate
6 mean, what would be the triggers that you feel would be
7 valid for employers to deem that workers take a break
8 in different situations? Thank you very much.

9 MR. FREEDMAN: This is a question where I'm going
10 to say that employers are going to need to understand
11 their workplaces and their employees. And training
12 plays a big part in this to make sure that employees
13 understand what the symptoms are and what the -- the
14 risks are and that there should be flexibility about
15 when breaks are taken. I'm not opposed to breaks being
16 taken. I'm not opposed to an employer, if they want
17 to -- if they want to, having a regular scheduled
18 break. That's up to them. What I am opposed to is
19 OSHA arbitrarily coming in and saying, thou shalt take
20 a break on this schedule, where it's not at all
21 flexible or, you know, reflects the specific conditions
22 of the workplace.

1 MS. BARBARASH: But Mr. Freedman, do you have
2 anything with the knowledge that exists of heat
3 exposure and worker signs and symptoms -- I just
4 wonder, do you have anything specific to say that what
5 would trigger workers having the right to take that
6 break?

7 MR. FREEDMAN: This would be something that would
8 be - have to be developed through the performance-
9 orientated standard, and for employers to understand
10 their workplaces. You know, you're asking me to put
11 out a specific schedule that OSHA could then impose on
12 employers. I'm not going to go there. I'm going to
13 say that breaks should be taken as needed. Nevada
14 seems to agree with that idea. And that there are ways
15 to - for employers to understand when employees should
16 be able to take a break.

17 MS. BARBARASH: I don't think my question's been
18 answered, but I don't think you're going to answer it.
19 Thank you very much.

20 MR. FREEDMAN: I'm not going to give you the
21 answer you want, but I thought I responded to your
22 question.

1 JUDGE HENLEY: Mr. Freedman and Ms. Barbarash, I
2 think that's enough. Thank you. Any additional
3 participants, Mariam?

4 MS. CARLON: No, Your Honor, that was the last
5 one.

6 JUDGE HENLEY: Any follow up from OSHA or the
7 Solicitor?

8 MR. LEVINSON: No, Your Honor.

9 MS. WILES: No, Your Honor.

10 JUDGE HENLEY: Mr. Freedman, I'd like to thank you
11 for your testimony this morning, and you are excused.

12 MR. FREEDMAN: Thank you very much, Your Honor and
13 representatives of OSHA.

14 JUDGE HENLEY: Do we have our next panel
15 available? Please promote.

16 MS. CARLON: Yes. The next speaker group will be
17 the U.S. Small Business Administration Office of
18 Advocacy. This group consists of Bruce Lundegren and
19 Chip W. Bishop, III. Please state your name and
20 affiliation for the record and please continue to
21 repeat your name and affiliation for the record as you
22 move between each other. Thank you.

1 JUDGE HENLEY: Mr. Lundegren -- or Mr. Bishop, are
2 you going to take the lead? If so, I can't hear you.
3 You appear to be muted. Still having some
4 difficulties, sir? Can't hear you.

5 MS. CARLON: Mr. Bishop, if you can hear us, it
6 looks like you're -- I would just double check that
7 Webex is using the right microphone for you. You can
8 click on the drop-down arrow by your mute button and
9 just double check that your microphone is selected and
10 matches.

11 MR. LUNDEGREN: Try the mute button on the bottom
12 left. It says --

13 JUDGE HENLEY: There it is. We got you, Mr.
14 Lundegren.

15 MR. LUNDEGREN: Can you hear me?

16 MS. CARLON: Yes.

17 JUDGE HENLEY: Whatever you clicked works.

18 MS. CARLON: Yep. There you go.

19 JUDGE HENLEY: Don't touch anything else. So if
20 you could introduce yourself, sir?

21 MR. LUNDEGREN: Can you hear me?

22 MS. CARLON: Yes, we can.

1 JUDGE HENLEY: Can you hear me? This is Judge
2 Henley. Can you hear me? That's probably a better
3 question.

4 MR. BISHOP: We can hear you.

5 JUDGE HENLEY: All right. We can hear you now.
6 Mr. Lundegren, if you could proceed with your remarks.
7 Or you're going somewhere else.

8 MR. BISHOP: Just passing it over to me. Can you
9 guys hear me now? Sorry about that. At least we had
10 some kind of contingency here where Bruce and I double
11 teamed. So thank you, Your Honor and members of the
12 panel for your time and your patience as we got the
13 audio working. My name is Chip Bishop, and I serve as
14 the deputy chief counsel for the Office of Advocacy of
15 the Small Business Administration. And joining me
16 today is assistant chief counsel Bruce Lundegren.

17 Advocacy is a federal office that oversees
18 compliance with the Regulatory Flexibility Act, a law
19 that requires federal agencies to assess the impact of
20 their regulations on small entities and consider less
21 burdensome alternatives. We appreciate the opportunity
22 to discuss OSHA's proposed Heat Injury and Illness

1 prevention Rule, and its potential impact on small
2 entities. This rule would affect small entities in
3 construction, agriculture, maritime, and general
4 industry, as well as small governmental jurisdictions
5 in state plan states.

6 Advocacy was a member of the Small Business
7 Advocacy Review Panel for this rule in 2023, and has
8 discussed the rule at multiple small business
9 roundtables that we've hosted. While small entities
10 emphasize that health and safety are the paramount
11 concerns, most object to the one size fits all approach
12 that OSHA has taken, and want a more flexible and less
13 prescriptive rule.

14 OSHA estimated that small entities would incur
15 aggregated annualized costs of approximately \$8.2
16 billion. OSHA has understated the cost, including in
17 rule familiarization and program development. These
18 costs would put small entities at a competitive
19 disadvantage.

20 Advocacy appreciates the opportunity to reiterate
21 six issues that small entities raised during this
22 SBREFA panel that OSHA failed to incorporate. Advocacy

1 urges OSHA to take these issues into account to reform
2 the rule.

3 First, OSHA has proposed a one size fits all
4 approach, as others have commented on this call.
5 Despite OSHA's assertion that the proposed rule is a
6 programmatic standard intended to be flexible, it
7 largely requires every employer to adopt the same plan
8 with the same provisions, triggers, and protocols.
9 Workplaces and employees vary widely. OSHA should
10 incorporate industry, sector, geographic, operational,
11 and employee flexibilities into any rule.

12 Second, the proposed heat triggers are too low.
13 Some businesses operate in climates that do not drop
14 below 80 degrees for weeks at a time. Any rule should
15 incorporate geographic and workplace flexibility. One
16 stakeholder also stated that OSHA should look at
17 metabolic body heat rather than environmental
18 temperature. OSHA should consider a performance-based
19 standard that is based on employee health and safety
20 outcomes, not ease of OSHA enforcement.

21 Third, the proposed rule includes ambiguous terms
22 and arbitrary provisions that make compliance difficult

1 and onerous. Inflexible rest breaks are impractical or
2 infeasible for time sensitive products or materials
3 like asphalt, concrete, or agricultural products.
4 Inflexible rest breaks can also create a greater hazard
5 in industries. As I mentioned -- has been mentioned
6 before, like tree care and tower services, where
7 climbing from heights is - is a significant safety
8 concern. Requiring artificial shade and temporary
9 structures and operations like road construction can
10 introduce greater hazards such as site obstructions.
11 OSHA should recognize and provide variances for these
12 situations and sincerely aim to avoid creating new
13 risks.

14 The acclimatization requirements are too rigid and
15 should be based on regional variations, employee
16 susceptibility, confounding factors, and employer
17 observation. Small businesses have questioned the need
18 for annual program reevaluations if workplace
19 conditions have not changed. They question seemingly
20 arbitrarily setting the written program exemption at
21 ten or fewer employees when verbal safety briefings
22 have been trusted for larger groups in multiple

1 industries for decades. Others raised concerns about
2 involving outside third parties in program development
3 and reevaluation, referencing concerns with OSHA's
4 worker walk around rule.

5 Fourth, OSHA should clarify standards for hybrid
6 work environments. OSHA should consider it separate
7 standards for outdoor, indoor, and hybrid work, among
8 other considerations.

9 Fifth, OSHA should simplify training requirements.
10 Small businesses are concerned about the complex
11 training provisions, which appear to require employers
12 to conduct training on complex medical concepts. A
13 stakeholder noted that the training requirements are
14 too technical and should be simplified for typical
15 small business employers and employees to understand.

16 Six, OSHA should consider regulatory alternatives
17 that achieve the agency's objectives and minimize the
18 impact on small entities. Two potential alternatives
19 would be to limit any rule to workplaces with heat
20 and -- injury and illness rates above a certain
21 threshold, similar to a national emphasis program.
22 Another alternative would be a training-only rule,

1 based on industry standards or OSHA guidelines, or one
2 that provides employers with a menu of acceptable
3 controls.

4 Advocacy is concerned that the proposed rule is
5 inflexible, overly prescriptive, and fails to account
6 for sector specific and regional differences. Advocacy
7 recommends that OSHA withdraw the proposed rule, and if
8 OSHA decides to propose a new heat rule, it should
9 reengage with small entities and develop a proposal
10 that is performance-based, targeted at positive health
11 and safety outcomes, and incorporates the previously
12 stated yet ignored issues in this testimony. Advocacy
13 would welcome the opportunity to participate in any
14 such efforts. And thank you for your consideration and
15 we're happy to answer any questions.

16 JUDGE HENLEY: Thank you, Mr. Bishop. Do any OSHA
17 representatives have questions for this panel?

18 MR. LEVINSON: Yes, Your Honor. SBA recommended
19 that -- I'm sorry. I'm getting a little bit of
20 feedback. All right. Okay.

21 SBA recommended that OSHA address the needs for
22 small businesses by adding a scope exclusion for

1 employers that employ fewer than 20 employees. We're
2 requesting additional information on the basis for this
3 exclusion and can you provide us with any evidence that
4 OSHA could use to support such an inclusion. For
5 example, evidence of a lower risk of heat-related
6 injury and illness in small businesses with fewer than
7 20 employees, or significantly increased burden for
8 protecting those workers.

9 MR. BISHOP: Yeah, thank you. I think the
10 comments were focused specifically on the written
11 program, but I think in terms of the onerousness of the
12 requirement, when we're working with smaller firms and
13 they have to comply with all of these obligations,
14 they're already stretched thin as it is. And if we're
15 actually looking at the economic side of the impact,
16 their time is valued much more highly in a small
17 operation where employees hold more -- more
18 responsibilities. And if they're tied up doing extra
19 tasks that are imposed by OSHA, they should be valued
20 at a much higher rate.

21 MR. LEVINSON: Thank you. And just to clarify,
22 you were saying in your comments -- when you were

1 saying the -- bump the exclusion up to 20, it was
2 really for the written program component? That was
3 your main concern?

4 MR. BISHOP: Yeah, that was one of them.

5 DR. SCHAYER: Yes. Thank you very much for your
6 testimony, Mr. Bishop. I just had a question -- a
7 follow up question on one of the alternatives you
8 mentioned, which was an OSHA -- that OSHA adopt a
9 training-only standard. So would you envision that
10 there would be only training requirements on elements
11 like water, rest, and shade, but not any requirements
12 for employers to actually develop and implement a heat
13 injury and illness plan -- illness prevention plan that
14 includes water, rest, and shade?

15 MR. BISHOP: Yeah, I think we generally support
16 that.

17 DR. SCHAYER: Okay. And just as a follow up, do
18 you - do you think that an alternative like this - that
19 would be training only - would be sufficiently
20 protective? And if so, if you have any evidence, in
21 your post-hearing comments you could point to on the
22 effectiveness of a training only standard in reducing

1 the risk of HRIs, heat-related injuries and illnesses,
2 that would be really helpful for us.

3 MR. BISHOP: Yeah, I think this was raised in the
4 SBREFA panel. But I also know that this -- that verbal
5 trainings have been used across multiple industries for
6 decades and have had good results at -- at outcomes,
7 without having the onerous burden applied to every
8 organization that would operate in -- in this kind of
9 heat environment.

10 DR. SCHAYER: Okay, thank you. So yeah, any
11 evidence you could provide on the effectiveness would
12 be helpful. One other quick clarifying question -- you
13 mentioned that you had heard feedback that some of the
14 terms in the proposal are vague or confusing. So if --
15 if you could provide, you know, more -- more
16 information about that and your post here and comments
17 on -- on which terms, that would be very helpful for us
18 as well.

19 MR. BISHOP: Yes, I'd be happy to and I'll just
20 flag one now. We just met with some farmers last week
21 who -- they operate in Arizona and they -- they have
22 heats that are above 80 degrees all night long. And if

1 they have to comply with the shelter standards of the
2 rule, they're being required to put up a shelter
3 standard when the sun is literally not out. So there's
4 concerns with that and other areas where the standard
5 is requiring them to do things that don't make
6 practical sense. But if it's in a standard that's
7 published in a rule, they have to follow it and we have
8 a lot of confusion in addition to wasted resources.

9 DR. SCHAYER: Okay. Thank you very much.

10 MR. LEVINSON: Your Honor, the next question comes
11 from Dr. Zoe Petropoulos.

12 DR. PETROPOULOS: I believe my question was
13 answered during the testimonies. Go to the next
14 person.

15 MR. LEVINSON: Thank you. The next questions come
16 from Brenda Finter.

17 MS. FINTER: Good morning. Brenda Finter, OSHA
18 Directorate of Standards and Guidance. I have two
19 questions. One is, in your written comments regarding
20 road construction, you mentioned that requiring
21 artificial shade and temporary structures may be and
22 can introduce greater hazards due to vehicular traffic

1 and the work environment. Can you please elaborate on
2 the hazards that this introduces?

3 MR. BISHOP: Yeah, I appreciate the opportunity to
4 dig a little deeper into that. If there is a shelter
5 that is put up, there is a likelihood that it can block
6 views. And you already have equipment, you have blind
7 corners already, and if you have additional places of
8 blind spots where you can't see around traffic or you
9 can't see around workers, you could be putting roadway
10 workers, pedestrians, and other -- other cars at risk.

11 MS. FINTER: Can a portable structure be placed
12 off the road or on the shoulder or another staging
13 area?

14 MR. BISHOP: There may or may not be space, but
15 it's -- is exceptionally dependent. I have in mind
16 works on mountain roads or next to ditches or next to
17 waterways and all of those -- or -- or you know, or
18 next to, you know, big easements with large walls that
19 just prohibit that kind of structure. But you know,
20 that -- that just -- I don't believe that that was even
21 addressed in the rule that there would be flexibility.

22 MS. FINTER: Okay. Are there any other types of

1 structures that OSHA could -- should consider for use
2 as shade?

3 MR. BISHOP: Yeah, there could be -- you know,
4 there could be equipment, there could be vehicles,
5 there could be on the shady side of a tree, or of a
6 mountain, or of any other kind of equipment. One of
7 the -- one of the things we heard from some
8 construction workers was when they're building a house,
9 it can be 90 degrees outside, but if you're in the
10 shade side, it's in the 70s. But if you're on the
11 roof, it's in the hundreds.

12 So just exposure to the sun, directly or not, has
13 a big impact and it's not just the ambient temperature
14 in the air. And I think that would go towards shade
15 structures and construction environments, also. If
16 there's an area that is around a contour of the road or
17 in the shade of machinery that already exists -- I've
18 worked outside a lot, and I know that leaning behind a
19 tree can often give me significant heat relief.

20 MS. FINTER: Thank you.

21 MR. LEVINSON: Your Honor, the next question is
22 coming from Dr. Tiffany DeFoe.

1 DR. DEFOE: Thank you. Thank you. Mr. Lundegren,
2 in terms of the flexibility that we've been requested
3 in -- in the matter of scheduled mandatory rest breaks,
4 you suggested that that be one of the -- one of the
5 aspects of a potential standard that OSHA could offer
6 variances on to -- for situations where they may not be
7 feasible or safe.

8 Another or perhaps a related possibility -- we
9 noticed that in Oregon's rule for outdoor work, there's
10 a provision that allows for the use of technology such
11 as cooling vests, water dampened clothing, or what it
12 terms, similar effective measures in -- in cases where
13 the employer can demonstrate that providing access to
14 rest in shade is not safe, not possible, or interferes
15 with the ability of employers and employees to complete
16 the necessary work in a particular situation. I'm
17 wondering if you have thoughts on whether this
18 flexibility is something that could be beneficial to
19 employers should OSHA move forward with a final
20 standard, or if you're aware of any employers using
21 these cooling measures and how effective they are?

22 MR. LUNDEGREN: We did have some discussion of the

1 cooling equipment during the SBREFA panel, and I think
2 we certainly wouldn't object to any inclusion of these
3 as part of a workplace safety and health program. And
4 generally, we support a performance-based standard
5 where employers would evaluate equipment such as this
6 and make determinations about whether they're suitable
7 for their particular workplace.

8 DR. DEFOE: Thank you very much. That's all I
9 have.

10 JUDGE HENLEY: Thank you.

11 MR. LEVINSON: And then, Your Honor, we had two
12 final questions to be read into the record by Dr. Zoe
13 Petrooulos.

14 DR. PETROPOULOS: Yeah. So we just ask that you
15 consider these in your post hearing comments. What
16 would be an appropriate schedule or trigger for
17 employers to review their heat injury or illness - and
18 illness prevention plan, or HIIPP, and can you provide
19 in your comments any additional flexibilities that you
20 recommend OSHA consider for the HIIPP requirement,
21 which could support compliance for small businesses?
22 Thank you.

1 MR. LUNDEGREN: Yes.

2 JUDGE HENLEY: Thank you, Mr. Levinson. Any
3 questions from our Solicitor representative?

4 MS. WILES: No. Linda Wiles from the Solicitor's
5 Office. Thank you, Your Honor. No questions for me.
6 And thank you Bruce and Chip for your testimony today.

7 JUDGE HENLEY: Mariam, how many participants do we
8 have who wish to ask questions of this panel?

9 MS. CARLON: Just one, Your Honor.

10 JUDGE HENLEY: Promote them, please.

11 MS. CARLON: Yes. Mr. Schneider, please state
12 your name for the record.

13 MR. SCHNEIDER: Scott Schneider. I question --
14 I -- I -- I have two questions. One of them is my
15 experience has been that small employers like to know
16 exactly what they have to do to comply with the rule to
17 prevent them from getting a citation. So how does that
18 compare -- how does that balanced by the need for
19 flexibility? If OSHA tells them you have to do
20 something at 80 degrees, it's very clear that whether
21 or not they have to do it. But if there's no trigger,
22 then how does -- how do they know when to actually

1 implement these kind of controls? I can't hear him.

2 JUDGE HENLEY: Mr. -- Mr. Bishop, if you're
3 speaking, I can't hear you.

4 MR. SCHNEIDER: You're on mute, Mr. Bishop.

5 JUDGE HENLEY: Still on mute. If you go down to
6 the mute at the bottom and check your audio controls.
7 Unless Mr. Lundegren, can you try?

8 MR. BISHOP: Can you hear anything?

9 JUDGE HENLEY: Yeah. There -- there you go. We
10 got you now.

11 MR. BISHOP: All right. So -- no, I appreciate
12 that question. I think you put your finger right on
13 that key point. We hear from small -- small businesses
14 all the time that they want some kind of standard to
15 comply with and something is better than ambiguity.
16 And then we hear from others that the standard that
17 exists is exceptionally onerous and they just can't
18 comply with it. So I think that building flexibility
19 in any kind of standard is going to be important, where
20 there's parameters and there's parameters and there's
21 performance objectives that each business, given their
22 circumstance, can target.

1 I don't think you're ever going to have, you know,
2 a hundred percent of the regulated community be on
3 board with -- with any approach. But I think by
4 building in performance-based standards, which is part
5 of -- you know, the rule-making process, part of the
6 OSH Act also, will go a long way to -- to mediating
7 that conflict that you -- you identified, Mr.
8 Schneider.

9 MR. SCHNEIDER: Okay. The -- the other question I
10 had is you mentioned, Mr. Bishop, that working out in
11 direct sunlight causes significant increase in the risk
12 of heat stress. So how should OSHA regulate or reduce
13 the risk of working in direct sunlight, the risks from
14 exposure to radiant heat? Again, we can't hear you.

15 JUDGE HENLEY: Mr. Schneider. Thank you for
16 helping me.

17 MR. SCHNEIDER: Okay. Sorry, I --

18 JUDGE HENLEY: I -- I -- I appreciate it. I know
19 you want to do --

20 MR. BISHOP: I think that that's a good point. I
21 think that there's a lot of science in this area that
22 could be considered. But again, I think that that's

1 where a performance standard -- because, you know, we
2 had several small businesses come to us and say we're
3 walking in between the shop floor and the field every
4 day. We're walking from the field to -- again, the
5 construction example -- we're on the shady side of the
6 build, and now we're in the sunny side of the build.

7 Sun exposure is something that would be considered
8 by -- by businesses and by employees when they are on
9 the job. I don't know if -- if there's a specific
10 standard that could be universally applied and I think
11 that that's a big part of the issue.

12 The acclimatization element is also key. You
13 know, we had a group in here from Arizona last week and
14 it was 85, 90 out here in DC. And they said that this
15 was relief. And then we had people down from the
16 northeast and they were needing to run and find shade
17 and water everywhere they went. And that was just
18 emblematic of this whole issue -- that if we're setting
19 a standard, there is science to be consulted, but also
20 the regional specific impacts can't be understated.

21 MR. SCHNEIDER: Okay. Thank you.

22 JUDGE HENLEY: Thank you, Mr. Schneider. Did we

1 have any other participants, Mariam?

2 MS. CARLON: No, that was it, Your Honor.

3 JUDGE HENLEY: Any follow up from OSHA or
4 solicitor's office?

5 MR. LEVINSON: No, Your Honor.

6 MS. WILES: No, Your Honor.

7 JUDGE HENLEY: I'd like to thank our two
8 representatives from the Office of Advocacy, U.S. Small
9 Business Administration, for your testimony this
10 morning. You are excused.

11 So we are finished with this morning's testimony.
12 We are off the record and on break, and we will
13 reconvene at 1 p.m. Eastern daylight time. 1 p.m.,
14 everybody. Thank you.

15 (Lunch break.)

16 MS. CARLON: This is Mariam Carlon, from Abt
17 Global, OSHA's contractor.

18 It is 1 o'clock p.m. Eastern Time, and we are now
19 rejoining OSHA's Informal Rulemaking Hearing for Heat
20 Injury and Illness Prevention in Outdoor and Indoor
21 Work Settings.

22 Before we begin, we'd like to go over some

1 logistics for today's public hearing. As a reminder,
2 all attendees are muted automatically. All Webex
3 attendees can access closed captioning and translated
4 captioning by clicking on the CC icon in the lower
5 left-hand corner of the application. You can
6 individually select your caption language if
7 translation is required -- excuse me -- required.

8 I will now share this same slide in Spanish.

9 (Shared in Spanish)

10 MS. CARLON: As a reminder, all attendees are
11 muted automatically. All Webex attendees delivering
12 testimony will have access to a countdown timer to
13 ensure allotted time is adhered to. We will launch the
14 timer for you, and it should be seen on the right-hand
15 side of your screen. If you do not see this app
16 launched in your Webex window, please follow the
17 instructions on the screen to manually launch this app.

18 If you are speaking today, you will receive a
19 notification on your screen that you are being promoted
20 to the panelist group a few minutes before it's your
21 time to provide testimony. Once promoted to the
22 panelist's role, you will be able to unmute and turn on

1 your camera. We ask that you do not unmute or turn on
2 your camera until your name has been called, and you
3 have been asked to start your testimony.

4 Speakers connected by telephone should unmute
5 their phones when called to testify. Depending on
6 timing, there may be opportunity to ask questions of
7 other speakers giving testimony. You may press the
8 raise hand button at the bottom of the Webex
9 application to indicate that you have a question. If
10 there is time, you will be called on by name and
11 promoted to the panelist group to unmute and ask your
12 question.

13 If you are having any technical difficulties,
14 please send an email with your name and phone number to
15 Public_Hearing@AbtAssoc.com.

16 Now, we will continue our public testimony. The
17 expected speaking order is currently displayed on the
18 screen. I will be introducing each speaker in turn.
19 Please speak slowly and clearly so our court reporter
20 can record these proceedings accurately.

21 The first speaker will be Elizabeth Milito.
22 Please state your name and affiliation for the record.

1 MS. MILITO: Elizabeth Milito. I am with the
2 National Federation of Independent Business. Thank
3 you.

4 JUDGE HENLEY: You may proceed, Ms. Milito. Thank
5 you.

6 MS. MILITO: Thank you. Thank you, Your Honor.
7 And thank you, other participants, and staff from OSHA.

8 On behalf of the nearly 300,000 small businesses
9 that NFIB represents nationwide, I speak today in
10 opposition to OSHA's proposed Standard on Heat Injury
11 and Illness Prevention. NFIB's members include
12 businesses in every state and in nearly every industry,
13 many of whom would be subject to OSHA's proposed
14 standard regulating heat exposure.

15 For NFIB members, the prevention of employee
16 illness through exposure to heat has always been, and
17 continues to be, a critical part of maintaining an
18 effective workplace safety program. However, we have
19 heard from members, in California in particular, that
20 it is extraordinarily difficult for them to comply with
21 a one-size-fits-all heat standard given its sheer
22 impracticality, vagueness, and costs that do not fit

1 the needs of all businesses.

2 Today, I want to highlight two of NFIB's concerns
3 with the standard: First, NFIB does not believe that
4 Federal Law authorizes OSHA to regulate heat exposure.
5 Therefore, OSHA -- OSHA lacks authority to do so. The
6 OSHA proposed Heat Rule, by the agency's own admission,
7 reaches 150 million employees, which is substantially
8 more than the 84 million than OSHA COVID-19 vaccination
9 mandate reached. A number the U.S. Supreme Court cited
10 in calling the vaccine mandate: No everyday exercise
11 of Federal power.

12 The proposed heat standard encroaches on the lives
13 of those 150 million employees and their employers,
14 specifying what they must do and when and if the
15 temperature rises too much. The proposed heat standard
16 constitutes a broad public health measure and not
17 merely a workplace safety standard. Heat exposure is
18 ubiquitous, broad hazard, not characterized properly as
19 an occupational hazard.

20 Under the principles set forth by the Supreme
21 Court, before OSHA can adopt such a standard, they must
22 receive authorization from Congress to regulate heat

1 exposure, which has not been done to date.

2 Second, NFIB is very concerned about OSHA's
3 unwillingness to take into consideration the
4 information it collected from the agency's Small
5 Business Advocacy Review Panel process. The Regulatory
6 Flexibility Act requires the agency to consider less
7 burdensome alternatives, and the SBAR process was
8 replete with those, many of which were outlined in the
9 Office of Advocacy's comment letter.

10 For instance, small entities in the panel
11 recommended that the standard be flexible with an
12 approach that allows employers to tailor their program
13 to their workplaces, including offering employers
14 flexibility and the frequency of rest breaks, and to
15 consider alternative arrangements for businesses with
16 solo and mobile workers.

17 Instead, the heat standard as proposed has a one-
18 size-fits-all approach that would impose an onerous new
19 mandate on small businesses, leading to additional
20 litigation and enforcement risks.

21 NFIB also has serious concerns about the work
22 stoppage that would occur under the standard. The

1 proposed rule would force employers to stop work during
2 periods of excessive heat, and OSHA has not provided
3 exceptions to the mandatory high-heat trigger rest
4 break provisions, i.e., 15 minutes every 2 hours, where
5 materials like asphalt and concrete are time sensitive
6 and must be applied immediately.

7 As Mr. Friedman and Mr. Bishop mentioned in their
8 testimony earlier today, requiring inflexible break
9 schedules can create a hazard in industries,
10 particularly those with tree care, and where climbing
11 up and down is involved. We have heard about that from
12 members -- small business members, too, at NFIB.

13 While excessive heat presents a hazard that must
14 be addressed, employers have proven that they can
15 provide safe workplaces for employees during these
16 times. Some of the steps that employers are taking are
17 recommended by OSHA, including increased access to
18 shade, water, rest, misting fans, moisture-wicking
19 clothing and cooling vests. OSHA's existing water,
20 rest, and shade resources offer excellent guidance to
21 employers and allow businesses to effectively tailor
22 heat illness prevention programs to unique work

1 environments, employees' needs, and tolerances.

2 If contrary to NFIB's request that OSHA withdraw
3 the proposed rule OSHA -- and OSHA ultimately decides
4 to issue a programmatic standard, OSHA should allow
5 specifically for adjustments based on geography, the
6 nature of particular jobs, and the health status of
7 individual employees.

8 Such flexibility would provide better protection
9 for employees than a more rigid, one-size-fits-all
10 standard.

11 Thank you for your time here today.

12 JUDGE HENLEY: Thank you, Ms. Milito. Does OSHA
13 have questions for this panelist?

14 MR. LEVINSON: Yes, Your Honor; Andrew Levinson
15 for OSHA. Ms. Milito, in your written comments, you
16 recommended that OSHA address the needs of small
17 businesses by adding a scope exemption for employee --
18 employers with 50 or fewer full-time employees. Can
19 you provide us with a basis for this exclusion, and any
20 evidence that you might have to support such an
21 exclusion, such as lower heat-related injury risk, or
22 increased cost or feasibility concerns?

1 MS. MILITO: Yes. Thank you for that question. I
2 will share that regulatory compliance, as you probably
3 know, is much more difficult for small entities, in
4 large part because small businesses, typically most
5 NFIB members -- and I do have data to share to support
6 this -- do not have a dedicated human resource
7 professional. We have found that in most instances,
8 it's the 40-, 50-, 60-employee threshold, at which
9 point businesses typically employ a full-time
10 professional HR representative. And very rarely do
11 NFIB members have a compliance officer.

12 So the 50-employee threshold, again, similar to
13 the same threshold that is in the Family Medical Leave
14 Act is, in part, because of the compliance difficulties
15 related to recordkeeping, training. There's lots of
16 that in the proposed standard there too.

17 With regards to data on injuries and illness, and
18 whether it's threshold of employees too, I'm happy to
19 provide more in post-hearing comments thereto. But I
20 know this was an issue raised in the SBAR panel. Thank
21 you.

22 MR. LEVINSON: Okay. The next question comes from

1 Stephen Schayer.

2 DR. SCHAYER: Yes. Thank you, Ms. Milito, for
3 your testimony. A question on performance-oriented
4 standards. So in your testimony, and also your written
5 comments, you recommended that if OSHA proceeds with
6 the rule, it should issue a more performance-oriented
7 standard that allows employers to make adjustments to
8 their heat injury and illness prevention plan as long
9 as they achieve the objectives that OSHA proposes to
10 set.

11 So just wondering if you could provide any more
12 information on how you would suggest OSHA structure
13 such a performance-oriented standard, and if you'd
14 envision any minimum specifications for any of the
15 elements in the standard, such as water, or rest, or
16 shade, or training?

17 MS. MILITO: I mean, I'll say at the outset, too,
18 that you know, again, reiterate NFIB's request that the
19 proposal -- the standard be withdrawn there. I would
20 point to Office of Advocacy's comment letter, which
21 offered two, I think, alternatives, and gave good
22 reasoning for those alternatives.

1 One would be looking at, you know, high-risk
2 sectors, so certainly sort of more along the lines of a
3 national emphasis program. So that would be one way to
4 tailor or narrow the scope of a rule too, and also
5 focusing more on the training aspects too, and starting
6 there with training for employers.

7 DR. SCHAYER: Okay. Thank you.

8 MR. LEVINSON: Your Honor, the next question comes
9 from Gary Orr.

10 DR. ORR: Thank you, Andy.

11 Ms. Milito, thank you for the information, your
12 comments. I want to focus specifically on the idea of
13 employee tolerance. And so my question is this, you
14 talked about providing flexibility to adjust the safety
15 measures, recognizing there's differences in various
16 employees and their personal health conditions so more
17 resources could be added to protect workers who face a
18 higher risk. And so what I'm interested in is, if
19 you're aware of your members having some way of
20 identifying those -- those employees who might be at
21 higher risk?

22 MS. MILITO: I -- I think -- the answer is yes.

1 Particularly in a small business there where I think
2 this is where the flexibility for an employer who knows
3 their employees, who has good communication -- open
4 lines of communication with their employees in a
5 smaller workplace there, and is aware of potential, you
6 know, any ongoing or past, you know, health issues with
7 a particular employee.

8 So I would say as a general matter, I think many
9 small businesses, because it's a smaller workplace,
10 would in fact be -- you know, would have more of that
11 information available there. So I think there is --
12 you know, smaller employers could address it in that
13 way. And again, the flexibility is just so important
14 for small businesses. I can't emphasize that enough.

15 DR. ORR: Absolutely, and just kind of one short
16 follow-up here. So you know, an employee who may not
17 have exhibited any lack of tolerance, how would an
18 employer get that information given that, that would be
19 personal information the employee would have to share,
20 and just any thoughts on how that might work in that
21 situation?

22 MS. MILITO: Well, this is where I do think some,

1 you know, training of managers. And I think I
2 mentioned too -- already mentioned too, the education
3 expanding that would be helpful for small employers.
4 So training managers on sort of, you know, what are the
5 signs of potential, you know, heat stress when that
6 comes on. I think that would be very helpful if you
7 have managers, and business owners too, who are
8 sometimes the ones who are on site to identify that and
9 sort of be able to foresee that. And then of course,
10 also making employees aware too, of sort of the
11 symptoms of heat stress, would also be very important.

12 DR. ORR: Thank you very much.

13 MR. LEVINSON: Your Honor, the next questions come
14 from Zoe Petropoulos.

15 DR. PETROPOULOS: Hello. In your written
16 comments, you indicated that having two heat triggers
17 is complex and recommended that OSHA tie triggers to
18 the National Weather Service heat advisories. So I
19 have a few follow-on questions about that.

20 Can you clarify now or in post-hearing comments
21 how you envision OSHA would use these advisories and
22 what provisions you think should be required once these

1 advisories have been issued?

2 MS. MILITO: Yes, I'm happy to do so in the -- in
3 my post-hearing comments, absolutely. And that was a
4 recommendation that came actually from one of our
5 members too. So I will be happy to expand on that
6 further. Thank you.

7 DR. PETROPOULOS: Thank you. Under the scenario,
8 too, would you envision the trigger to be the same for
9 indoor workplaces as well, or something else; if you
10 want to comment on that now or in your post-hearing
11 comments?

12 MS. MILITO: I will comment on that in my post-
13 hearing comments. Thank you.

14 DR. PETROPOULOS: Okay. And then finally, to help
15 us support the use of a heat advisory as an appropriate
16 trigger, and to ensure that it is sufficiently
17 protective, can you provide evidence now or in your
18 post-hearing comments to support that the incidence of
19 heat-related injuries and illnesses occur when a heat
20 advisory is issued?

21 MS. MILITO: And you have read that question into
22 the record; is that correct?

1 DR. PETROPOULOS: This is for now or in your post-
2 hearing comments.

3 MS. MILITO: I mean, I would be happy to --

4 DR. PETROPOULOS: I have a follow-up question.

5 MS. MILITO: -- address it in my post-hearing
6 comments. Thank you.

7 DR. PETROPOULOS: Okay. And then I'll move on to
8 another topic. So in your written comments, you
9 recommended that employers be allowed, in their Heat
10 Injury and Illness Prevention Plan to account for
11 geographical factors. Can you point to any evidence
12 that employers could use to justify having trigger
13 levels based on geography? For instance, evidence
14 indicating a lower incidence of heat-related injuries
15 and illnesses when temperatures are above the proposed
16 triggers in certain geographical regions?

17 MS. MILITO: I will address this in my post-
18 hearing comments too, but I would also point to what I
19 believe was good information that the small entity
20 representatives presented in the SBAR panel process
21 there, the talk -- and there were several
22 representatives, I believe, that discussed the

1 differences in geography too. So to say, you know, a
2 landscaping firm that is in Arizona where the employees
3 are more, you know, acclimated to the heat there,
4 versus a landscaping firm that operates in
5 Massachusetts.

6 DR. PETROPOULOS: Thank you. And this is my last
7 question for you, which we ask that you consider in
8 your post-hearing comments. You mentioned in your
9 written comment that you welcome the exemption of the
10 written HIIPP for employers with less than ten
11 employees, but also mentioned that having a verbal
12 HIIPP only could create a burden, as they would be
13 required to provide proof of the verbal HIIPP. And we
14 just ask that you provide any suggestions to OSHA on
15 this concern.

16 MS. MILITO: Okay. Thank you. Yes. Yeah. That
17 is definitely a concern, as we had a member, say this
18 could be a real "gotcha" situation where, how am I
19 going to sort of prove a negative, if you will. So
20 thank you for that question.

21 DR. PETROPOULOS: Thank you.

22 MR. LEVINSON: Your Honor, OSHA is done with its

1 questions, and I note that we have a different
2 solicitor. Linda Wiles is no longer with us in the
3 room. And we have -- Dan is our solicitor for this
4 afternoon.

5 MR. MOCZULA: Yes. Dan Moczula for the
6 Solicitor's Office, one quick question: In your
7 testimony, Ms. Milito, you mentioned that portions of
8 the proposed standard are vague, either now or in your
9 post-hearing comments, could you provide further detail
10 on portions of the proposed standard, which could be
11 further clarified for the regulated community?

12 MS. MILITO: Yes, I'd be happy to do so in my
13 post-hearing comments. Thank you.

14 MR. MOCZULA: And that's it from the Solicitor.
15 And thank you very much for your time.

16 JUDGE HENLEY: Thank you. Mariam, how many
17 participants do we have who wish to ask questions of
18 this panelist?

19 MS. CARLON: We have one from Mr. Schneider -- oh,
20 actually, we have two.

21 JUDGE HENLEY: Promote Mr. Schneider.

22 MR. SCHNEIDER: Thank you. My name is Scott

1 Schneider, for the record. Ms. Milito, I had a
2 question about -- you mentioned in your testimony that
3 many or most of these small businesses don't have on-
4 staff health and safety expertise; is that correct?

5 MS. MILITO: That is correct. That is what I
6 stated, yeah.

7 MR. SCHNEIDER: Okay. Okay. So given that, how
8 are these small businesses supposed to make a
9 determination whether a heat-stress risk exists in
10 their workplace if they don't have the expertise? Are
11 you expecting them to hire consultants to do that?

12 MS. MILITO: No, I am not. I would -- that is
13 where it goes back to OSHA providing some educational
14 information that is written in plain English in which
15 small business owners, and their managers, and
16 employees can be educated. My members time and time
17 again are asking for information on Federal regulatory
18 mandates in plain English, simplified as possible, so
19 that it is digestible for the average, you know,
20 employer, manager, and employee too. So I think it can
21 be done, Mr. Schneider. And I thank you for your
22 question.

1 MR. SCHNEIDER: So you're -- are you familiar with
2 the materials that already exist from OSHA on heat
3 stress, the guidance documents, and are they
4 sufficient?

5 MS. MILITO: Yes. And I said that in my
6 testimony, too. And in fact many, many, many NFIB
7 members look to that -- that information and do find it
8 helpful. Thank you.

9 MR. SCHNEIDER: Okay. Thank you.

10 JUDGE HENLEY: Please promote the next question --
11 questioner.

12 MS. CARLON: Jordan, please state your name for
13 the record.

14 MR. BARAB: Yeah. Hi, this is Jordan Barab. And
15 my question is you -- in response to Mr. Schneider's
16 question, you acknowledged that OSHA has good guidance
17 materials that are written in plain English, and I
18 think you're aware that OSHA has had those materials on
19 its website for at least 15 years. NIOSH, and other
20 organizations, of course, have been issuing such
21 guidance since the early 1970s.

22 So the guidance is there. It's understandable.

1 It's usable. And I think a lot of -- as you say, a lot
2 of employers are using it and are doing the right
3 things. Are you saying that all employers, large and
4 small, are actually following this guidance right now?

5 MS. MILITO: No, I just mentioned that the
6 guidance is available and it is used by many employers,
7 large and small.

8 MR. BARAB: And so what happens -- so given that
9 this guidance has been around for, oh, 50 years or so
10 in one form or another, and there are still -- as you
11 indicate, lots of employers out there who are not
12 following this guidance, how is it -- how is it going
13 to help the situation for OSHA or other organizations
14 just to provide more guidance when, you know, again,
15 everybody is not already following this guidance?

16 MS. MILITO: I will just say that there's a lot of
17 Federal rules and regulations that are unfortunately
18 not always followed. That doesn't mean that we pile
19 on -- there is a need to pile on more Federal rules and
20 regulations. Thank you.

21 MR. BARAB: All right. But you don't have any
22 solutions as to how to encourage or force employers who

1 are not in compliance for being in compliance without a
2 mandatory standard?

3 MS. MILITO: I mentioned before that there is
4 always room for more training and compliance assistance
5 from Federal agencies. Thank you for your question.

6 MR. BARAB: Thank you.

7 JUDGE HENLEY: Jordan. Can you spell your last
8 name, please?

9 MR. BARAB: Yes. Yeah. B as in boy A-R-A-B as in
10 boy.

11 JUDGE HENLEY: Are you associated with any
12 particular organization?

13 MR. BARAB: Not at this time. I was formerly with
14 OSHA, and other organizations.

15 JUDGE HENLEY: Thank you, sir.

16 Is that it, Mariam?

17 MS. CARLON: That is, Your Honor.

18 JUDGE HENLEY: Any follow-up from OSHA or SOL?

19 MR. LEVINSON: No, Your Honor.

20 MR. MOCZULA: No, Your Honor.

21 JUDGE HENLEY: Oh. Thank you, Counsel.

22 Ms. Milito, thank you very much for your

1 participation this afternoon and for your testimony.

2 You are excused.

3 MS. MILITO: Thank you, Your Honor.

4 JUDGE HENLEY: Please promote our next panelist,
5 Mr. Abron.

6 Mr. Abron, good afternoon. Please identify
7 yourself.

8 MR. ABRON: Yes. Anthony Abron, with the National
9 Safety Council.

10 JUDGE HENLEY: You may proceed with your comments,
11 remarks.

12 MR. ABRON: Thank you. And thank you for allowing
13 the National Safety Council to testify today in support
14 of the Occupational Safety and Health Administration's
15 proposed Heat Injury and Illness Prevention Standard.

16 The National Safety Council is America's leading
17 nonprofit safety advocate, and we have been for over
18 110 years. We have more than 1,300 members that
19 include both employers that are focused on safety as
20 well as labor unions, and we represent nearly 41,000
21 United States worksites.

22 As stated in our public comments, occupational

1 heat hazards are becoming more prevalent in the United
2 States and throughout the world. NSC leads an
3 organization called Injury Facts, which shows that
4 exposure to environmental heat resulted in thousands of
5 days away from work reported cases in both 2021 and
6 2022. Industries that face these hazards had a higher
7 rate than others include the transportation industry,
8 the construction industry, and the manufacturing
9 industries, and we believe it is well within the remit
10 of OSHA to finalize a standard to ensure workers do not
11 get sick or sustained fatal injury due to burdensome
12 heat exposure.

13 Additionally, heat is not slowing down as a topic
14 of concern at both the environmental and occupational
15 levels. Just this month in Congress, there was a
16 member of Congress that introduced the Extreme Heat
17 Economic Study Act, which would require an economic
18 study to look at workers' compensation data, focused on
19 employee heat-related claims, as well as existing
20 research on labor productivity losses associated with
21 extreme heat.

22 And as many are aware, there are states such as

1 California, Oregon, Colorado, Minnesota, Washington,
2 and Maryland that have implemented their own heat
3 stress standards. Most employers want to do the right
4 thing and protect their workforce, workplace injuries
5 and fatalities cost the United States economy over \$173
6 billion alone in 2023. And we believe there is both a
7 moral and economic imperative to mitigate or eliminate
8 hazards that lead to occupational injuries and
9 fatalities, which include heat.

10 Specific to the proposed Heat Injury and Illness
11 Prevention Standard, we believe that workers who are
12 experiencing temperatures at 80 degrees Fahrenheit or
13 higher, should receive shade, rest, and water to
14 protect against occupational injury and illness due to
15 heat. And then also a rest break in shade for 15
16 minutes every 2 hours with potable drinking water makes
17 sense for worker protection under a high-heat
18 environment.

19 We also support the ANSI Consensus Standard, which
20 is the Heat Stress Management and Construction and
21 Demolition Operations, which suggests that the length
22 and frequency of rest breaks should increase as heat

1 exposure increases over recommended or regulated
2 limits. There should be some acclimatization process
3 for new workers and workers returning to the job site
4 after 14 days or more away, because that will be
5 critical to their safety and health.

6 And then, similarly to what Ms. Milito just said,
7 we believe that training is imperative, but both
8 supervisors and managers should receive the same
9 training as frontline workers. And additional -- both
10 regarding heat, but then also other occupational safety
11 matters such as emergency procedures, emergency
12 response, and emergency first aid.

13 We also support OSHA looking at nonphysical risk
14 factors, such as physiological stresses from work and
15 acknowledging how that can also add to a worker's
16 overall heat load.

17 We are, as NSC, an expert in delivering OSHA
18 required training and partnering with employers on
19 strengthening their safety, health, and management
20 system processes. And we also believe that there are
21 additional opportunities in the standard for OSHA to do
22 additional work so that the standard is workable for

1 businesses.

2 These areas include OSHA providing examples of
3 what would be considered an acceptable exposure in an
4 environment exceeding the initial heat trigger for 15
5 minutes or less in any 60-minute period. We also
6 believe that there may be temperatures that are too
7 high or any exposure invoked, whether it's 15 minutes
8 or less, would invoke an occupational illness or
9 injury.

10 For companies with multiple worksites, work
11 outdoors, and/or job sites that change frequently,
12 consistent site-specific monitoring for the Heat Injury
13 and Illness Prevention Plan may be problematic and
14 ultimately costly to an employer. So we just ask that
15 OSHA create an opportunity for a partnership with those
16 employers to figure out what a -- what a proper plan
17 could be.

18 An employer with multiple worksites might find
19 difficulties in designing -- in designating a
20 coordinator for each specific worksite. OSHA should
21 provide alternative compliance-related protocols that
22 employer can use that would still meet the intentions

1 of the coordinator role in the proposed standard.

2 OSHA should finalize -- OSHA should outline the
3 final standard of whether employees can make their own
4 acclimatization schedule and the proper guidelines they
5 must follow. And also the proposed standards should
6 clearly address the use of personal protection
7 equipment designed to provide cooling.

8 We hope that the testimony provided here today is
9 valuable to OSHA as it endeavors to finalize its Heat
10 Injury and Illness Prevention Standard. NSC supports
11 the implementation of the standard as it will save
12 lives in workplaces across the country.

13 Thank you so much.

14 JUDGE HENLEY: Thank you, Mr. Abron.

15 Does OSHA have questions for this panelist?

16 MR. LEVINSON: Yes, we do, Your Honor. Andrew
17 Levinson for OSHA.

18 Mr. Abron, either now or in your post-hearing
19 comments if you could please address: In your written
20 comments you expressed support for adding a third
21 trigger to account for heat waves. And we are curious
22 if you have any thoughts on how OSHA could define a

1 heat wave in a manner that would be easy for all
2 covered employers to understand?

3 MR. ABRON: Yes. I'm happy to provide an answer
4 to that in our post-hearing comments.

5 MR. LEVINSON: Thank you. The next questions come
6 from Steven Schayer.

7 DR. SCHAYER: Yes. Thank you, Mr. Abron, for your
8 testimony. So I just have two questions; one is about
9 performance-oriented standards. We've received
10 comments today, and in also written comments that OSHA
11 should adopt the more performance-oriented standard
12 that would allow employers to adjust their heat injury
13 and illness prevention plans as long as they meet set
14 objectives.

15 And I noticed in your written comments you
16 indicated that performance-oriented standards can
17 sometimes cause confusion during enforcement and
18 compliance. So I was just wondering, from your
19 perspective, if OSHA were to adopt a more performance-
20 oriented standard, how you would suggest that OSHA do
21 it in a way that would avoid confusion?

22 MR. ABRON: Yes. As Ms. Milito said, there may be

1 several businesses that don't have a designated
2 compliance officer or a healthy safety -- or health and
3 safety expert, and so in those cases, for those
4 businesses, or those work sites, it may be confusing to
5 sort of understand what the landscape and what the
6 remit is, especially for employers that don't have
7 access to regulatory counsel, and so forth. So a more
8 prescriptive standard where there actually is
9 acknowledgment of, this is the rule, this is what I
10 must follow, is a little more delineated and easier
11 for -- easier to follow in that case.

12 If OSHA were to adopt a more of a performance
13 requirement, we believe that compliance assistance will
14 ultimately be the most impactful factor there, and that
15 will just take more robust processes for OSHA to use.

16 But ultimately, at the end of the day, we think
17 it's just better if there is specific delineations on
18 what the rule is, and what as specifically -- as
19 specific businesses or worksites must be required to
20 follow.

21 DR. SCHAYER: Okay. Thank you very much.

22 Appreciate that. And if you have anything to add in

1 your post-hearing comments on the structure of a
2 post -- I'm sorry -- the structure of a performance-
3 oriented standard, we'd appreciate that as well.

4 The second question I had was based on something
5 you just said. You suggested that OSHA outline in the
6 final standard whether -- or in a final standard,
7 whether employers can make their own acclimatization
8 schedule and the guidelines they must follow, and so
9 we'd just be curious what specific elements that you
10 believe such employer development schedule -- such
11 employer developed schedules would need to incorporate
12 in order to be effective? And if this is something you
13 want to answer now or in your post-hearing comments,
14 it'd be -- it'd be helpful for us to know for
15 acclimatization purposes.

16 MR. ABRON: Yes. Happy to provide an answer to
17 that in our post-hearing comments.

18 DR. SCHAYER: Okay. Thank you very much.
19 Appreciate your testimony.

20 MR. ABRON: Thank you.

21 MR. LEVINSON: Your Honor, the next question comes
22 from Jessica Stone.

1 MS. STONE: Hi. Jessica Stone, OSHA. I'm curious
2 about, in your written comments you had talked about
3 work activities where there is no reasonable
4 expectation of exposure at or above the initial heat
5 trigger, and that there may be some activities that
6 need to be done, including monitoring and others that
7 we did not account for.

8 Can you expand on that and explain sort of what
9 you envision that would require in frequency, and
10 anything -- any thoughts, additional thoughts you have
11 on that?

12 MR. ABRON: Yeah. So happy to talk on that, as
13 sort of -- a lot of our members, they have sort of work
14 operations in several different sort of climates, and
15 several different types of -- or places in the country
16 where they're just -- they don't think that there will
17 ever be sort of an exposure above 80 degrees, both
18 indoor or outdoor.

19 However, still, to be in compliance, they believe
20 that there should still be significant monitoring to
21 make sure that they don't meet what that trigger
22 threshold is. And so it would just -- we believe it's

1 helpful for employers to know sort of what specific
2 tools are at their disposal to use, sort of at their
3 work site, to make sure that they're not reaching that
4 specific trigger threshold, so that they don't have to
5 figure out what their -- all the other standards in the
6 plan, or all the implementations of their plan would
7 be.

8 However, most work sites that sort of are NSC
9 members, they also still do have heat illness
10 prevention plans, as opposed -- as a part of being good
11 occupational safety and health practitioners for their
12 employers -- employees.

13 MS. STONE: Thank you. And just as a follow up
14 from my understanding, are you suggesting that -- that
15 you think that OSHA should require some monitoring for
16 everybody, some kind of baseline? Or is this, you
17 think that people will look at that and say that they
18 have -- how do I know I'm in compliance? I have to do
19 this, whether it says it or not?

20 MR. ABRON: I think it's that second part. I
21 think it's sort of just making sure that they
22 understand that they are in compliance just because

1 they don't want to be subject to an enforcement action.

2 MS. STONE: All right. Thank you.

3 MR. LEVINSON: And Your Honor, the next questions
4 come from Deirdre Green.

5 DR. GREEN: Hello. Thank you, Mr. Abron.

6 Deirdre Green, OSHA, Director of Standards and
7 Guidance. You mentioned that supervisors and managers
8 should receive the same training as workers, and maybe
9 some additional trainings related to emergency
10 procedures, could you elaborate on why you think that
11 this is important?

12 MR. ABRON: Yes, I think sort of -- or we believe,
13 at the National Safety Council, that everyone should be
14 aware on job sites that sort of meet that 80-degree
15 Fahrenheit trigger, sort of what the signs and symptoms
16 of heat illness and heat stress should be. But
17 ultimately, the person suffering sort of heat illness
18 might not be the one -- might not be the one to sort of
19 get action, to sort of help support them through an
20 emergency response procedure.

21 So both -- sort of, supervisors should get the
22 same training in case they are subject to additional

1 thermal load of heat stress, and also should be aware
2 of what the proper emergency procedures should be, both
3 at the work site, sort of how to administer first aid,
4 but then also in the case of extreme instances, be able
5 to reach out to the requisite medical professionals,
6 either if they are both on campus, at the work site, or
7 also maybe they need to call 911 as sort of what that
8 emergency procedure would look like.

9 DR. GREEN: Thank you. I have another question
10 related on the high heat. Can you further explain why
11 you believe that OSHA should consider defining
12 excessively high-heat areas as something other than a
13 work area where ambient temperatures regularly exceed
14 120 degrees Fahrenheit? And are there other factors
15 that OSHA should consider in this definition?

16 MR. ABRON: Yes. I will be happy to answer that
17 question in our post-hearing comments.

18 DR. GREEN: Thank you.

19 MR. LEVINSON: Your Honor. The next questions
20 come from Gary Orr.

21 DR. ORR: Thank you, Andy.

22 Gary Orr, the Director of Enforcement Programs,

1 Mr. Abron, we are so impressed with what the National
2 Safety Council does, and how you can reach out to so
3 many people on -- particularly on this important topic
4 of heat stress. This has to deal with an -- prevention
5 program, or a prevention plan. How important is it
6 that workers get involved in the development of the
7 plan and implementation of the plan? And again, you
8 know, I appreciate your discussion, but you're also
9 able to put those in your post-hearing comments as
10 well.

11 MR. ABRON: And I'm happy to answer that right
12 now. We truly believe in the role of worker
13 participation and worker involvement. Ultimately,
14 plans are the most successful when workers can engage
15 in the creation of them, because they ultimately know
16 best what their work is. And so trying to create a
17 plan where they can understand if this is workable,
18 this is not workable, in partnership with managers and
19 supervisors, to ultimately get to what the business
20 imperative is while also maintaining safety as a
21 critical component is support sort of paramount to
22 anything that we could ever want. And so it's always

1 important for workers to be involved in the process as
2 though they are the ones that know their work the best.

3 DR. ORR: I agree. And one of the things that
4 we'd like to know, get some of your thoughts on this,
5 is the plan should be available, right, and what is the
6 time frame, you know, for some employers that may take
7 a little bit of scurrying about to find that? So what
8 would a reasonable time frame you think to have that
9 plan available?

10 MR. ABRON: Yeah, I think, and NSC believes that
11 would be different based on the size and scope of what
12 each employer's operations are. And so where we would
13 be is -- is that we would sort of put that back on OSHA
14 and say, sort of given the information that you were
15 provided, given the operation of the businesses
16 throughout the country, what seems reasonable.

17 And then also we would partner then with the
18 employers to making sure that they are in compliance
19 with what the regulation says. Both that the
20 availability is something that all the workers, whether
21 it needs to be translated in other languages that they
22 are -- that that consideration is made also for

1 employers, but then also sort of what the availability
2 looks like. Is there a digital copy? Does there need
3 to be a physical copy as well? So that way, you know,
4 employers know that they have their bases covered and
5 employees actually know what the plan involves and what
6 the plan is.

7 DR. ORR: And I think probably because we were
8 just talking about development. But if somebody wants
9 the plan, have access to the plan, what time frame
10 should -- you know, sometimes it's just going to the
11 file cabinet, and other times it might be going
12 somewhere. Any kind of thoughts on that, how long it
13 might -- what would be a reasonable time for that?

14 MR. ABRON: Yes. I think that, especially from
15 the perspective of workers, if they're -- if they're
16 asking for the plan, it should be readily available
17 anywhere, right? And most of the times they're asking
18 for the plan because they believe they're being subject
19 to a threshold of heat that may not be workable for
20 them.

21 So sort of having a digital copy sort of on site,
22 wherever the job site is, might be helpful, and

1 especially for workers that are maybe potentially on
2 lone-worker conditions, maybe that's sort of they have
3 access to technology, whether it's a smartphone, or
4 other types of documentation, a wearable that would
5 give them access to that plan as well. We believe it's
6 something to specifically consider for job sites that
7 are remote and have lone-worker conditions.

8 DR. ORR: That's so helpful. Thank you.

9 MR. ABRON: Okay.

10 MR. LEVINSON: And Your Honor, our last question
11 from the OSHA Panel is from Zoe Petropoulos.

12 DR. PETROPOULOS: Hello. We just asked that you
13 consider this in your post-hearing comments. So in the
14 National Safety Council's written comment, there was
15 reference to the newly developed AIHA app that allows
16 folks to determine wet bulb globe temperature at their
17 work sites. And if you are aware of any research or
18 data that validates these values derived from the app,
19 could you share those in your post-hearing comment?

20 MR. ABRON: Yes, we will make sure to have that in
21 our post-hearing comments.

22 DR. PETROPOULOS: Thank you.

1 MR. LEVINSON: And Your Honor, that concludes the
2 OSHA panel.

3 JUDGE HENLEY: Thank you. Do we have questions
4 from our Office of the Solicitor?

5 MR. MOCZULA: No questions from us. Thank you
6 very much for your testimony, Mr. Abron.

7 JUDGE HENLEY: Mariam, do we have any participants
8 who would like to ask questions of this panelist.

9 MS. CARLON: There are none, Your Honor.

10 JUDGE HENLEY: Mr. Abron?

11 MR. ABRON: Right.

12 JUDGE HENLEY: Thank you very much for your time
13 and testimony this afternoon. And you are excused.

14 MR. ABRON: Thank you so much.

15 JUDGE HENLEY: Mariam, if you can promote our next
16 panel, please?

17 MS. CARLON: Yes. The next speaker group is the
18 American Society of Safety Professionals, represented
19 by Robert Drane, David May, and John Johnson. Please
20 state your name and affiliation for the record as you
21 each testify independently.

22 JUDGE HENLEY: Mr. Drane, Mr. May, and Mr.

1 Johnson, can you hear me? This is Judge Henley.

2 DR. MAY: Yes, I can hear you. This is David May,
3 I'm the vice chair of A10.50 Standard, and my
4 association is mostly retired. I'm also -- work a
5 little bit with Keene State College as a professor --
6 as associate professor emeritus.

7 JUDGE HENLEY: You're speaking on behalf of the
8 American Society of Safety Professionals?

9 DR. MAY: That's correct.

10 JUDGE HENLEY: Okay.

11 MR. DRANE: And I'm Robert Drane. Sorry, I was
12 unable to unmute. So I'm Robert Drane with the
13 American Society of Safety Professionals, as well, and
14 I'm here to speak for the Society.

15 JUDGE HENLEY: Do we have Mr. Johnson?

16 MR. JOHNSON: I am here, sir.

17 JUDGE HENLEY: Okay. Well, Mr. Drane, did you
18 want to begin with your testimony?

19 MR. DRANE: Yes, I will. My name is Professor
20 Robert Drane. I'm the chair of the American Society of
21 Safety Professionals, Government Affairs Committee.
22 ASSP and I are pleased to have the honor and privilege

1 of testifying on the important issue of workplace
2 safety stress, workplace heat stress, to be specific,
3 its impact on workers and the proposed U.S.
4 Occupational Safety and Health Administration Rule.

5 As you know or may not know, ASSP was founded in
6 1911 with currently over 36,000 members. The Society
7 is the oldest and one of the largest occupational
8 safety and health professional organizations in the
9 world. The Society has been a supporter of OSHA since
10 its advent, and we commend OSHA's role in prioritizing
11 workplace safety at a national level, which also
12 includes heat stress.

13 Heat stress is the workplace - in the workplace is
14 a significant safety issue, and OSHA plays a critical
15 role in addressing it. On September 20th, 2021, the
16 Biden administration announced that OSHA would enhance
17 and expand its efforts to address heat-related
18 illnesses. This included an enforcement initiative on
19 heat-related hazards, developing a National Emphasis
20 Program on heat inspections, and launching a rulemaking
21 process to develop a workplace heat stress standard.

22 Response from ASSP membership to this announcement

1 was overwhelmingly positive. ASSP educational and
2 technical events addressing heat stress and the
3 proposed OSHA Heat Stress Rule received high levels of
4 participation, and our membership encouraged society
5 leadership to advocate its support of the proposed
6 rule.

7 ASSP offers the following positions and general
8 comments on the proposed heat stress rule: ASSP
9 supports public and private sector initiatives intended
10 to prevent occupational injuries, illnesses, and
11 fatalities. We support public policy initiatives
12 backed by good science and good technology -- sound
13 technology. Heat stress is a well-known and largely
14 preventable hazard, and ASSP has long supported the
15 development of a standard for heat stress.

16 Our members emphasize the importance of a standard
17 that is clear and practical to implement, particularly
18 for employers with limited resources. ASSP worked and
19 is continuing to work with the National American
20 Standards Institute, ANSI, A10 Committee for
21 Construction and Demolition Operations to raise more
22 awareness of our ANSI ASSP A10.50-2024 Volunteer

1 National Consensus Standard published in February 2024,
2 addressing heat stress for construction and demolition
3 operations.

4 ASSP provided extensive technical comments on
5 OSHA's heat stress initiatives, including the National
6 Emphasis Program during the time of their release, in
7 order to address any concerns it believed warranted
8 additional review.

9 Those comments are available for review on our
10 website for interested EHS professionals and
11 stakeholders. While ASSP has offered technical input
12 on certain provisions, we continue to support the
13 overall direction and intent of the proposed rule.
14 ASSP's comments reflect technical insight from hundreds
15 of members.

16 Three key themes emerged: Our members believed
17 the proposed rule has the potential to significantly
18 reduce heat-related hazards and provide clarity on
19 employer responsibilities related to heat stress
20 prevention.

21 The proposed rule will pose significant
22 implementation challenges for organizations and

1 occupational safety and health professionals.
2 Implementation could be particularly challenging for
3 smaller organizations due to a lack of resources. This
4 lack of resources could include technical and
5 professional insight from EHS professionals. Many ASSP
6 members noted they were pleased that OSHA recognized
7 ANSI ASSP A10.50-2024 Standard.

8 ASSP has historically maintained its position that
9 voluntary national consensus standards should be
10 reviewed for inclusion as part of the regulatory
11 process.

12 Thank you for the opportunity to share ASSP's
13 perspective. And I would like to now invite John
14 Johnson, the chair of our ANSI ASSP A10 Committee for
15 Construction and Demolition Operations, to expand on
16 how our standards development efforts align with OSHA's
17 proposed rule.

18 MR. JOHNSON: Thank you, sir. Good afternoon. I
19 would like to extend my appreciation to OSHA for
20 allowing me to speak today on behalf of the A10
21 Committee for Construction and Demolition Operations.
22 I would also like to express my support to Professor

1 Robert Drane, as Chair of the ASSP's Government Affairs
2 Committee, for his testimony supporting the development
3 of an OSHA rulemaking -- rule addressing heat stress in
4 the workplace.

5 The A10 Committee is one of the oldest standard
6 development committees under ANSI, dating back to the
7 1940s. Over the years, it's developed over 50 national
8 standards, technical reports, and guidance documents
9 focused on improving safety in construction and
10 demolition operations.

11 Our committee brings together a diverse group of
12 stakeholders from labor, management, and the public.
13 ASSP serves as the secretariat and manages our
14 consensus process, ensuring that no single interest
15 dominates. This structure supports open dialog,
16 transparency, and a balanced approach to standards
17 development.

18 In 2018, our committee began discussing the need
19 for a national consensus standard on heat stress.
20 After careful deliberation, we agreed that a full ANSI
21 standard would provide the strongest platform to
22 address this hazard, particularly in construction and

1 demolition settings where the risks are often elevated.

2 We then formed a dedicated subcommittee to lead
3 the development of what became ANSI ASSP A10.50, with
4 Dr. Tom Bobick serving as chair, and Dr. David May, as
5 vice chair. The subcommittee included 30 professionals
6 representing businesses, labor, academia, consulting,
7 and government. Their inclusive, consensus-based work
8 took three years and reflects the best available
9 knowledge on how to protect workers from heat stress.

10 A10.50 includes practical guidance on engineering
11 administrative controls, rest, water, and shade
12 requirements, emergency response, and heat stress
13 management programs. While the focus is on
14 construction and demolition, its guidance is relevant
15 to other outdoor industries as well.

16 As OSHA considers a Federal rule, we urge the
17 agency to look at A10.50 as a key reference point, and
18 to align its final rule with the protections our
19 standard outlines. Voluntary consensus standards like
20 this one play a critical role in filling regulatory
21 gaps in helping employers implement effective safety
22 practices today.

1 With that background, I'd like to turn it over to
2 Dr. David May, vice chair of A10.50 Subcommittee, who
3 will speak more specifically about the technical
4 details of the standard, and the science and safety
5 considerations that inform its development. Thank you.

6 DR. MAY: Thank you, John. My name is Dr. David
7 May, and I'm Vice Chair of the A10.50 Subcommittee that
8 created the heat stress standard. It was approved by
9 the main A10 Committee, and subsequently approved as an
10 American national standard.

11 In my opinion, there is no question that heat
12 stress is a significant hazard on work sites, and the
13 most heat stress -- and most heat-stress-related
14 incidents can be avoided.

15 Our subcommittee's intent was not to replace
16 OSHA's regulatory process, but rather create a resource
17 that OSHA and others could use to inform their efforts.
18 The A10.50 Standard offers practical science-based
19 guidance that we believe can complement OSHA's
20 rulemaking and provide a strong foundation for
21 compliance and worker protection.

22 The standard helps prevent heat illness by

1 recommending engineering and administrative controls,
2 acclimatization practices, training, and defining
3 roles, for example, that of a competent person and a
4 qualified person.

5 One of the key aspects of A10.50 in any proposed
6 regulation is its emphasis on heat-stress management
7 programs. This is a critical and impactful section of
8 the A10.50 standard. Establishing a heat stress
9 management program requires some planning and effort.
10 Appendix 1 of the document provides sample plans and
11 checklists to assist companies in implementing
12 effective heat stress programs.

13 Appendix 2 offers procedures for measuring or
14 determining heat stress, including the use of wet bulb
15 globe temperature, or WBGT. Appendix 8 outlines
16 medical monitoring needs and describes a buddy system
17 for recognizing early signs of heat illness. Another
18 key feature is support for estimating metabolic
19 workload. Table 2 in the appendix provides examples
20 across various work intensities, from light to very
21 heavy, to help safety professionals evaluate heat
22 strain more accurately.

1 A10 provides guidance on acclimatization,
2 hydration, rest, and shade, core elements of OSHA --
3 that OSHA is also proposing. It also includes methods
4 for converting heat index data to an estimated WBGT,
5 thus offering a more comprehensive risk assessment of
6 heat conditions.

7 The standard offers a step-by-step procedure to
8 evaluate working conditions, and recommends the use of
9 engineering and administrative controls to reduce heat
10 exposure. It also includes WBGT correction factors for
11 different types of PPE work clothing. Appendix 6
12 includes detailed emergency action plan to follow if a
13 worker experiences a serious heat-related incident.

14 A10.50 aligns with the hierarchy of controls,
15 focusing on engineering or administrative controls, as
16 well as PPE, since elimination or substitution of
17 environmental heat isn't often feasible for most
18 outdoor work. Engineering controls are a way to block
19 or reduce heat exposure through physical barriers and
20 mechanical devices such as portable air conditioner
21 when using inside, or fans in a designated rest area
22 that could be used both indoors and outdoors. Misting

1 fans can also be used to cool workers outside.

2 For reference, sometimes you see those types of
3 fans used on sidelines of football games or amusement
4 park -- amusement parks. Administrative controls
5 include changes to the way work is done that can reduce
6 the heat exposure, such as scheduling to start at dawn
7 and take a break during the hottest time of the day.
8 If not, work could be extended to cooler hours at the
9 end of the day.

10 Another administrative control is rest, which
11 reduces workers' metabolic load and allows them to cool
12 off in a shady area while drinking water to replace
13 fluids lost through sweating during the day. PPE can
14 also include cooling vests or hard hats with thermal
15 barriers and or shade visors that attach to the back
16 to -- attach to the back to block direct sunlight.

17 Let me note that dealing with excessive heat is a
18 complicated process, because many of the environmental
19 conditions and wide range of work tasks must be
20 considered. This complexity is one reason why no
21 national consensus standard had yet been developed.
22 The subcommittee considered all aspects of the problem

1 when preparing this document, to give companies as much
2 help as we could. The standard itself is 17 pages, but
3 there are an additional 30 -- but there are additional
4 34 pages of helpful information in nine different
5 appendices that give both management and workers advice
6 on how to deal with working safely in excessive heat.

7 Lastly, as John Johnson noted, the A10
8 Subcommittee consisted of 30 members who represented
9 small and large businesses, trade unions, consultants,
10 university, and government agencies. We worked well
11 together over the three years it took to develop the
12 standard, and I want to express my sincere appreciation
13 to everyone involved for their dedication and
14 collaboration.

15 Thank you for the opportunity to contribute to
16 this important dialog. ASSP appreciates the thoughtful
17 and diligent efforts of OSHA and its stakeholders to
18 protect workers from the hazards of heat. We stand
19 ready to support the agency as it advances a standard
20 that prioritizes both worker safety and operational
21 practicality. Thank you.

22 JUDGE HENLEY: Thank you. Does OSHA have

1 questions for this panel?

2 MR. LEVINSON: Yes, Your Honor. In ASSP's written
3 comments -- sorry, Andrew Levinson for OSHA -- in
4 ASSP's written comments, you recommended that OSHA
5 recognize the specific requirements of the ANSI ASSP
6 A10.50 Standard for Construction and Demolition as an
7 example -- as an additional example of what could be
8 implemented in a Federal OSHA standard.

9 Could you please highlight either now or in your
10 post-hearing comments, any requirements of the A10.50
11 Standard that OSHA is currently missing from its
12 proposed standard, and which you believe should be
13 included in an OSHA standard?

14 MR. JOHNSON: David, I'll cover this one. We will
15 address that in our -- in our comments.

16 MR. LEVINSON: Thank you very much. The next
17 comment -- or the next question comes from Stephen
18 Schayer.

19 DR. SCHAYER: Yes. Thank you so much for your
20 testimony. I have just two questions. One is about
21 drinking water. So we've received comments about
22 drinking water. And we're wondering, in your

1 experience, if you could discuss any challenges in
2 maintaining water at cool temperatures at remote or
3 mobile work sites, especially during long shifts or on
4 very hot days, and if you could offer any
5 recommendations for measures that could help with these
6 challenges?

7 DR. MAY: We could offer -- we could offer advice.
8 We didn't put a specific temperature in our standard
9 for water, other than it just be cool. I presume it
10 would be a standard ways that we would do it in, you
11 know, in any other sort of -- any other sort of
12 operation where we needed to have cool water, which
13 would be, you know, bring ice and ice chests that can
14 cool down drinking water.

15 DR. SCHAYER: Okay. Thank you. I appreciate
16 that. And my second question is about acclimatization.
17 In your comment, you had proposed including
18 acclimatization schedules and a nonmandatory appendix
19 to any rule. And so I was wondering if you could
20 provide some examples of what you think OSHA should
21 consider including in such an appendix. And this is
22 something you could also do in your post-hearing

1 comments.

2 DR. MAY: Sure, we can -- we can include that in
3 post-hearing comments. Basically we -- in our
4 standard, in the appendices, we did put some examples
5 of acclimatization schedules both for initial
6 acclimatization and for reacclimatizing workers. In
7 our standard we -- we adapted the NIOSH recommendations
8 from the NIOSH criteria document.

9 DR. SCHAYER: Great. Okay. Thank you very much.

10 MR. LEVINSON: And Your Honor, the next question
11 comes from Jessica Stone.

12 MS. STONE: Hi, Jessica Stone with OSHA. And I
13 apologize if this is getting into the weeds, and you
14 don't have an answer. I'm an economist, and we tend to
15 get in the weeds and ask questions that nobody can
16 answer. So I'm curious if you have any information
17 about vehicle cabs. Part of our standard, you know,
18 said that there were some different considerations for
19 drivers who were in cooled cabs. Our big question is
20 what the percent of cabs - what percent of trucks have
21 cabs that are cooled?

22 Again, that's the question that I don't think

1 anybody has the information on. But if you do, I would
2 love to hear it. And any considerations that you gave
3 to workers who are spending time driving, or in a
4 cooled cab, and how that would affect what their
5 employer should be doing.

6 MR. JOHNSON: Well, Dave, let me try this one. As
7 far as the percentage of vehicles that have cooled
8 cabs, that that would be a tough one. We'll have to
9 kind of collaborate together on that one and try to
10 give you the best answer we can. So I think we'll have
11 to address that in our post-hearing comments; my
12 apologies.

13 MS. STONE: I know. You didn't come equipped to
14 answer my very specific question.

15 MR. JOHNSON: I guess it all depends on the age of
16 the vehicle. There aren't too many vehicles
17 manufactured that don't have air conditioning. So we
18 don't see that in the industry as a problem finding
19 conditioned cabs, actually, that -- that is
20 something -- and the employer I work for, we use, as
21 cooling stations, vans, or trucks, or vehicles in
22 environments where we have a very difficult time

1 finding shade, which would be solar fields, large solar
2 fields. So that is one of the controls that's in
3 place. And we know that it's used very, very widely
4 across the industry.

5 MS. STONE: Thank you.

6 MR. LEVINSON: Your Honor, the next question comes
7 from Deirdre Green.

8 DR. GREEN: Hi. Dr. Deirdre Green, OSHA
9 Directorate of Standards and Guidance. You indicate
10 that the proposed recordkeeping requirements needed
11 additional clarification. Can you please identify the
12 specific aspects that you believe OSHA should clarify?

13 DR. MAY: I think that one is yours too. I'm not
14 familiar with the -- with the concern.

15 MR. JOHNSON: Yeah. We'll have to get back to you
16 on that one. I don't know if that was -- that wasn't
17 part of my testimony.

18 MR. DRANE: Yeah, I think we'll have to address
19 that in our post-hearing comments.

20 DR. GREEN: Thank you.

21 MR. LEVINSON: And Your Honor, the last question
22 from the OSHA panel comes from Zoe Petropoulos.

1 DR. PETROPOULOS: Hey. And this is just to be
2 considered for your post-hearing comment, and this was
3 a question we also have for National Safety Council.
4 In the ASSP written comment, there was a mention of the
5 recently developed AIHA app for determining wet bulb
6 globe temperature at worksites. And if you're aware of
7 any data or research validating the values derived from
8 this app, could you share those with us in your
9 comments? Thank you.

10 MR. JOHNSON: Will do.

11 MR. DRANE: We will do so.

12 MR. LEVINSON: And Your Honor, that concludes the
13 OSHA questions.

14 JUDGE HENLEY: Thank you. Any questions from the
15 Office of the Solicitor?

16 MR. MOCZULA: No questions for the office of the
17 solicitor. Thank you very much for your testimony.

18 JUDGE HENLEY: Mariam, do we have any participants
19 that would like to ask questions of this panel?

20 MS. CARLON: Yes. There is one question from Mr.
21 Cain.

22 JUDGE HENLEY: Please promote.

1 MS. CARLON: Ms. Cain. I apologize.

2 JUDGE HENLEY: Ms. Cain, please identify yourself
3 and any associated organization?

4 MS. CAIN: Good afternoon, Chris Cain, NABTU. I
5 had just a couple questions if you can offer any
6 insight. One is, during the process of establishing
7 the A10.50 final standard if you could share any
8 instances of employers' examples of acclimatization
9 processes that they use, number one.

10 And number two, if you have any information,
11 anyone on the panel, on the use of A10.50 since its
12 publication, and any feedback that's been received by
13 employers, if you could share that.

14 DR. MAY: I can do the -- I can do the first part.
15 John, if you want to take the second part, with the --

16 MR. JOHNSON: You got it. Right, yeah.

17 DR. MAY: -- with acclimatization. I don't recall
18 that we had seen other acclimatization processes from
19 employers -- actually, I should take that back. There
20 might have been -- there might have been a couple, and
21 where there were specific acclimatization processes,
22 they would have been pretty close to the -- to probably

1 the NIOSH recommendations. There's some -- there's
2 sort of a wide -- not a wide variation, but there is
3 some variation between acclimatization processes.

4 Some might have it as low as, you know, four days
5 or thereabouts, while others go out 14 days, so it all
6 depends on what percentage of acclimatization that you
7 want. We've looked at the five days and it seemed to
8 be, you know, very good at getting pretty close to
9 being fully acclimatized. 100 percent, is about 14
10 days.

11 MR. JOHNSON: Thank you, David.

12 DR. MAY: Okay, John.

13 MR. JOHNSON: Yeah. In terms of utilization of
14 A10.50, the latest records we have is we've sold 800
15 copies. We've given away about 700 copies to committee
16 members and other folks. We just gave a copy to a
17 representative of Red Cross last week, as an example.
18 So it's getting out and about. It's a relatively new
19 standard, so it's selling pretty well for a new
20 standard.

21 So how it's been received? It depends on your
22 audience, as with any standard. But generally

1 speaking, it's been received well in the industry.
2 People have been kind of starved for guidance on this
3 particular topic. And A10.50 has done a really good
4 job of presenting the information in a very factual
5 way, and very clear -- clear to understand of how
6 employers can comply with A10.50 as a consensus
7 standard.

8 As with any consensus standard, people can pick
9 and choose what they -- what they like or what they
10 don't like out of the particular standard. But
11 generally speaking, it's been received pretty well by
12 the industry as a whole.

13 MS. CAIN: Thank you so much. Thank you, Judge.

14 JUDGE HENLEY: Thanks, Ms. Cain.

15 And Mariam, any additional participants?

16 MS. CARLON: No, Your Honor.

17 JUDGE HENLEY: Any follow up from OSHA or the
18 Solicitor's Office?

19 MR. LEVINSON: No, Your Honor.

20 MR. MOCZULA: No, Your Honor.

21 JUDGE HENLEY: I'd like to thank the American
22 Society of Safety Professionals for their time and

1 testimony this afternoon. You are excused. Thank you.

2 MR. JOHNSON: Thank you.

3 MR. DRANE: Thank you very much.

4 JUDGE HENLEY: And I believe our final panel for
5 today's session is from the UAW, International Union.
6 Please promote.

7 MS. CARLON: Yes. The next speaking group is
8 represented by Darius Sivin, Matthew Uptmor, and James
9 Holton. We do not see James Holton in the attendee
10 list. So if you have joined under another name, Mr.
11 Holton, please use the raise hand feature.

12 JUDGE HENLEY: Good afternoon, gentlemen. Dr.
13 Sivin, I think we have you. Are you the lead?

14 DR. SIVIN: I'm the lead. I think I may be the
15 only one actually speaking. I'm not sure if Matt
16 intends to speak, if he's on.

17 Matt, are you on?

18 Okay. He may not even be on. So in any case, I
19 will be -- I will be speaking. So may I start?

20 JUDGE HENLEY: Yes, sir. Just identify yourself.
21 And again, the organization you're associated with, and
22 then you can begin your testimony.

1 DR. SIVIN: My name is Dr. Darius Sivin, of the
2 United Auto Workers Health and Safety Department. I
3 bring greetings from our president, Shawn Fain and his
4 assistants, Emily Friedberg and Matthew Uptmor. Mr.
5 Uptmor directs the Health and Safety Department.

6 We represent about a million active and retired
7 workers, and we are grateful for the opportunity to
8 testify on this proposed rule.

9 We strongly support OSHA's proposal for a standard
10 on heat injury and illness prevention in outdoor and
11 indoor work settings. It will save thousands of lives
12 and protect millions of workers from entirely
13 preventable, heat-related illnesses and injuries on the
14 job.

15 We believe that some of the strengths of the
16 proposed rule include, but are not limited, the fact
17 that it is well supported by strong empirical evidence.
18 It includes workers at risk of heat stress in indoor
19 environments. The two heat thresholds, or triggers,
20 provide different levels of preparation and response
21 according to the risk or the severity of the hazard.
22 We urge you to continue this rulemaking and publish a

1 final standard as soon as possible.

2 Public Citizen has estimated that as many as 600
3 to 2,000 workers die of heat-related illnesses each
4 year, as many as 170,000 workplace injuries annually
5 may be due to excessive heat on the job.

6 We have more than 200,000 members who live in
7 states who, according to the preamble -- in which,
8 according to the preamble, the initial heat trigger has
9 exceeded more than 500 hours a year, and we have almost
10 175,000 members who live in states where the high heat
11 trigger has exceeded more than 100 hours a year.

12 In addition to our support for the standard, we
13 recommend some improvements. We would like to see a
14 reduction in the time threshold -- excuse me -- to meet
15 the initial heat trigger, according to OSHA's Technical
16 Manual on Heat Stress, the core body temperature can
17 increase to dangerous levels within 10 or 15 minutes.
18 And yet the standard -- the trigger is for more than 15
19 minutes in any 60-minute period.

20 This potentially places workers at risk of being
21 exposed for a dangerously long time to dangerous levels
22 of heat, before the employer begins to implement

1 controls, we recommend the threshold be reduced to
2 exposure above the initial heat trigger for five
3 minutes over the span of an hour.

4 This will trigger protections before workers
5 experience heat stress, instead of once they are
6 already experiencing the signs of heat stroke. We
7 favor requiring onsite measurements using the wet bulb
8 globe temperature as a heat trigger. There are lots of
9 local conditions, including ambient temperature,
10 humidity, radiant heat exposures, wind speed, outdoors,
11 workload, and clothing that may well not be captured by
12 using the heat index. Generally and within the same
13 workplace, in fact, there can be wide varieties of heat
14 depending on a variety of conditions.

15 For those reasons, we recommend using the wet
16 bulb -- wet bulb globe technology instead of the heat
17 index. We think that heat-related dangers should -- to
18 temporary workers should be -- should be addressed more
19 clearly and responsibility for keeping them safe should
20 be made more clear, particularly because such a large
21 fraction of heat-related injuries and illnesses occur
22 during the first week or the first day of exposure.

1 We think it's often the case that temporary --
2 that workers, especially workers employed by an agency,
3 are not properly acclimatized. And the employer, that
4 is to say, the host employer may not have the
5 information as to well -- how well acclimatized they
6 are or not, because they may have been acclimatized or
7 not on other jobs. And so we think that it should be
8 clarified, and that that's the host employer's
9 responsibility.

10 In addition, while OSHA mandates scheduled rest
11 breaks for high-heat situations, rest breaks for lower
12 exposures are unscheduled and on an as-needed basis.
13 We believe that there should be a mandated minimum
14 scheduled risk - rest breaks to prevent employers from
15 ignoring early signs of heat stress at the 80 - at the
16 80 trigger, and there should be enough water below 60
17 degrees Fahrenheit for every employee to drink at least
18 32 ounces per hour, as in the California and Colorado
19 Heat Standards.

20 We believe that the standard should require
21 employers to follow the hierarchy of controls, and
22 that -- that the feasibility of this is demonstrated in

1 the OSHA Guidance document entitled Heat Prevention,
2 Engineering Controls, Work Practices, and Personal
3 Protective Equipment.

4 We believe that employees and their
5 representatives should be included in all aspects of
6 the Heat Injury and Illness Prevention program and in
7 the identification of monitored work areas, not just in
8 the development and implementation of the
9 programming -- of the program.

10 Ongoing participation of the workers and their
11 representatives is necessary, so that those who are
12 most directly affected by heat-related hazards have a
13 regular opportunity to participate in determining which
14 additional work activities or work zones will be
15 covered. Workers are obviously most familiar with the
16 conditions of their own jobs. And they should -- and
17 their participation should be ongoing.

18 We believe that the standard should provide
19 workers with an explicit right to stop working as soon
20 as they experience signs or symptoms of heat-related
21 illness, which can quickly escalate into a life-
22 threatening situation. We recommend adopting the

1 language of the ASSP ANSI A10.50 Standard on this
2 particular point. We believe the standard should
3 specify training and qualifications required for heat
4 safety coordinators, and give them explicit authority
5 to stop work.

6 Some of the training could - should include how to
7 ensure compliance with the Heat Illness and Injury
8 Prevention Plan, detailed protocols for responding to
9 heat-related emergencies, including decision making
10 during life threatening scenarios. Using and
11 interpreting environmental monitoring data, such as wet
12 globe bulb and heat index readings to adjust work
13 schedules dynamically, and communication skills which
14 may not always be just in English, in order to make
15 sure that - that they can - that they both receive
16 reports from workers and coworkers that somebody may be
17 having - experience heat-related symptoms and can
18 respond appropriately to them.

19 We urge that OSHA actually require that all
20 personnel employed at a workplace covered by the
21 standard be trained, and not just those who may be heat
22 exposed. In part, because those who are less heat

1 exposed may be better -- in a better mental shape to
2 identify and respond to the issues being experienced by
3 those who are more heat exposed.

4 The proposal also contains no requirement about
5 how cool a shaded area should be, despite the fact that
6 the preamble reports a case in which the temperature in
7 the shade reached 120 degrees Fahrenheit, we think it
8 should follow the California Heat Standard, which
9 states has stated area -- shaded area must be less than
10 82 degrees Fahrenheit, and that workers should not have
11 to rely on their own resources for shade.

12 Given the well-documented prevalence of health-
13 and safety-related retaliation, we recommend that OSHA
14 develop an enforceable provision that expressly
15 prohibits employer retaliation for workers who assert
16 their rights under this rule, and an employer should be
17 required to inform employees of their rights to job
18 protections when they raise safety concerns.

19 The proposed rule at current does not consider the
20 population of children farm workers. Children as young
21 as ten are legally hired for farm work, since children
22 have physiological differences and less control of

1 their environments compared to adults, it is difficult
2 to compare studies. However, a study of child farm
3 workers in North Carolina found that 47.9 percent of
4 child workers experienced heat-related illness.

5 Ultimately, we support the elimination of all
6 child labor in all industries, including agriculture;
7 however, this cannot necessarily be accomplished
8 through an occupational heat standard. Hence, we ask
9 OSHA to consider the reality that many child employees
10 are exposed to heat at work.

11 Please include clear requirements for recording
12 and reporting on work-related heat incidents and
13 illnesses required -- require all covered employers to
14 maintain a heat incident log in writing. Give workers
15 and their representatives the right to access and copy
16 the log. Include a definition of criteria for what
17 constitutes a work-related heat illness that must be
18 recorded on the log, require that all work-related heat
19 cases needing emergency care be reported to OSHA within
20 eight hours as part of OSHA's Severe Injury Reporting
21 Regulation.

22 Also address situations in which the air

1 conditioning fails to function. We agree with AIHA,
2 that if the air conditioning cannot be fixed the day it
3 breaks, work should be suspended until it is fixed. We
4 believe that the rule should cover workers performing
5 sedentary activities who are currently excluded. There
6 are many old and poorly ventilated buildings, and also
7 buildings in which it's not possible to open the
8 windows.

9 This can lead to decreases in air quality and
10 increases in heat stress, as some buildings absorb heat
11 and few avenues to mix with cooler air. Although
12 sedentary jobs are at lower risk, it doesn't mean that
13 they're not at risk at all.

14 And finally, we think that incarcerated workers
15 have the same rights as other workers and should be
16 covered by the standard. Otherwise, it would actually
17 be that somehow these dangerous occupational conditions
18 are part of their sentence, and that might even be
19 cruel and unusual punishment.

20 Thank you very much for the opportunity to testify
21 on this important proposal.

22 JUDGE HENLEY: Thank you, Dr. Sivin.

1 Does OSHA have questions for this -- for Dr.
2 Sivin, or for the panel?

3 MR. LEVINSON: Yes, we do, Your Honor. Andrew
4 Levinson for OSHA. We heard earlier today, a number of
5 speakers say that they think that smaller employers
6 should be exempt from having a written plan. Do you
7 have thoughts on that, and if so at what size should
8 OSHA consider too small to have a written plan?

9 DR. SIVIN: I think perhaps smaller employers
10 could have a somewhat simpler written plan, but I think
11 in terms of simply communicating, even if you have five
12 employees, you have a two-page written plan and
13 everybody knows what the plan is. I think it -- I
14 think if you -- if you don't have a written plan, human
15 communication is often poor enough, and -- and it's --
16 it's very -- it could be smaller or simpler, but I -- I
17 would not totally exempt anybody from having a written
18 plan.

19 MR. LEVINSON: Thank you. And you had touched on
20 this a little bit in your testimony now, and I think
21 also in your written, can you expand upon your thoughts
22 on employee involvement, when should it be required?

1 And do you have specific language that OSHA should
2 consider; and again either -- if not here, then in
3 post-hearing written comments?

4 DR. SIVIN: We'll be happy to provide specific
5 language in post-hearing written comments. In general,
6 I think that -- that employees should be involved in
7 all aspects of, not just the design and implementation
8 of the program, but carrying it out day to day, because
9 they're the ones who are exposed, they're the ones at
10 risk, and they're often the ones who -- who know what's
11 happening in the workplace better than anyone else.

12 MR. LEVINSON: Thank you. Our next question comes
13 from Deirdre Green.

14 DR. GREEN: Thank you, Dr. Sivin. Dr. Deirdre
15 Green, OSHA. Your comments mentioned that supervisors
16 and heat safety coordinators may need some additional
17 training, such as a job hazard analysis. What specific
18 changes would you suggest that OSHA make? And in your
19 experience, are these things that people on staff
20 already know, or would this be a change?

21 DR. SIVIN: So we will be happy to submit specific
22 changes in post-hearing comments. Now, there are, in

1 my experience, a wide variety of employers, and there
2 are employers who already have robust heat programs and
3 train their supervisors. Obviously, they don't have
4 exactly a position called heat program coordinator
5 because that's essentially created for the standard,
6 but train the responsible people.

7 And then I think I would say they exist, but
8 they're the exception. And the vast majority of
9 employers do not achieve that high a standard of - of
10 practice. And in general, that's why mandatory
11 standards exist, because there are always maybe the top
12 ten or five percent who - who implemented to reduce
13 workers' comp costs, because they see what the science
14 says, because it's part of their self-definition as
15 employers to be super responsible employers for
16 whatever reason. And then there's everybody else who
17 needs to be brought up to a minimum by a standard.

18 So yeah, there are some employers who are already
19 doing it, but they're the minority of employers. And
20 also, quite frankly, they may be putting themselves as
21 a - at a competitive disadvantage, which can be reduced
22 by bringing everyone else up to a floor.

1 DR. GREEN: Thank you.

2 MR. LEVINSON: Your Honor, the next question is
3 from Jessica Stone.

4 MS. STONE: Jessica Stone with OSHA. This may be
5 another thing for post-hearing comments. We're just
6 curious if your -- if your organization has looked at,
7 or if you know anyone who has looked at sort of the
8 impacts on things like absenteeism, turnover, and
9 workers' compensation costs associated with either --
10 with not having a plan or benefits of reducing those
11 where people do have plans for heat injury and illness
12 prevention; and again, if this is a post-hearing
13 comment.

14 DR. SIVIN: And so if we have -- if we had
15 specific data on that, it probably would have already
16 been in our comments or in our testimony.

17 MS. STONE: All right.

18 DR. SIVIN: So we will be -- we will attempt to
19 look at that one for post-hearing comments as well.

20 MS. STONE: Really appreciate it. Thank you.

21 MR. LEVINSON: Your Honor, the next questions come
22 from Brenda Finter.

1 MS. FINTER: Hi. Good afternoon. I'm Brenda
2 Finter with OSHA. In the written comments submitted,
3 you mentioned the use of cool seats and benches. Would
4 you provide more information or details regarding the
5 use of cooled seats or benches for rest breaks?

6 DR. SIVIN: One possibility would be to have like
7 lightweight plastic seats that were, let's say, kept
8 indoors in air conditioned for outdoor work, and
9 brought out, maybe changed every hour. I -- I can't
10 say that that I can tell you right now where they might
11 be used. But we could look into that too.

12 MS. FINTER: That would be great. Thank you. Can
13 you describe how successful the use of personal cooling
14 devices and body cooling accessories has been in the
15 field? This includes things like vests, neck bands,
16 headbands, cooling towels, neck fans, hard hat, cooling
17 top pads -- pads, and so forth. And which of any of
18 these have you found particularly effective?

19 DR. SIVIN: We would have to look at that, too,
20 and get back to you in post-hearing comments.

21 MS. FINTER: Okay. And then can you describe your
22 members' experience with formal work rest break

1 schedules when the heat reaches a certain trigger
2 point? Have they had any problems with follow --
3 following these schedules, and where do the employees
4 take breaks for cooling rest?

5 DR. SIVIN: So it just so happens that -- that
6 last week I was at contract negotiations for a small
7 employer in Ohio, where our members raised that -- we
8 were trying to negotiate, in fact, some improvements in
9 the heat exposure policy, and our members raised that
10 the existing heat exposure policy is very variable by
11 supervisor in terms of whether the breaks required in
12 the policy are actually followed or not.

13 MS. FINTER: What control technology should be
14 included as an alternate to AC and fans?

15 DR. SIVIN: As an alternate to AC and fans?

16 MS. FINTER: And that's something you can, you
17 know, provide later if you can't think of anything
18 right now.

19 DR. SIVIN: Yeah. Yes.

20 MS. FINTER: And then my last question is: Have
21 your member companies tried cooling fans, and if so
22 what is their experience with fans? Do employees work

1 in places where fans cannot be used frequently or for
2 extended periods of time, and if so what is currently
3 being used to keep employees in those spaces cool?

4 DR. SIVIN: We have some employers who use AC, and
5 so there are some places where fans can be used. There
6 are some places that get so hot that the fans are just
7 sort of blowing around hot air, and there are some
8 places where sideways movement of air would interfere
9 with the local exhaust ventilation and lead to higher
10 toxic chemical exposures where you obviously would not
11 want to use fans.

12 I'm also aware of cases where employees were using
13 fans on their own because they were hot and they were
14 unaware that the fans were -- were reducing the
15 function -- the functioning of the local exhaust
16 ventilation.

17 MS. FINTER: Okay. Thank you.

18 MR. LEVINSON: And Your Honor, the last question
19 comes from Zoe Petropoulos.

20 JUDGE HENLEY: You're muted, yes.

21 DR. PETROPOULOS: Sorry. I couldn't click that
22 button for a second. So you said in your testimony

1 that you recommended that OSHA required the use of wet
2 bulb globe temperature instead of heat index, and
3 correct me if I've mischaracterized that. I'm
4 wondering if you could speak to whether you think
5 conducting on site measurements of wet bulb globe
6 temperature is feasible for most worksites and
7 employers.

8 DR. SIVIN: I think it's feasible for many. And
9 perhaps it could be a requirement which some employers
10 could be excused from if they could demonstrate that it
11 was not feasible for them, or that OSHA could say that
12 it's a requirement for employers, so large or larger
13 based on OSHA's estimate, of who could afford the
14 industrial hygiene resources.

15 I think those -- those would be reasonable. But I
16 think that there are some workplaces, for example, UAW
17 represented foundries where it's not just the outdoor
18 temperature that's determining the heat, and so the
19 heat index would not -- would not be adequate. And
20 just for example.

21 MR. LEVINSON: Your Honor, that concludes OSHA's
22 questions, unless, Zoe, did you have a final?

1 DR. PETROPOULOS: I did. I'm so sorry, I did have
2 another one. This can be considered in your post-
3 hearing comments. You don't need to answer it now. We
4 heard from many commenters that they oppose the
5 exemption of indoor sedentary workers from the rule,
6 and if you're aware of any literature or data on the
7 risk of HRIs among these workers specifically, if you
8 could share that in your post-hearing comment. Thank
9 you.

10 DR. SIVIN: Okay.

11 MR. LEVINSON: And that, Your Honor, concludes
12 OSHA questions.

13 JUDGE HENLEY: Thank you. Do we have questions
14 from the Office of the Solicitor?

15 MR. MOCZULA: I do. In some of our comments,
16 there are calls for flexibility in the timing of the
17 mandatory breaks above the high-heat trigger. I wanted
18 to know how the UAW responds to these calls for
19 flexibility for employers who are engaging in work
20 processes that may come up against the timing of the
21 mandatory breaks.

22 DR. SIVIN: I'm concerned that there at least

1 might be some cases in which -- in which individuals
2 who are getting close to the limits of their
3 physiological capacity would be forced to continue
4 working. I can imagine situations where one plans for
5 the work to continue by having other individuals, maybe
6 who haven't been working in hot conditions, rotate into
7 the hotter work, whereas -- whereas the individuals who
8 have been working in those conditions get their breaks.

9 And so I understand why the work must continue. I
10 think it might be possible to find a way for the work
11 to continue without forcing the overexposed workers to
12 be the ones who continue the work.

13 MR. MOCZULA: Thank you so much for your
14 testimony.

15 JUDGE HENLEY: Thank you. Mariam, how many
16 participants do we have who wish to ask questions of
17 this panelist?

18 MS. CARLON: We have three, Your Honor.

19 JUDGE HENLEY: Can you promote the first
20 individual, please?

21 MS. CARLON: Yes. The first is Mr. Schneider.

22 Please state your name for the record?

1 MR. SCHNEIDER: Okay. My name is Scott Schneider.
2 And the question I had was: The industry talks a lot
3 about performance-based standards and using a JHA to
4 determine the hazards that are appropriate for their
5 work site. In your comments, you talk about the use of
6 a JHA and a programmatic standard. Could you tell us
7 how that would work?

8 DR. SIVIN: Well, I think in the context of a
9 programmatic standard, JHA is about reviewing a task or
10 a set of tasks to determine all the potential risks,
11 and then identify how those risks will be addressed.
12 And part of the program could be, first of all, to do
13 upfront JHAs on all those jobs that don't change much
14 over time, production work primarily.

15 And then sometimes you have to do, maybe less
16 programmatic, but should be required JHAs on work
17 that's performed only occasionally, to make sure that
18 all the risks of that work are identified. We find
19 that a disproportionate portion of our serious injuries
20 and fatalities occur in infrequently done work where
21 JHAs have not been properly performed, so that the
22 hazard that eventually resulted in the injury or

1 fatality was not identified prior to the work starting.
2 And that if a JHA had been properly performed, it could
3 have been.

4 Heat is, potentially, one of those -- one of those
5 hazards which could be better identified as a JHA, and
6 specifically if the -- if the JHA requires you to take
7 a specific measurement -- if the JHA procedure for heat
8 requires you to take a specific measurement at the time
9 that the work will be done, you will have -- you will
10 have a lot more information with which to address that
11 hazard. And that can certainly be part of Heat Injury
12 and Illness Prevention program saying, take the JHA --
13 you know, do the JHA.

14 MR. SCHNEIDER: Thanks very much.

15 DR. SIVIN: You're welcome.

16 JUDGE HENLEY: Thank you, Mr. Schneider.

17 Please promote our next participant.

18 MR. LEVINSON: The next person is Ms. Barbarash.

19 MS. BARBARASH: Hi. This is Ellie Barbarash, from
20 AFSCME. Dr. Sivin, hi. I wanted to follow up on Ms.
21 Petropoulos' question about wet bulb temperatures. And
22 just ask why is relying on a wet bulb globe temperature

1 for measurement more important than a general heat
2 index, especially for indoor or auto facility settings?
3 And I would even expand that to other -- to even other
4 scope of indoor work, why is the wet bulb globe (audio
5 interference)?

6 DR. SIVIN: It captures specific conditions that
7 may be caused by local industrial processes such as
8 furnaces, or processes that exist may be in large parts
9 of the facility, such as in a foundry that are much
10 harder to capture using a generalized heat index.

11 MS. BARBARASH: Thank you. I ask it from the
12 context of our members who work in incinerators, and
13 waste processing, and huge industrial municipal
14 services capacity. Thank you.

15 DR. SIVIN: A similar thing where the source of
16 heat is not just the weather, but the -- but the
17 specific industrial process. Smelting facilities are
18 another example.

19 MS. BARBARASH: Thank you.

20 JUDGE HENLEY: Thank you, Ms. Barbarash.

21 Mariam, please promote our next participant.

22 MS. CARLON: The next is Ms. Arberry.

1 MS. ARBERRY: Hi there. My question is for Dr.
2 Sivin.

3 JUDGE HENLEY: Ms. Arberry, is there a way for --
4 you're very faint. I'm having trouble hearing you.
5 Maybe you can go closer to your mic.

6 MS. ARBERRY: Sure. Yes. My name is Chenay
7 Arberry with the AFL-CIO.

8 JUDGE HENLEY: Dr. Sivin, can you hear her?

9 DR. SIVIN: I can.

10 JUDGE HENLEY: Okay. Maybe it's just me. Sorry,
11 Ms. Arberry. Go ahead.

12 MS. ARBERRY: No worries. Dr. Sivin, what are
13 examples of occupations in your membership that would
14 fall under OSHA's current exclusion of indoor sedentary
15 work? And how do you think it's best to include them
16 in the standard?

17 DR. SIVIN: I can repeat the question if it helps.

18 JUDGE HENLEY: Well, it typically is, if you're
19 answering the question, you shouldn't ask the question,
20 but I --

21 DR. SIVIN: Okay. All right.

22 JUDGE HENLEY: -- maybe we can have our Abt folks

1 help Ms. Arberry with her volume.

2 MS. ARBERRY: Okay. Can you hear me if I speak
3 quite loudly?

4 JUDGE HENLEY: Now, now you're muted.

5 MS. ARBERRY: How am I muted? How about now?

6 JUDGE HENLEY: Not much improvement.

7 MS. CARLON: Do you have headphones by chance, Ms.
8 Arberry?

9 MS. ARBERRY: Not on me, no.

10 MS. CARLON: Okay. If you have your phone, if you
11 want to, go ahead and just click the dropdown arrow by
12 your mute button. You can have Webex call you, and
13 then you can just speak to your phone. I think that'll
14 be a little louder for you. Do you see that dropdown
15 arrow next to the Mute option?

16 MS. ARBERRY: Yes, but I don't see my phone as an
17 option.

18 MS. CARLON: Do you see "Switch Audio" towards the
19 bottom?

20 MS. ARBERRY: Yes. Oh.

21 MS. CARLON: Switch Audio, and then choose "Call
22 Me", and then just put in your cell phone number.

1 MS. ARBERRY: Okay.

2 MS. CARLON: Thank you. We appreciate you doing
3 that.

4 (Technical difficulties.)

5 MS. ARBERRY: Can you hear me now?

6 JUDGE HENLEY: Yeah, that's a little better, but I
7 think -- I think we were trying to get you to call in,
8 and then just instead of --

9 MS. ARBERRY: Yeah. This is a Webex number?

10 MS. CARLON: Yeah. She called in that's -- that's
11 perfect.

12 JUDGE HENLEY: All right. So we can hear you now,
13 Ms. Arberry, much better. Go ahead. What's your
14 question? Ooh. Now, you're muted.

15 MS. ARBERRY: Am I still muted?

16 JUDGE HENLEY: Not anymore. Go ahead.

17 MS. ARBERRY: Dr. Sivin, what are -- what are
18 examples of occupations in your membership that would
19 fall under OSHA's current exclusion of indoor sedentary
20 work? And how do you think it's best to include them
21 in the standard?

22 DR. SIVIN: So it may not be that well known that

1 the UAW represents a large number of legal services
2 staff, especially in the City of New York. As a health
3 and safety representative, I have been to many of their
4 offices and many of them are in very old buildings in
5 New York City, which have very poor HVAC systems or no
6 HVAC systems that rely on maybe radiators in the winter
7 and if they're lucky window air conditioning units in
8 the summer.

9 And although they do sedentary work, those
10 buildings can get very hot. And often they don't even
11 have the window air conditioning units. And so I
12 believe that those -- those folks who have to often be
13 in those buildings eight hours a day, or more, as some
14 of you know, legal work is not always 9 to 5. In any
15 case, an example of a part of our membership that might
16 be considered sedentary, but would be exposed to rather
17 difficult conditions in the summer which might be
18 covered by the standard.

19 JUDGE HENLEY: Thank you, Ms. Arberry.

20 Mariam, any additional participants in the queue?

21 MS. CARLON: Yes. The final question is from Mr.
22 West.

1 MR. WEST: Thank you. My name is Gavin West. I'm
2 here on behalf of North America's Building Trades
3 Unions, NABTU.

4 Dr. Sivin, could you explain why in your work
5 settings that it is important for a heat illness and
6 injury prevention plan to be in writing? And why did
7 you stress this as important in your comments? Thank
8 you.

9 DR. SIVIN: So I think, generally, in a -- in a
10 context where you have supervisors and workers, where
11 you have -- even where you have worker -- worker
12 participation, even where you have mandated worker
13 participation there's still a difference in power.
14 Also, if you do have mandated worker participation and
15 the workers say, we think X, and Y, and Z should be in
16 the plan, the best way to demonstrate that it's in the
17 plan is to actually have a written plan, right.

18 And I agree that a plan for a workplace of five
19 people does not need to be as lengthy as a plan for a
20 workplace of a couple thousand people. So let -- let's
21 take a -- I mean, actually some of our legal services
22 offices have 50 or 100 people, but let's imagine a

1 small legal services office of five people, right, so
2 that would not need to be a lengthy plan.

3 But if you put it in paper so that everybody knows
4 what the plan is and everybody knows that once there
5 was, like, participation and development of the plan,
6 the suggestions got into the plan, or some suggestions
7 did get into the plan, and some suggestions didn't
8 because people can see it on paper.

9 And you know, if somebody says, hey you know, the
10 heat trigger has been exceeded. We need our water. We
11 need our breaks. It's helpful to have a written plan
12 to point to that says, yeah, here in the plan, it says,
13 this is what you're going to do in these circumstances.

14 JUDGE HENLEY: Thank you, Dr. Sivin.

15 Is that it, Mariam, anybody else?

16 MS. CARLON: That is it, Your Honor.

17 JUDGE HENLEY: Any follow up from OSHA or the
18 Solicitor's Office?

19 MR. LEVINSON: No, Your Honor, no questions from
20 OSHA.

21 MR. MOCZULA: No, Your Honor, no additional
22 questions from us, either.

1 JUDGE HENLEY: So we appear to be at the end of
2 all scheduled witnesses for today. I would like to
3 remind the hearing participants that they may submit
4 additional evidence or statements relevant to the
5 proceeding within 90 days of the end of the hearing,
6 which, again is September 30th, 2025. At that point,
7 the record for this rulemaking will close.

8 On behalf of the Department of Labor, I wish to
9 again publicly thank all those people who gave of their
10 time and testimony to contribute to today's session.
11 To all participants, thank you for your interest in
12 this important matter.

13 The hearing is hereby adjourned for today. And we
14 will reconvene tomorrow morning at 9:30 a.m. Eastern
15 Time. We are adjourned.

16 Thank you everybody. Have a good day.

17 (Whereupon, at 4:30 p.m., the hearing was
18 adjourned)

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