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Transcript of Day 12

Wednesday, July 2, 2025

OSHA Heat Injury and Illness Prevention Hearing

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5 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

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9 OSHA'S INFORMAL RULEMAKING HEARING

10 FOR HEAT INJURY AND ILLNESS PREVENTION IN OUTDOOR AND

11 INDOOR WORK SETTINGS

12

13 Day 12 of 12

14 Wednesday, July 2, 2025

15 9:30 a.m.

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PARTICIPANTS

PRESIDING:

PAMELA KULTGEN, Administrative Law Judge,
Office of Administrative Law Judges, United States
Department of Labor

OSHA PANEL:

ANDREW LEVINSON
STEPHEN SCHAYER
DEIRDRE GREEN
BRENDA FINTER
ZOE PETROPOULOS
ADRIANA LOPEZ-MENENDEZ
PATRICIA DOWNS

OFFICE OF THE SOLICITOR OF LABOR:

LINDA WILES
SHEILA NAUGHTON

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21	ALSO PRESENT:	
22	MARIAM CARLON, ABT Global	

P R O C E E D I N G S

JUDGE KULTGEN: We are on the record now. The hearing will come to order. This is the final day of an informal public hearing on the Occupational Safety and Health Administration's proposed rule for heat illness and injury prevention in outdoor and indoor work settings. The Notice of Proposed Rulemaking was published to the Federal Register on August 30th, 2024, in volume 89 of the Federal Register, beginning at 70698. I am Pamela Kultgen, Administrative Law Judge for the US Department of Labor, and I will be presiding over this hearing today.

The purpose of this hearing is to receive testimony, from interested parties -- oral testimony, as well as other information pertinent to the proposed rule. After this hearing and the post-hearing comment period have closed, OSHA will review the entire record in determining the content of the final rule.

My role as presiding judge will be limited to conducting this hearing to assure that a complete and accurate record is made, and that all interested parties receive a fair hearing and have an opportunity

1 to submit their information. The hearing schedule and
2 OSHA procedures governing this hearing are available on
3 the website for this hearing, which is at
4 <https://www.osha.gov/heat-exposure/rulemaking>. These
5 documents were sent to people and organizations who
6 filed a timely notice of intention to appear at this
7 hearing.

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

18 Any written comments you have submitted to the
19 docket are already part of the record of this
20 rulemaking. In the rare case where witnesses wish to
21 provide any other documents that have not already been
22 entered in the docket, they should provide them by

1 email to OSHAEvents_dsg@dol.gov before the witness
2 begins their testimony so that they can be entered as
3 exhibits in the record.

4 Because all pre-submitted documents are already
5 part of the record, your oral testimony should
6 concentrate on presenting the highlights of your
7 written comments or clarifying your written submission.
8 Hearing participants may also submit additional
9 evidence or statements for a period of 90 days after
10 the end of the hearing, which would be September 30th,
11 2025. At that point, the record for this rulemaking
12 will close.

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

22 This is the process I intend to follow. After

1 OSHA has finished asking questions of a witness or
2 panel, I will ask participants who wish to ask
3 questions of the witness to identify themselves by the
4 raise hand button in Webex, or by pressing star three
5 on their phones for those who have called in. Based on
6 the hearing schedule and the number of participants who
7 wish to ask questions, I will determine the order in
8 which participants will question the particular witness
9 or panel and any time restrictions on that questioning.

10 If there are more questions than we have time for
11 today, it may be possible to ask additional questions
12 after the conclusion of the final witness's testimony.
13 Further, if witnesses are unable to answer a question
14 during today's hearing, or would like to expand on the
15 answers provided, they are welcome to use the post-
16 hearing comment period to submit such information.

17 I would also like to remind you that this
18 proceeding is being recorded and transcribed by a court
19 reporter. To ensure the reporter is able to provide an
20 accurate record of all of the testimony, questions, and
21 responses, please try to remember to provide verbal
22 responses to all questions. Do not just nod. The

1 court reporter may have a hard time seeing if you only
2 nod or shake your head in response to a question.

3 In addition, please remember to identify yourself
4 before beginning your testimony and before asking or
5 answering a question. I do -- and don't worry. I know
6 many participants are not accustomed to doing these
7 things, and I will provide reminders of these things as
8 we go along. The transcript of the hearing will be
9 uploaded to the hearing docket on regulations.gov,
10 approximately two weeks following this hearing.

11 Now, unless there are any further announcements or
12 other housekeeping matters -- and I'm not seeing anyone
13 pipe in with them -- I believe that we can proceed with
14 the public testimony. The expected speaking order is
15 being currently displayed on the screen. Our
16 contractor will introduce each speaker in turn and
17 promote them to be panelists. When you are called to
18 testify, please state your name and affiliation for the
19 record and speak slowly and clearly so our court
20 reporter can record these proceedings accurately.

21 MS. CARLON: Thank you, Judge. Our first speaker
22 is Richard Juang. Please state your name and

1 affiliation for the record.

2 MR. JUANG: Thank you. My name is Richard Juang.
3 I serve as Senior Manager for Environmental Justice
4 Policy at Ceres. Honorable members of the panel, Your
5 Honor, thank you for the opportunity to speak briefly
6 in support of the proposed heat rule. Ceres, I should
7 say, is a nonprofit advocacy organization working with
8 some of the largest businesses and institutional
9 investors across the country to build a cleaner, more
10 just, and more resilient economy.

11 We support this rulemaking. We regard it as an
12 opportunity to provide regulatory clarity for firms in
13 both state and multi-state contexts, and to assure
14 American investors that the risks and hazards that come
15 with extreme heat conditions are being adequately
16 managed in public policy. Notably, institutional
17 investors have already begun to ask companies in high-
18 risk sectors to disclose their risk assessment and
19 mitigation strategies regarding -- related to heat
20 stress.

21 We do not regard this rulemaking as an adversarial
22 process. We see it as an opportunity to create a

1 positive working relationship between public policy and
2 ongoing private sector efforts to protect workers from
3 dangerous temperatures exacerbated by climate change.

4 As a practical matter, many companies are already
5 developing climate transition action plans, CTAPs.

6 These are enterprise level strategies intended to
7 operationally respond to climate change and include
8 protecting workers.

9 In turn, the development of a federal heat rule is
10 a welcome opportunity to harmonize federal regulations
11 with the planning and practices of America's most
12 forward-looking companies. We do not regard the
13 proposed rule as impractical. The benefits of
14 thoughtful adaptation to climate change significantly
15 outweigh the costs, particularly when the failure to
16 adapt in the present simply pushes greater costs into
17 the very near future.

18 In that vein, I'm here to briefly supplement our
19 written comments by highlighting an economic dimension
20 that supports the promulgation of this rule, and which
21 we did not make sufficiently explicit in our initial
22 comments -- the growing problem of unmanaged and

1 amplified risk arising from extreme heat exposure.
2 Researchers from the Workers' Compensation Research
3 Institute have observed that, compared with days with
4 maximum temperatures of 75 to 80 degrees Fahrenheit,
5 the number of heat-related illnesses was 7 times
6 greater on days with high temperatures of 90 to 95
7 Fahrenheit, 11 times higher on days reaching 90 -- 95
8 to 100 Fahrenheit, and 18 times greater when high --
9 when the high temperature exceeded 100 degrees
10 Fahrenheit.

11 Notably, and perhaps counterintuitively, it was
12 younger workers under the age of 35 and workers new to
13 their jobs who reported the highest rates of heat-
14 related illness. This suggests, perhaps a lack of
15 preparedness in both demographics to simply self-manage
16 heat stress. It further indicates a need to provide
17 greater clarity with regards to heat protection for up
18 and coming workforce.

19 In 2023, the risk advisory firm, Marsh, observed
20 similarly that in their own analyses, heat-related
21 workers' compensation claims have increased
22 significantly over the last ten years. In particular,

1 they observed the southwestern United States has seen
2 the incidence of heat-related claims double during this
3 period.

4 Marsh went on to make three observations. First,
5 the upward trajectory is anticipated to persist,
6 propelled by the continuous increase of global
7 temperatures. Second, extreme heat is a leading
8 indicator for other type of workplace claims as workers
9 are exposed to -- are exposed to extreme heat, their
10 cognitive abilities and physical well-being can be
11 compromised, leading to an increased likelihood of
12 accidents and errors that can result in additional
13 compensation claims. And finally, of specific
14 relevance to these proceedings, they observed that the
15 absence of dedicated regulations leaves workers
16 vulnerable to heat-related heat risks, ranging from
17 heat exhaustion to potentially fatal heat strokes.

18 In turn, and consequently, Ceres sees this
19 rulemaking as an opportunity to set out a national
20 framework that supports more effective risk mitigation
21 and risk management. I want to stress here that the
22 likely consequence of inaction is not a continuation of

1 the status quo. More likely, we will see an
2 accelerated rise in insurance costs and the risk of
3 growing uninsurability in regions of the country that
4 will face dangerously high temperatures.

5 The Swiss Reinsurance Institute observes that,
6 quote, "extreme heat poses a growing threat to the
7 insurance industry, with property, specialty, and life
8 and health businesses most exposed". In life and
9 health, they go on to observe, heat-related health
10 impacts can increase medical life and worker's
11 compensation claims, particularly among vulnerable and
12 outdoor working populations. Extreme heat can put
13 additional stress on healthcare systems. Liability
14 exposures may also rise as employers and institutions
15 face legal risks for failing to mitigate heat-related
16 harms. This we regard -- and this we regard as a
17 warning that must be heeded.

18 We have already seen, nationally, that a failure
19 to address catastrophic or widespread harms in a
20 specific sector can lead to insurance gaps,
21 unrecoverable costs, and ultimately uninsurability.

22 So to close, we wish to simply state that, in our

1 view, the proposed rule supports more effective risk
2 mitigation and risk management for American businesses,
3 for American workers, and for the financial and
4 healthcare infrastructure that serves both. This is a
5 moment where good public policy and forward-looking
6 business practices can, in fact, work together in
7 building a more resilient economy and creating a better
8 protected workforce. Thank you.

9 JUDGE KULTGEN: Thank you. Do we have any
10 questions from the OSHA panel?

11 MR. SCHAYER: Yes, Your Honor. Good morning. My
12 name is Stephen Schayer from the OSHA Directorate of
13 Standards and Guidance. Thank you, sir, for your
14 testimony today. We do have just a few questions. The
15 first was about the workers' compensation data that you
16 mentioned in your testimony. If you haven't already,
17 would you be willing to submit that in your post-
18 hearing comment?

19 MR. JUANG: Yes, certainly. Thank you very much.
20 I will do so.

21 MR. SCHAYER: Sure. Thank you. Now I'd like to
22 turn to Brenda Finter in the room here on the panel for

1 a few questions.

2 MS. FINTER: Good morning. Brenda Finter, OSHA
3 Directorate of Standards and Guidance. I just have two
4 questions for you. One, in your written comments, you
5 mentioned situations where air-conditioning systems
6 failed to function adequately, that alternative
7 engineering controls should be used. Are you aware of
8 employers that have instituted a policy for how long
9 employees may work when the AC breaks down, and if they
10 do continue to work, do they have any alternate
11 controls in place to prevent heat-related injuries?

12 MR. JUANG: I apologize, I don't have that
13 information with me. If possible, I am happy to
14 provide it in post-hearing follow-up.

15 MS. FINTER: That would be great, thank you.
16 Also, should OSHA consider any other control
17 technologies that were not included in the proposal?

18 MR. JUANG: Oh, that is an excellent question.
19 And I apologize for, once again, saying that I'd like
20 to get back to OSHA on that. Again it's been a while
21 since the original written testimony, and I'm -- I
22 don't have that material in front of me.

1 MS. FINTER: We'll be happy to get them post
2 comment -- or post-hearing. Thank you.

3 MR. JUANG: Yes. Thank you. And again, I
4 apologize for postponing the answers to those
5 questions.

6 MS. FINTER: And that's all I have.

7 MR. SCHAYER: Okay. This is Stephen Schayer
8 again. Thank you, sir, for your testimony. And Your
9 Honor, that concludes the questions from the OSHA
10 panel.

11 MR. JUANG: My deep thanks to all of you.

12 MR. SCHAYER: I believe you're on mute, Your
13 Honor.

14 JUDGE KULTGEN: Do we have any questions from the
15 Solicitor's Office?

16 MS. NAUGHTON: No, Your Honor. This is Sheila
17 Naughton on behalf of the Solicitor. No questions.
18 Just thank you.

19 JUDGE KULTGEN: And do we have any questions from
20 participants today?

21 MS. CARLON: We do not, Your Honor.

22 JUDGE KULTGEN: Thank you. Thank you very much

1 for your testimony. And we will proceed with the next
2 witness.

3 MS. CARLON: The next -- excuse me. The next
4 speaker is Sarah Wilme. Please state your name and
5 affiliation for the record.

6 MS. WILME: Hi. My name is Sarah Wilme, and I'm
7 speaking on behalf of Students for Science. We are a
8 collective of student researchers in health science,
9 policy, and climate working to advocate for research,
10 support and policy that values that science. I am
11 speaking today as a graduate student in climate
12 science, a science communicator, but more importantly,
13 as a blue collar worker who has experienced firsthand
14 the dangers of not taking proper heat safety
15 precautions.

16 I have nearly always worked outside prior to going
17 back to school to study marine science. And though
18 many of these jobs have been on the water, we have
19 still experienced high risk of heat injury. The idea
20 that heat injury is only dangerous at a threshold of 90
21 degrees is not true for all workers, and it is not true
22 in all situations and jobs.

1 On my 21st birthday, I experienced heat stroke in
2 84 degrees. I was in a marine trades apprenticeship
3 and we had not been properly acclimatized to our first
4 day working on our boats in the sun, rather than in a
5 cooled shop environment. We started work three hours
6 earlier than usual to avoid the worst of the heat, and
7 because we had to launch a vessel early. Around 10:00
8 a.m., I found that I was struggling to keep my heart
9 rate down and was no longer sweating. I tried to drop
10 my body temperature by sitting in a car with air-
11 conditioning, hoping that my supervisor did not notice
12 that I was gone and that he would not count my hours
13 for that day. I experienced vomiting and briefly lost
14 conscious in under 90 degrees of heat, with access to
15 water repeatedly throughout the day. We had taken all
16 proper heat safety precautions, but it was still
17 difficult without acclimatization.

18 This is to say that heat illness can come easier
19 than expected with all the right precautions. Over the
20 course of the next two years, I found myself
21 increasingly getting heat sick. I found that on days
22 doing repairs in a parking lot or an uncooled trailer,

1 I was coming home lethargic, nauseous, and unable to do
2 anything after work for -- at least once a week in this
3 period. This was often temperatures over 90 degrees,
4 but there were some cooler days at the start of the
5 summer where we were not given adequate breaks.

6 I often had to take unpaid days off for nausea
7 from the heat stress incurred at work, and there was no
8 clear solution, nor was there compensation from my
9 employer or a plan to solve this. Now I am working in
10 a physical labor job that is seasonal but is
11 discouraged breaks when we are out in the sun. I have
12 been told to stay and finish out days that I have
13 fallen ill from the recent northeast heat wave. And
14 I've been left alone on a project site and told not to
15 take breaks, with a camera on, when too dizzy to
16 perform job tasks because my hours are billed as a
17 contractor to different projects.

18 We are stressing our healthcare system
19 unnecessarily and causing employees to fear protecting
20 their own safety in case of unlawful retaliation. I
21 could speak as a physical scientist who has studied how
22 difficult it can be to practically define the

1 propagation of a heat wave, or discern individual
2 marine heat wave. I can speak on behalf of the
3 neuroscientists I advocate for health policy alongside,
4 and how their work reminds us of the cognitive damage
5 that repeat heat stress can have -- have.

6 Instead, I want to speak from experience as
7 someone who's work in the marine trades has led to
8 having to frequently step back from the organization I
9 am here to represent, as heat stress at work has
10 diminished my ability to function in the evenings. I
11 wanted to speak as someone whose chronic inflammatory
12 health issues have caused severe pain flaring up below
13 the 90 degree heat trigger. And as someone who has
14 lost wages frequently whose, my job did not have a heat
15 requirement or any requirement to protect me in this
16 way and did not consider this work-related injury. I
17 can also send a couple of papers that I mentioned that
18 I don't have statistics in here. I will put that in my
19 post-hearing statement. Thank you.

20 JUDGE KULTGEN: Thank you. Any questions from the
21 OSHA panel?

22 MR. SCHAYER: This is Stephen Schayer from OSHA.

1 We have no questions, but I would like to thank Ms.
2 Wilme for your testimony today. We appreciate you
3 being here.

4 MS. WILME: Thank you.

5 JUDGE KULTGEN: Any questions from the Solicitor's
6 Office?

7 MS. NAUGHTON: This is Sheila Naughton for the
8 Office of the Solicitor. No questions. Just thank
9 you, Ms. Wilme, for your testimony.

10 MS. WILME: Thank you.

11 JUDGE KULTGEN: And any participant questions?

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

13 JUDGE KULTGEN: Thank you. Thank you for your
14 testimony today.

15 MS. CARLON: The next speaker is Pablo M ndez-
16 Lazaro. Unfortunately, we do not see your name in the
17 attendee list, so if you've joined under a different
18 name, please use the raise hand button to indicate your
19 presence. And if you have called in, please use star
20 three to raise your hand.

21 Our next speaker group is Wisconsin Community
22 Health Action, represented by Kaitlin Sundling and

1 Susan Nossal. Please state your names and affiliation
2 for the record.

3 DR. SUNDLING: Hi, my name is Kaitlin Sundling and
4 I am speaking on behalf of Wisconsin Community Health
5 Action. My colleague Susan is not available this
6 morning, so I'll just be speaking. So I am Kaitlin
7 Sundling. I'm an MD/PhD, physician-scientist in
8 Wisconsin. I'm presenting today on behalf of Wisconsin
9 Community Health Action, WCHA, an informal group of
10 Wisconsin based educators, workers, and concerned
11 members of the public. We've come together to work to
12 improve public health resources and policies for the
13 people of Wisconsin. I want to thank you for the
14 opportunity to speak today, and I particularly want to
15 thank the federal workers who made this rulemaking and
16 meeting possible.

17 WCHA strongly supports OSHA's proposed rule on
18 heat illness prevention with the -- with the addition
19 of these comments. Our comments have also been
20 submitted as documentary evidence, including
21 references. A 2024 report from the Wisconsin
22 Department of Health Services on heat-related illness

1 highlighted that nearly 80 percent of claims of -- for
2 workers' compensation in Wisconsin have been denied,
3 based on the most recent data from 2022.

4 This clearly demonstrates the need for stronger
5 workplace heat protection rules, both to prevent heat
6 illness in the first place, as well as to improve
7 appropriate compensation for workers who are injured
8 due to a lack of adequate heat protection. It's also
9 important to note that many workers affected by heat
10 illness will never make a claim, and are not
11 represented in these data.

12 Much of the draft rule and supporting materials
13 are based on the idea of a healthy worker, but many
14 common conditions such as high blood pressure, asthma,
15 diabetes, autoimmune diseases, or pregnancy can
16 increase the risk of severe consequences of heat
17 exposure. In revising the rule, baseline thresholds
18 and provisions should be adjusted to accommodate
19 workers with health conditions that place them at
20 higher risk of heat illness.

21 For example, heat illness poses very serious risks
22 to kidney disease patients who are undergoing routine

1 maintenance dialysis. Based on recent estimates, we --
2 we estimate that over 100,000 people working in the
3 U.S. are on dialysis and are really exquisitely --
4 exquisitely sensitive to high heat and high humidity.
5 About 60 percent of workers have at least one chronic
6 medical condition and most of those workers have not
7 disclosed their conditions to their employer. Fear of
8 discrimination or stigma can be a major barrier, and
9 many workers actually do not need any other reasonable
10 accommodations for well-managed chronic illnesses.
11 Thus, it is not sufficient to count on ADA
12 accommodations to protect the safety of disabled
13 workers and workers with chronic medical conditions
14 when it comes to heat illness and heat injury.

15 Extreme heat is a growing problem across a variety
16 of workplaces, including schools, many of which are not
17 air-conditioned, especially here in the northern US.
18 Workers in our area are less likely to be well
19 acclimatized to heat, and workers may be less aware of
20 the strategies for prevention, signs and symptoms of
21 heat illness compared to southern or warmer climates.

22 According to a 2022 study, the Center for Climate

1 Integrity estimated that between 1970 and 2025, there
2 will be a 39 percent increase in the number of school
3 districts that see 32 or more days over 80 degrees.
4 Furthermore, over 10 million students attend schools in
5 districts that will see three weeks -- or three more
6 weeks of school days over 80 degrees in 2025 than they
7 did in 1970. And of course, this applies to both
8 students and workers and staff in those schools.

9 In cities, areas of increased asphalt and cement
10 can contribute to an increased heat effect known as the
11 heat island effect. These differences in temperature
12 can be very drastic even within a city. Anyone who
13 works or lives in an urban environment can experience
14 this heat island effect. Workers may be
15 disproportionately impacted by heat if they don't have
16 access to cooler spaces overnight, so the -- the
17 effects of heat are not just while they are at work,
18 but whether they are able to fully recover from the
19 heat when they go home at the end of the day. This
20 will disproportionately impact lower income workers,
21 who may not be able to afford air-conditioning at home,
22 as well as many communities where air-conditioning is

1 not common within housing.

2 So we have a number of different recommendations
3 which we have listed in detail, but I -- I will
4 summarize. So we -- we ask you to incorporate up to
5 date and comprehensive information about common health
6 conditions that may make workers more vulnerable to
7 heat. To provide greater heat protection and to
8 account for variability in temperature conditions
9 within a geographic area, we suggest lowering the heat
10 index threshold for the high heat trigger, or changing
11 to only one threshold for the -- the greater provisions
12 of the high heat trigger, using a heat index of 80
13 degrees Fahrenheit for those high heat trigger
14 provisions.

15 The rule should be revised to prescribe what --
16 what an employer is required to do to address broken
17 air-conditioning or power outages. This has been an
18 increasing problem in our area. This should include
19 timelines for action and specifications for what
20 additional measures should be taken when air-
21 conditioning is down. Although indoor air -- indoor
22 sites may be air-conditioned in most circumstances with

1 an intended temperature below 80 degrees, occupied
2 spaces should be monitored regularly for the
3 functioning of that air-conditioning and should have
4 increased monitoring when worker concerns about heat
5 arise.

6 The requirements for providing drinking water
7 should be clarified to indicate that that water should
8 be cool, rather than warm or hot. Also, electrolytes
9 should be provided. This is essential because sweating
10 can cause loss of electrolytes, and providing only
11 water would not replenish those necessary electrolytes.
12 The rule should also prescribe additional tools to help
13 workers understand when they are dehydrated, and to
14 learn the early signs and symptoms of dehydration.

15 The rule should be revised to provide more
16 protections for indoor workers, including sedentary
17 workers, where high heat may not necessarily -- may not
18 necessarily be anticipated as a routine impact, but
19 there may be impacts during -- you know, during high
20 temperatures and unexpected circumstances such as not
21 having air-conditioning. Domestic workers and day
22 laborers should be included in these provisions, and

1 there should be accommodations made to protect both gig
2 workers and contract workers.

3 As I've mentioned, air-conditioning is absent in
4 many indoor working sites in our area, including in
5 schools and assisted living facilities. In medical
6 type facilities, including assisted living facilities,
7 there's also an increased risk that, if workers are
8 experiencing the effects of high heat, this would
9 impact their ability to care for their patients.

10 So I wanted to also highlight the concerns for
11 workers who work primarily out of vehicles. There
12 should be some specific consideration for those
13 workers, as they will experience extreme changes in
14 temperature going from an air-conditioned environment
15 to a high heat environment, as -- you know, for
16 example, delivery drivers. And in some circumstances,
17 air-conditioning may be available, but we've heard that
18 some employers may not allow its use unless
19 temperatures exceed the operating parameters of
20 equipment. So we noticed that in public comment
21 from -- from people at WiscOSH.

22 The use of personal protective equipment does

1 increase the burden of heat-related illness. It can
2 increase the risk of overheating. So additional
3 accommodations should be made for -- for workers who
4 must work in high heat and -- you know even more
5 moderate temperatures, where overheating can occur
6 because of that personal protective equipment. The use
7 of personal cooling gear, such as cooling vests, should
8 be part of a comprehensive plan for employers
9 keeping -- making protections -- protection plans for
10 those workers.

11 The rule should prescribe additional rest breaks
12 for workers who have elevated body temperature or any
13 symptoms of heat illness. I also wanted to emphasize
14 that it's very important that we have ongoing data
15 about -- about the climate as well as about the weather
16 in order to make these decisions, including staffing of
17 NOAA and the National Weather Service and making the
18 information from the National Climate Assessment
19 available. This is -- this is very important for
20 planning for the future.

21 I also wanted to highlight the impacts of
22 structural racism as well as discrimination, adding to

1 the disproportionate impacts of heat on marginalized
2 populations. I want to thank you for the opportunity
3 to provide this comment in support of strengthening
4 workplace heat injury and heat illness prevention.
5 We're very happy to take questions and provide
6 additional information either now or after the hearing.

7 JUDGE KULTGEN: Thank you. Does the OSHA panel
8 have any questions?

9 MR. SCHAYER: Yes, Your Honor. This is Stephen
10 Schayer from OSHA. First, thank you, Dr. Sundling, for
11 your testimony today. I had a question on your
12 testimony about water. You had indicated that the
13 proposed rule should require drinking water to be cool
14 rather than warm. So the proposal currently requires
15 employers to provide access to drinking water that is
16 suitably cool. So just wanted to clarify, do you think
17 this is sufficient, or are you suggesting that OSHA
18 include a specific temperature range for the drinking
19 water?

20 DR. SUNDLING: I think a temperature range would
21 be a helpful guide for employers and would -- would
22 take a question out of that.

1 MR. SCHAYER: Okay. Thank you. And if you have
2 any suggestions for a range that you could include in
3 your post-hearing comments, that would be very helpful
4 for us.

5 DR. SUNDLING: Great. I will thank you.

6 MR. SCHAYER: One follow-up question as well, if
7 you don't mind, on electrolytes. You mentioned that
8 the rule should require employers to offer
9 electrolytes, and just wondering if you could expand
10 under what conditions the standard should require
11 electrolytes.

12 DR. SUNDLING: I don't have a detailed answer
13 right now, but I can get back with some more
14 information. I think that in -- in the conditions of
15 high heat when sweating is a concern, some provision of
16 electrolytes should be routine. But there are
17 conditions where there would be additional parameters.
18 So I can get back to you on that.

19 MR. SCHAYER: Okay, great. Thank you. We would
20 appreciate that in your post-hearing comments. Now I'd
21 like to turn to Brenda Finter on the panel in the room
22 here.

1 MS. FINTER: Good morning. Brenda Finter, OSHA
2 Directorate of the Standards and Guidance. In your
3 written comments, and also this morning, you mentioned
4 situations where air-conditioning systems break down or
5 stop working due to power -- power outages or other
6 reasons. Are you aware of any employers that have
7 instituted a policy for how long employees may continue
8 to work if the AC is not functioning, and if they do
9 continue to work, do they have any alternative controls
10 in place to prevent HRIs?

11 DR. SUNDLING: I don't have that information right
12 now, but I can follow up.

13 MS. FINTER: That would be great. Thank you.
14 That's all I have.

15 MR. SCHAYER: Okay. Thank you, Stephen Schayer
16 again. Now I'd like to turn to Deirdre Green on the
17 panel in the room.

18 MS. GREEN: Good morning, Dr. Sundling. Thank you
19 for your testimony this morning. This is Dr. Deirdre
20 Green from OSHA's Standards -- Standards and Guidance.
21 So in your written comments and you also briefly
22 touched on this this morning, you recommended that the

1 rule should prescribe some additional rest breaks if
2 workers have an elevated body temperature or early
3 symptoms of heat-related illness.

4 I'm wondering if you're able to provide some
5 information now, or even your post-hearing comments
6 about what exactly the requirements for -- the
7 requirements for additional rest breaks for workers
8 with those elevated body temperatures -- like what that
9 would look like? And some of those early symptoms of
10 heat-related illness and how those should be
11 operationalized?

12 And then I guess, as a kind of additional part to
13 that question, you also mentioned in the written
14 comments that rest breaks should include parameters to
15 prioritize recovery before returning to work. And OSHA
16 would be interested in what those parameters may look
17 like. Specifically if there's -- if there's any
18 information on that recommendation or how maybe we
19 could structure that in a rule that would also be
20 appreciated.

21 DR. SUNDLING: Yeah. Thank you. I can definitely
22 provide some additional parameters and detail on that

1 in the follow-up.

2 MS. GREEN: Thank you. That's all for me, Steve.

3 MR. SCHAYER: Okay. Thank you again, Dr.
4 Sundling, for being here today and for your testimony.
5 Your Honor, that concludes OSHA's questions.

6 JUDGE KULTGEN: Thank you. Does the Solicitor's
7 Office have any questions?

8 MS. NAUGHTON: No, Your Honor. Sheila Naughton
9 for the Office of the Solicitor. Just thank you, Dr.
10 Sundling, for your time.

11 JUDGE KULTGEN: Are there any participant
12 questions?

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

14 JUDGE KULTGEN: Thank you. Thank you for your
15 testimony today.

16 DR. SUNDLING: Thank you.

17 MS. CARLON: The next speaker is Umair Abbas.
18 Unfortunately, we do not see your name in the attendee
19 list. So if you have joined under a different name,
20 please use the raise hand button to indicate your
21 presence. And if you have dialed in, please use star
22 three to raise your hand.

1 The next speaker is Anne Berry. Please state your
2 name and affiliation for the record.

3 DR. BERRY: Good morning. My name is Anne Berry.
4 I'm a family physician and preventive medicine
5 physician. And I'm a member of the Carolina Advocates
6 for Climate Health and Equity, an advocacy group in
7 North Carolina advocating for climate health and
8 equity. And I'm here on behalf of myself to draw your
9 attention, specifically, to the effects of heat -- high
10 heat on pregnant workers.

11 As a family doctor, I have a special focus on both
12 in my clinical work and my public health and community
13 engaged work on pregnancy care, particularly in
14 vulnerable communities. And through my experience
15 caring for patients and working in communities, I've
16 come across, over time, many pregnant people who are
17 unable to access the accommodations that they need in
18 their jobs for various reasons. But particularly, I
19 wanted to bring up the impacts of high heat on
20 pregnancy health and specifically mental health during
21 pregnancy.

22 As the panel may be aware, mental health

1 conditions are now the number one cause of maternal
2 mortality in the United States. And as you are also
3 likely aware, maternal mortality overall continues to
4 increase in the United States. There is emerging
5 evidence of high heat conditions having an association
6 with mental health harms during pregnancy. There's --
7 this is an emerging area. In general -- the general
8 population, there is more literature, as you're
9 probably aware of high heat impacts on mental health --
10 harming mental health.

11 I have been involved with some epidemiologic work
12 here in North Carolina linking pregnancy related mental
13 health emergencies, specifically emergency room visits,
14 to high heat conditions measured in various -- with
15 various different epidemiologic measurements. And so
16 there -- we did find that there is a link there. And I
17 believe other scholars as well are now following up on
18 this. And this has -- is continuing to -- to emerge as
19 a risk factor for -- for mental health emergencies and
20 pregnancy.

21 I'm not aware of any specific research on work-
22 related heat conditions, specifically in pregnant

1 workers. However, it would stand to reason that if
2 high heat is harmful to mental health and pregnancy in
3 general, then certainly work-related by heat exposure
4 would -- would also be dangerous. So I want to support
5 all of the recommendations that Dr. Sundling made to
6 strengthen the protections in this rulemaking for
7 workers. Specifically, keeping in mind the special
8 vulnerability of pregnant workers and particularly
9 mental health conditions and the -- the risk that poses
10 to people during pregnancy in their work. Thank you
11 very much.

12 JUDGE KULTGEN: Thank you. I think we'll do
13 questions for individuals after three of them have
14 testified if that works for the panel. Or do you want
15 to ask questions now?

16 MS. NAUGHTON: Sheila Naughton for the Office of
17 the Solicitor. Thank you, Your Honor. Yes, Dr. Berry,
18 if you don't mind holding off, we'll ask questions of
19 witnesses in groups of three, if that's possible.

20 DR. BERRY: Yes. Thank you.

21 MS. NAUGHTON: Thank you.

22 JUDGE KULTGEN: Thank you.

1 MS. CARLON: The next speaker is Madison Miracle.
2 We do not see your name in the attendee list. So if
3 you've joined under a different name, please use the
4 raise hand button at the bottom of the Webex screen to
5 indicate your presence. And if you've called in,
6 please use star three to raise your hand.

7 The next speaker is Poune Saberi. As well, we do
8 not see your name in the attendee list, so if you've
9 joined under another name, please use the raise hand
10 button to indicate your presence. And if you have
11 called in, please use star three to raise your hand.

12 The next speaker is Elizabeth Pleuss. As well, we
13 do not see your name in the attendee list, so if you've
14 joined under another name, please use the raise hand
15 button to indicate your presence. And if you have
16 dialed in, please use star three to raise your hand.

17 Would you like to pause here, Judge, for questions
18 or move to the next speaker block?

19 JUDGE KULTGEN: Let's pause here for questions and
20 then do the next block on the -- on the next slide in a
21 separate block. So OSHA, any questions for Dr. Berry?

22 MR. SCHAYER: No, Your Honor. This is Stephen

1 Schayer from OSHA. We would like to thank Dr. Berry
2 for your testimony and for being here today.

3 JUDGE KULTGEN: And any questions from the
4 Solicitor's Office?

5 MS. NAUGHTON: No, Your Honor. Thank you, Dr.
6 Berry, again, for your time and for your testimony.

7 JUDGE KULTGEN: And any questions from
8 participants?

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

10 JUDGE KULTGEN: Thank you for your testimony
11 today.

12 MS. CARLON: Our next speaker is Adrienne Wald.
13 Please state your name and affiliation for the record.

14 DR. WALD: Good morning, and thank you for this
15 opportunity. My name is Dr. Adrienne Wald. I'm
16 submitting my comments as a private citizen in strong
17 support of OSHA's heat rule and urge its swift passage
18 to prevent heat-related injuries and illnesses, and to
19 save lives in both indoor and outdoor work
20 environments.

21 As a doctorally prepared professor of nursing in
22 New York, I've conducted research on extreme heat

1 impacts of human health and am a member of the Alliance
2 of Nurses for Healthy Environments and the American
3 Public Health Association. I served as an evidence
4 analyst on the American College of Sports Medicine
5 2023's position statement on exertional heat illness,
6 which established important guidelines for preventing
7 and treating exertional heat indexes -- heat illnesses
8 in the sports context.

9 As a high school and college cross-country coach
10 and medical volunteer at race events, including the
11 Boston Marathon, I've treated athletes with exertional
12 heat illnesses as well as coaches and other staff and
13 volunteers working in outdoor heat conditions who
14 suffered from occupational heat exposure, including
15 heat illnesses across the spectrum from nausea, cramps
16 and heat exhaustion to collapse from severe, life
17 threatening heat stroke requiring urgent lifesaving
18 treatment.

19 Individuals who suffer heat illness are at
20 increased risk of experiencing again. Heat is well
21 known -- is well known to be a leading cause of death
22 among all weather-related phenomena in the United

1 States, and is a serious occupational hazard for many
2 workers. Heat stroke, heat exhaustion, heat syncope,
3 rhabdomyolysis, heat cramps, hyponatremia, heat edema,
4 and heat rash from occupational heat exposure can also
5 occur and are all preventable.

6 Each year, thousands of workers suffer from heat-
7 related illnesses, some requiring emergency room visits
8 or hospital admissions. And tragically, some of these
9 incidents result in fatalities. All add an additional
10 burden to health systems. It's crucial to recognize
11 that the brunt of these dangers fall disproportionately
12 on workers earning low incomes, communities of color,
13 and immigrant laborers who are overrepresented by
14 physically demanding outdoor jobs.

15 Many of these workers already face precarious
16 working conditions and are further burdened by the lack
17 of heat safety measures. Many also suffer from
18 chronic -- other chronic health conditions, including
19 diabetes and kidney disease, asthma, obesity, and
20 cardiovascular diseases, placing them at increased risk
21 of heat illnesses.

22 The climate crisis is exacerbating heat-related

1 risks, highlighting the urgency to protect America's
2 workforce. However, most U.S. workers are not formally
3 protected from heat exposure without a federal
4 standard. It's not enough to have just six or seven
5 states with partial -- full or partial protection,
6 leaving others unprotected.

7 A federal standard is needed to offer uniform,
8 evidence-based approaches for worker protection. And
9 the proposed federal rule would statutorily cover
10 approximately 38 million indoor and outdoor workers,
11 with estimated benefits of 9.2 billion from avoided
12 deaths or illnesses. The key elements of the proposed
13 rules include adoption of two heat index thresholds, as
14 well as many prevention steps outlined for reducing
15 heat stress. I won't go into all of them. These are
16 important evidence-based -- evidence-based measures
17 aimed at reducing worker risks.

18 In addition to these elements, I urge OSHA to
19 strengthen the rule by adding several other important
20 protections as already recommended by nurses and other
21 health care professionals, including improving worker
22 monitoring for heat-related illnesses, increasing the

1 frequency and duration of rest breaks, offering medical
2 evaluations for workers at higher risk, such as those
3 with the chronic health conditions I mentioned, the
4 development of written heat illness prevention plans,
5 and providing additional support for worker compliance
6 and training initiatives.

7 As critics note, the new OSHA standards may
8 require operational infrastructure changes, as well as
9 additional costs for scheduling adjustments and
10 increased staffing needs and costs are also likely.
11 However, the improvements in overall worker physical
12 and mental health and safety, as well as worker
13 productivity and well-being are anticipated to offset
14 these investments.

15 Finally, the rule is a significant first step in
16 protecting indoor and outdoor workers through simple,
17 yet highly effective, evidence-based measures including
18 training, rest breaks, shade, and water, and
19 underscores the importance of a standard that is clear
20 and practical to implement, particularly for employers
21 with limited resources. I strongly support this rule
22 as an important step towards safeguarding the health

1 and well-being of millions of American workers.

2 However, I urge adoption within a flexible
3 framework incorporating changing climate data and the
4 evolving understanding of heat illnesses to ensure
5 implementation that is enforceable and successful in
6 protecting vulnerable sections of the workforce. I
7 appreciate the opportunity to sit in these commas as
8 OSHA works to finalize and implement this critical
9 rule. Again, thank you for your time today. I'm happy
10 to answer any questions.

11 JUDGE KULTGEN: Thank you. We'll reserve
12 questions. We'll call a couple more individuals, but
13 we will come back to you with questions.

14 MS. CARLON: The next four speakers, we do not see
15 these names in the attendee list. So I'm just going to
16 call each speaker individually. But a reminder that if
17 you have joined under a different name, please use the
18 raise hand button to acknowledge your presence once you
19 hear your name. And if you've dialed in, please use
20 star three to indicate your presence as well.

21 The first name is America Ramos. The next name is
22 Luis Alberto Pedrosa. The next name is Rodrigo Pereira

1 Gomes. And the next name is Tammy Lettieri. It looks
2 like these four speakers are absent, Your Honor.

3 JUDGE KULTGEN: Thank you. Let's go back to Dr.
4 Wald for questions.

5 MR. SCHAYER: Yes, Your Honor, we do have a
6 question for Dr. Wald. This is Stephen Schayer from
7 OSHA. I'd like to turn to Zoe Petropoulos, who's on
8 the line.

9 MS. PETROPOULOS: Hello. This is Zoe Petropoulos
10 with the Directorate of Standards and Guidance. In the
11 preamble of the proposed rule, OSHA cited literature
12 and analyses supporting the agency's claim that rapid
13 cooling of workers who are experiencing the signs and
14 symptoms of heat stroke will be highly effective in
15 preventing fatalities. Do you agree that heat stroke
16 fatalities are preventable and that rapid cooling will
17 be effective in preventing these fatalities?

18 DR. WALD: Yes, absolutely agree. The guidelines
19 from the American College of Sports Medicine call for
20 immediate rapid cooling, immersion. At the Boston
21 Marathon, we have tubs -- bathtubs filled with ice
22 water.

1 And rectal temperatures are the gold standard for
2 temperature identification. Other forms of temperature
3 measurement are not adequate to accurately gauge
4 temperature. And heat stroke can often be missed if
5 other forms of temperature are monitored.

6 So we use rectal temperature and immediate
7 immersion in an ice bath. There's some new kind of
8 innovative cooling devices to rapidly reduce
9 temperature, but the gold standard is that immersion in
10 cold water, critically important for life saving -- as
11 a life saving measure.

12 MS. PETROPOULOS: Thank you. That's it for me.

13 DR. WALD: Absolutely. Thank you.

14 MR. SCHAYER: And this is Stephen Schayer again.
15 Thank you, Dr. Wald, for your testimony and for being
16 here today. Your Honor, that concludes the questions
17 from OSHA.

18 DR. WALD: Thank you.

19 JUDGE KULTGEN: Any questions from the Solicitor's
20 Office?

21 MS. NAUGHTON: No, Your Honor. Just thank you,
22 Dr. Wald, on behalf of the Office of the Solicitor.

1 JUDGE KULTGEN: And any participant questions?

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

3 JUDGE KULTGEN: Okay. Thank you, Dr. Wald.

4 DR. WALD: Thank you.

5 MS. CARLON: The next speaker is Peter Downing.

6 Please state your name and affiliation for the record.

7 MR. DOWNING: Good morning. My name is Peter
8 Downing. I'm the Co-Founder and President of
9 Environment and Safety Solutions an environmental
10 health and safety consultancy based in Hightstown, New
11 Jersey, serving manufacturers, distributors, and
12 warehousing companies throughout the United States
13 since 2003. Prior to that, I was the Director of
14 Environment, Health, and Safety for a mid-sized global
15 manufacturing company, beginning in 1987.

16 My company has nine employees who travel
17 throughout the country to provide, among other tasks,
18 general OSHA compliance, process safety management, and
19 industrial hygiene services to our clients. My
20 viewpoints are based on my role in the manufacturing
21 sector throughout my career and my experience working
22 with hundreds of facilities throughout the U.S. in many

1 different industries.

2 The proposed heat standard will establish
3 prescriptive rules to address an issue that most
4 general industry companies experience. While
5 supportive of the concept of a heat illness standard,
6 what struck me first about this proposal was how
7 prescriptive it was. OSHA has proposed a limited, one-
8 size-fits-most path to compliance, rather than allowing
9 companies to establish the methods by which they will
10 protect their workers based on site-specific factors.
11 This prescriptive standard establishes significant
12 burdens on companies trying to comply and to protect
13 their workers, while not addressing individual worker
14 health concerns.

15 While I have many concerns about the standard as
16 written, most of which have been expressed by others
17 over the course of these hearings, I'd like to share
18 two examples that directly impact my business. First,
19 the heat threshold of 80 degrees Fahrenheit is too low.
20 As a consulting firm traveling to sites throughout the
21 country, our team is in the plant to provide our
22 services, including identifying potential OSHA

1 violations and recommending corrective actions.

2 This proposal will require our small team to
3 reacclimate to the temperatures on each site visit to
4 sites in the south, especially to sites located in
5 warm, humid climates such as Houston or Tennessee, or
6 take prescribed breaks every two hours in a
7 temperature-controlled area. This will greatly
8 increase our costs, which may make our services cost
9 prohibitive to the small and mid-size entities that we
10 serve.

11 Second, as with many organizations, our
12 professionals are expected to independently manage
13 their time at sites. Because our services are
14 dependent on observing the manufacturing processes, our
15 team will frequently be faced with the option of
16 violating the standard, or failing to provide an
17 essential service intended to keep people safe in other
18 areas.

19 Further, many of our clients have expressed
20 concerns about complying with this element of the
21 standard as it relates to their truck drivers, who are
22 expected to deliver hazardous chemicals to unmanned or

1 minimally -- minimally manned sites without direct
2 supervision. It's unrealistic to expect that a driver
3 will suspend a delivery for a forced break before
4 offloading has been completed. As cell phone use while
5 unloading is banned and hours of service is closely
6 regulated, it is unlikely an unsupervised driver will
7 comply, despite any company's best efforts.

8 While good intentioned, the standard as proposed
9 misses the mark. Based on my many years of experience,
10 I believe that the implementation of a heat illness and
11 injury standard should be performance-based and
12 supported by a site-specific heat injury and illness
13 prevention plan developed in accordance with good
14 scientific principles, considering the needs of the
15 site and its workforce.

16 As awareness has grown, my clients have reported a
17 decline in heat illnesses, and I believe that OSHA can
18 develop a solid standard that allows the insight and
19 knowledge of the regulated entities to shine forth
20 while still mandating worker safety. Thank you for the
21 opportunity to present my viewpoint.

22 JUDGE KULTGEN: Thank you sir. We will -- please

1 remain. We will ask questions after the next two
2 witnesses.

3 MS. CARLON: The next speaker is Vickie Chapman.
4 Please state your name and affiliation for the record.
5 And if you're speaking, you are still muted Ms.
6 Chapman.

7 MS. CHAPMAN: Good morning. My name is Vickie
8 Chapman. I'm located in Cleveland, Ohio. And last
9 year I was asked to write a program -- heat program.
10 And I followed the template of this performance-based
11 standard. I think it's a wonderful standard. It's
12 long overdue.

13 However as I was putting this together -- you
14 know, I had to write it for our sister plants in
15 Tennessee, South Carolina, and Alabama, where they have
16 more exposure to heat than we do in Cleveland. I got
17 tripped up when I was writing the emergency action plan
18 under the standard. And I just wanted to go on record
19 with my concern that in a heat emergency, if you have a
20 person who's non-ambulatory, it does specify that they
21 must be moved to a location and cooling start before
22 emergency services arrive.

1 However, being an EMT, my concern is the
2 contradiction to move an unconscious person, especially
3 if they passed out and fell down because they could
4 have a head, spine, and neck injury. One needs to
5 consider with this edict to move them to a cooler
6 location and start cooling -- one needs to consider the
7 level of first responder training at sites. Usually
8 most sites, if they do offer first aid training, they
9 do multimedia first aid training if they -- they're
10 under the two minute rule.

11 Again, it does stipulate that we're supposed to
12 talk about the equipment that sites would need to have
13 to effectively move somebody. You know, my people at
14 my site range from 110 pounds to 500. So I don't -- I
15 don't know how to do that, you know. So I just wanted
16 to go on record to say that there was a contradiction
17 for somebody who lost consciousness and that they're
18 supposed to be moved and cooling started prior to
19 the -- in a heat emergency, prior to the -- the arrival
20 of medical services. Thank you.

21 JUDGE KULTGEN: Thank you. And please remain we
22 will ask questions, if there are any, after the next

1 witness.

2 MS. CARLON: The next speaker is Matthew
3 Cahillane. Excuse me. We do not see your name in the
4 attendee list, however, so if you have joined under
5 another name, please use the raise hand button to
6 indicate your presence. And if you have dialed in,
7 please use star three to raise your hand.

8 All right. And our next speaker is Juan Rengifo.
9 Before we begin this testimony -- or did you want to go
10 ahead and go to questions, Judge?

11 JUDGE KULTGEN: Let's -- let's do questions before
12 we get to the next witness, because he requires an
13 interpreter.

14 MS. CARLON: Correct.

15 JUDGE KULTGEN: So let's do questions for Mr.
16 Downing and Ms. Chapman.

17 MR. SCHAYER: Yes, Your Honor. This is Stephen
18 Schayer from OSHA. Thank you, Mr. Downing and Ms.
19 Chapman, for your testimony. I do have one follow-up
20 question for Mr. Downing. So you said -- sure. You
21 had mentioned the standard should be more performance-
22 oriented. And I'm just wondering if you could provide

1 any more specific recommendations, either now or in
2 your post-hearing comments, on how OSHA could write
3 performance-oriented language in a way that's
4 sufficiently protective for employees, but also has
5 clarity for employers so that they can ensure they're
6 in compliance.

7 MR. DOWNING: That's the challenge, isn't it?
8 Yeah, I -- I will sit down and put some thoughts and
9 pen to paper on that. One of the challenges that we
10 really see, though, is that the -- the -- the transfer
11 between locations. Because what we would do is set up
12 a -- a policy or procedure for a site. And as we move
13 along to different sites, we have to handle things
14 completely differently. So you know, the ability to
15 have some more flexibility in there for -- for
16 operations really is helpful.

17 The other thing is as -- as I believe earlier it
18 was Doctor -- either Dr. Berry or Dr. Wald stated
19 that -- and I mentioned this as well in my -- in my
20 testimony. This the concept of being able to look
21 at -- while not specifically -- individual health
22 issues such as the high blood pressure, such as people

1 who have very -- very fair skin but have to be out in
2 the sun, who would be more prone to a heat -- heat
3 illness more quickly, may require breaks more
4 frequently.

5 So we've got to have that flexibility where maybe
6 it's not a two hour mark, but for certain people it's
7 an hour to an hour and fifteen minutes when they're
8 acclimating. And then for others, it might be that
9 they have just, you know, been in and out of areas
10 where it has been high temperature. And we are looking
11 at, while not specifically a fourteen day window, we
12 still would be looking at some flexibility on the back
13 end of that two hours, to go two and a half or maybe
14 two hours and fifteen minutes. So you know, we're
15 trying to get a little more flexibility for our
16 workforce as well as the workforce of our -- of our
17 companies with which we work. And I think that that's
18 an important component of the standard.

19 Frankly, it's long overdue that we have a heat
20 illness standard. I know coming from industry, you've
21 heard all -- the whole gamut. I don't believe that the
22 general -- the general duty clause is the way to go

1 about this. I think the standard is important and you
2 know, that to me is the first step. Let's get a
3 standard in place that has some flexibility. And if we
4 find that there are areas where there are problems
5 later, you know, there's the opportunity to go back and
6 propose edits or modifications to the standard.

7 MR. SCHAYER: Okay. Thank you, Mr. Downing.
8 Appreciate your response and any information or
9 specific recommendations you could provide in post-
10 hearing comments would be very helpful.

11 MR. DOWNING: Thank you, sir.

12 MR. SCHAYER: I believe that concludes the
13 questions from OSHA, Your Honor. Thank you.

14 JUDGE KULTGEN: Any questions from the Office of
15 the Solicitor?

16 MS. NAUGHTON: No, Your Honor. Just thank you
17 again for your testimony, both of you, Mr. Downing and
18 Ms. Chapman, this is extremely helpful.

19 JUDGE KULTGEN: Do we have any participant
20 questions?

21 MS. CARLON: Yes, Your Honor, we have one from Mr.
22 Lundegren. Please state your name for the record.

1 MR. LUNDEGREN: Hi, Mr. Downing, this is Bruce
2 Lundegren at the Office of Advocacy at the U.S. Small
3 Business Administration. And I just wanted to follow
4 up on this issue of -- of really -- of more flexible,
5 performance-oriented standard, which a lot of small
6 businesses have advocated for. And I guess I have two
7 questions. One is, the rule talks about indoor and
8 outdoor workplaces, but doesn't really talk about
9 hybrid work areas. And you talked about your members
10 being in manufacturing and also in trucking. So I
11 assume that you have employees that are coming indoors
12 and outdoors. And do you believe that OSHA should
13 include provisions for a hybrid work type environment?

14 MR. DOWNING: I think the failure to include
15 provisions for a hybrid work environment could be
16 catastrophic. There are many times, many points in the
17 standard where there are exclusions for those who work
18 out of vehicles. There are exclusions for those who
19 work in offices. But when those same people are going
20 in and out of the air-conditioning into those
21 workplaces, have been the times that I have seen the
22 most heat illness concerns.

1 Truck drivers who have to get out of an air-
2 conditioned truck to deliver chemicals, and now they
3 have to put on the heavy PPE to work in the hot sun to
4 make a delivery, and have to stay with their load the
5 entire time. They can't get in and out of the truck.
6 You have to, by DOT standard, stay with your load as
7 it's being offloaded. So it's a very important
8 consideration. How can we manage this?

9 I've got a person who's got a lower body
10 temperature when they get out of the truck, but now
11 they put that suit on and a lot of the equipment that's
12 available -- the ice packs -- they don't -- they don't
13 work in a truck environment because there's no air-
14 conditioner on the truck -- or a freezer on the truck
15 to maintain the chill of those ice packs. So you know,
16 we have to really look at what is out there in the
17 market for those people who are coming from a hot -- a
18 cold environment to a hot environment.

19 So you know, not only truck drivers but
20 manufacturers who are going in and out throughout the
21 day. We have seen a number of people succumb to heat
22 illnesses more quickly as they are changing

1 temperatures. So you know, you get acclimated a hell
2 of a lot quicker in construction industry. And you
3 know, I know that there are -- a lot of this focus is
4 the high heat in the construction industry.

5 I spent my first six years in the -- working --
6 working construction. So I know what it was like to
7 get heat stress. I know what it's like to have had to
8 go inside because of exposure. But that hybrid is more
9 dangerous. It really is. So we've seen a lot of those
10 issues associated with hybrid, especially truck
11 drivers.

12 MR. LUNDEGREN: Okay. And just one other
13 question. Well, actually two other questions. One
14 is -- and this kind of goes to what Ms. Chapman was --
15 was saying. Do you believe that the standard should
16 include a provision for impractical, infeasible, or
17 creating a greater hazard because it doesn't currently
18 have such a provision?

19 MR. DOWNING: Absolutely, absolutely. You know,
20 we are always concerned about transferring hazards.
21 You know, I could take an ergonomic hazard and all of a
22 sudden create a respiratory hazard by transferring the

1 way material is processed. We see the same thing here.
2 If you hit a point where you have done what you can and
3 trying to manage it to your best of your ability as a
4 company, I think that we have to be able to identify
5 that it's infeasible.

6 But where it's infeasible, I think that has to be
7 documented in the program. Because if not, companies
8 will take advantage of that. So and this is from 38
9 years of manufacturing experience, working with
10 companies all over. So where we -- where there's a
11 determination that something is -- is impractical or
12 infeasible, I think there has to be a documented paper
13 trail that shows that, that can support the company's
14 decision.

15 At the same time, I think that -- you know, and
16 unfortunately, in the climate that -- the political
17 climate that we're in right now, it's very difficult.
18 But I honestly believe that a study should be conducted
19 by NIH or one of the other -- whatever's left of the
20 agencies in the government, to look at other ways of
21 protecting those workers and develop other methods.
22 Because we don't have suits that we can put on to have

1 cooling coils wrapped around our chests.

2 But we need to have a way that we can actually
3 chill a worker while they're working or maintain their
4 body temperature. You know, when I'm putting on a
5 Tyvek suit that's coated with Saranex, the temperature
6 increase of my body is a couple of degrees per hour.
7 So I will see the temperature go up quickly. I know
8 that most of the workers in the plants that I'm
9 involved in are wearing much heavier protection, and
10 they're struggling. They struggle as the day goes on.

11 A two hour load -- offloading a two hour load of
12 chemicals is -- is hard. It's really hard. And you
13 know, when you're working with high hazard chemicals --
14 you know, sulfuric acid, hydrochloric acid -- those --
15 those corrosives require such attention. And one of
16 the challenges of heat stress is the lack of attention.
17 You lose that attention over time. So how is it that
18 I'm able to make that delivery?

19 And this is where I'm looking for that
20 flexibility, that we are able to manage this a little
21 bit differently as well. But I also have to look at,
22 you know, what are the ways that we can protect that

1 worker. And so far, there aren't a whole lot of good
2 options out there. So I'm not saying that the standard
3 is premature, but I think that right now there are some
4 challenges in how we implement the standard that are
5 going to -- as you said, that are going to require us
6 to have the ability to say something is impractical or
7 infeasible.

8 MR. LUNDEGREN: Okay. Your Honor, do I have time
9 for one quick follow up question?

10 JUDGE KULTGEN: I believe so yes.

11 MR. LUNDEGREN: And Peter, let me -- this Bruce
12 Lundegren again, Office of Advocacy. A lot of the
13 small businesses have said that they're looking for a
14 more performance-oriented, flexible standard, which I
15 think you are saying. And one of the questions that
16 comes up is how would OSHA enforce such a standard?
17 Because having a prescription or a specification
18 standard of 80 degrees, 90 degrees, 15 minutes, you
19 know, all these things -- it makes it easy for OSHA to
20 enforce something like that. How would OSHA enforce a
21 more performance-oriented flexible standard?

22 MR. DOWNING: I sit on the NFPA committee for

1 combustible metals and metal dust as well as well. Now
2 it's combined into NFPA 660, so the fundamentals of
3 combustible dust. And part of the challenge that we've
4 had in that -- in the NFPA committees is establishing a
5 prescriptive standard and a performance-based standard,
6 where someone can follow the prescriptive standard if
7 they so choose. But if they choose to go to a
8 performance-based standard, having the ability to
9 certify that the -- that the legwork was done.

10 And I think one of the comments that I included
11 was having an injury and a health prevention plan that
12 incorporated good scientific practices. I've been a
13 certified hazardous materials manager since 1990, so
14 well over 30 years now. And I would put my
15 certification on the line for any plan I wrote for a
16 company, if it was performance-based. I don't believe
17 that having a PE certify, because this is not the type
18 of program that PE would be appropriately certifying.
19 But having something where it would be certified,
20 either by a CIH or CHMM or maybe another -- an
21 additional credential would not be a bad idea.

22 I think the CHMM credential, Certified Hazardous

1 Materials Manager, is effective for this role because
2 you are someone who deals with hazardous materials.
3 You're dealing with hazardous situations every single
4 day. You know, a certified safety professional, of
5 course, would be appropriate as well.

6 So if you were to go performance-based, I think
7 someone has to put a credential on the line. They have
8 to put their butt on the line a little bit. And that's
9 good. That's good because we're talking about
10 something here that can turn in a half hour. You know,
11 someone could be fine and a half hour from now drop to
12 the floor. And we're now dealing with first aid.

13 So I think that there has to be -- if we are going
14 to performance-based, that there has to be some element
15 of responsibility that the -- that the person who
16 designed the plan and developed the plan would have to
17 meet. That's my -- that's my gut. I don't know,
18 Bruce, if that's how you feel or if that's what you're
19 leaning towards, but --

20 MR. LUNDEGREN: No, that's really helpful. Thank
21 you very much, Peter. And thank you, Your Honor.

22 MR. DOWNING: Thank you for your questions, Bruce,

1 I appreciate it.

2 JUDGE KULTGEN: Thank you. Any follow up
3 questions from the OSHA panel?

4 MR. SCHAYER: Yes, Your Honor. We do have one
5 from the Office of the Solicitor.

6 MS. NAUGHTON: Hi, yes. Mr. Downing, thank you
7 so much for your testimony and your answers to that
8 question. I just want to clarify for the record, when
9 you say PE what certification are you referring to?

10 MR. DOWNING: Professional Engineer. So
11 professional engineers have a lot of -- I'm not a PE
12 first off. But professional engineers because of
13 the -- the ethics requirements of the license -- and
14 because it's a license, not a certificate -- are drawn
15 into a lot of certification responsibilities. But
16 they're only supposed to certify those things that they
17 are uniquely qualified to certify. So an environmental
18 engineer can certify an environmental matter, a
19 chemical engineer can certify on chemical matters.

20 There's no corresponding PE role for safety
21 matters, so that's why I exclude them from this. I
22 honestly think -- and you're not EPA, but I think that

1 EPA should be looking at more than just PEs for
2 certifications as well, because I think that that is --
3 you know, it's really not entirely appropriate.

4 But for something like this, a Certified Safety
5 Professional, a Certified Industrial Hygienist, or
6 Certified Hazardous Materials Manager are really
7 designed for this role, you know. And it's a
8 credential that has the same ethics requirements as a
9 PE. In general, the folks who sit for the exams -- for
10 all those exams are well educated, well trained, and
11 have to have the same continuing education requirements
12 to stay up to standard. So thank you.

13 MS. NAUGHTON: I also have one question for Ms.
14 Chapman, if we have time, Your Honor.

15 JUDGE KULTGEN: Yes.

16 MS. NAUGHTON: In your testimony, you wanted to
17 clarify something you referenced -- the requirement for
18 moving -- removing workers if they're unconscious. I
19 just wanted to understand where you were seeing that in
20 the reg text, or if you could elaborate on that
21 requirement in your -- either here or in post-hearing
22 comment, that would be very, very helpful. Thank you.

1 MS. CHAPMAN: If you look at the standard, when
2 you start talking about developing the emergency
3 response plan and you also dovetail into the reporting
4 requirements for loss of consciousness and also for the
5 definition of heat emergency. And you look -- for
6 example, I'm looking at the standard right here.

7 Under paragraph (g) to employees experiencing
8 signs and symptoms of heat-related illness, you must,
9 you know, provide them with the means to reduce their
10 body temperature if they're -- paragraph (3) -- if an
11 employee is experiencing signs and symptoms of heat
12 emergency, the employer must take immediate action to
13 reduce employee's body temperature until medical
14 services arrive.

15 It just goes without saying that you're supposed
16 to, throughout the standard, get them and start
17 immediate cooling before emergency services arrived if
18 they are in a heat emergency. So you're looking at the
19 possible loss of consciousness with heat stroke or even
20 with heat syncope, you could lose -- you could you
21 could have a fainting attack, fall down, you know, and
22 be on the floor. Somebody responds and say, hey, are

1 you all right. The -- you know, the first thing is --
2 you don't want to move them, necessarily, until you
3 figure out, you know, if they've injured themselves
4 further, depending on the type of fall they took. So
5 it's kind of a compilation of all the things in the
6 standard.

7 MS. NAUGHTON: Okay. Thank you. Thank you, Your
8 Honor. And thank you, Ms. Chapman. That is helpful.

9 MR. SCHAYER: Your Honor, I believe you may be on
10 mute.

11 JUDGE KULTGEN: Thank you to both witnesses.

12 MS. CARLON: All right. Before we move to our
13 next speaker, I just want to make a logistical reminder
14 in terms of enabling interpretation, all end users in
15 Webex have access to a globe that is at the lower left-
16 hand of your Webex application. So please click on
17 that and you can switch to the Spanish channel to
18 enable interpretation. Once you click on that channel,
19 you can move the dial all the way to the right-hand
20 side, and you'll be able to hear the interpretation in
21 English. You can also click on the CC icon to the
22 left-hand side of that globe, and you can follow along

1 with closed captioning as well.

2 Our next speaker is Juan Rengifo. Please state
3 your name and affiliation for the record.

4 DR. RENGIFO: Good morning. My name is Juan
5 Carlos Rengifo. I am doctor from Colombia. I would
6 like to begin thanking you all and OSHA for giving me
7 this invitation. And I want us to go directly to the
8 PowerPoint where I tried to demonstrate something.

9 According to the document I share from OSHA, that
10 we're working from 2023 to present. And when we're
11 talking about things that the United States needs to do
12 in relation to regulating the heat. And through this
13 document, I attempted to express that we can apply
14 directly those variables of climate change from a
15 global perspective. If we have to see the entire world
16 that there is an atmosphere and stratosphere inside the
17 Earth planet. We must consider the global warming
18 applied to who? In the image we can see the worker --
19 the US workers that are near or exposed to the UV rays.
20 My intention is to explain how we can see these
21 applications from a point for a physical protection,
22 implementing something that I did not see in the

1 document.

2 If we have, in consideration, that the heat -- in
3 consideration is speaking about a specific rule so that
4 us, that we handle security and wellness at work
5 interpret the variables directly from the heat dome or
6 index -- heat index specifically. Then we must open
7 the document, please. Can you please open the
8 document, if you could? If you could click the link.
9 Thank you.

10 And we're going to go directly to the
11 interpretation that is given -- the document. And
12 we're going to go directly low -- to letter C. Please
13 go down. Go down more. Go down down, down, down.
14 There.

15 The supplement of C, that identify that from the
16 heat dome implementation, what refers to how the heat
17 index that should be -- or should be reserved to 80
18 degrees Fahrenheit. If we are exposed to a determined
19 global temperature, I wanted to refer something
20 directly. If we can return to the PowerPoint. Let's
21 click the first link of the second PowerPoint. Thank
22 you.

1 The creation of what -- can we do -- do what? Of
2 a protective -- a creation of a protective shield that
3 is created with a microfiber, which could be useful to
4 protect from the heat rays that could cover, not only
5 the part that is exposed who is the worker, but also
6 the infrastructure that we can build in certain areas.
7 If we apply this determined protector as a filter that
8 repel those sun rays that are determined within that
9 Earth part and the atmosphere, we could do a complete
10 coverage and avoid various problematic characteristics
11 to the body, which I -- like, such like skin cancer,
12 hair fall, or exposing, what are we talking about
13 specifically in this conversation, which is
14 dehydration.

15 Let's go to the third PowerPoint slide, please.
16 Third please. And this -- let's select the link. And
17 I want to retaliate that something that's important.
18 Yes, we are hydrating properly our workers is the
19 question? If we see in the document, and indeed we see
20 that directly, we are supposed to contribute -- can we
21 go down, please -- we should contribute for that --
22 that that figure right there. Let's click right there.

1 The top figure. Let's click the link for the figure --
2 for the image. If we can open that.

3 What do we need. We need to give -- can we go
4 down in the document or down low. Let's go down, let's
5 go down, let's go down. Let's go a little bit up, a
6 little bit up, a little bit up, a little bit up. More,
7 up more. Right there. Just go down a little bit where
8 it talks about liquids. Exactly.

9 Here I want to refer something that's important.
10 If in the document, we are saying that workers should
11 be hydrated with an adequate amount of liquids and
12 protections and including as coverage, so that the sun
13 rays don't penetrate. The question that I have is, are
14 we properly, truly hydrating the worker? The document
15 is clear. It says that they should consume a liter
16 within the work shift of a certain amount of time. But
17 that liquid, we don't claim consideration that we are
18 giving that organism only water with minerals, It is
19 the body -- I could give you this from a medical
20 perspective -- the body that received the hydration
21 that only received water with mineral, and therefore
22 they are wasting it because of the expulsion of heat

1 through sweat and through the activities that they
2 generate through the -- let's go to the next image,
3 please. All right. There.

4 This part that we see portrayed is -- constitutes
5 one cell within our organism. As we can see, there's
6 an external part and an internal part of the cell. It
7 constitutes of important elements such as sodium,
8 potassium, chloride, and magnesium. For the
9 functioning of said liquid elements, they should have
10 this internal component. Let's go down in the image.
11 A little bit more right there.

12 In our brain, we have a specific element in the
13 brain that activate the absorption of water and the
14 elimination through the kidneys when it's activated as
15 a mechanism of a heat stroke, what causes the body to
16 eliminate the water. And the patient that is having
17 said high temperature, therefore, it's going to get
18 dehydrated. And what am I referring to? That that
19 worker, when we are submitting them to high temperature
20 and as company we are hydrating them, we are doing it
21 wrong because they don't have a fundamental element.
22 So it could become a corporal reconstituent.

1 And that corporal reconstituent, we could do it
2 normally. But in the document says we can only
3 supplement with water. And that element that we could
4 use is sodium. In the water that we provide workers,
5 we can add -- so they can have a proper hydration -- we
6 can add a mineral called sodium, which will allow to
7 replenish the loss that are -- is happening through
8 urinating or sweat. Let's go down in the image. Let's
9 go please.

10 And so we have a clinical frame when it comes to
11 adult dehydration. When we are submitting ourselves to
12 said loss we must supplement with that. We have a mild
13 dehydration, moderate dehydration and an extreme
14 dehydration. When the worker doesn't consume the drink
15 and the element of sodium, if they don't have an
16 absorption -- a proper absorption of the liquids, then
17 they will have a slight loss. But if we're going to
18 face temperatures like heat says that are over 80
19 degrees and they don't want to escalate to 90 degrees.
20 Then we're going to have moderate to severe
21 dehydration. And we can implement these things in our
22 factories and our industries and construction giving

1 supplements. Let's go to the next image.

2 In this case, you will be able to see as
3 companies -- as large industry, you can just activate
4 it by not only consuming the beverages that we have on
5 the last slide, but supplementing them with salty
6 beverage or implementing the sodium, which could
7 improve the conditions of dehydration due to heat
8 stroke, which may really worsen the quality of work and
9 the quality of life of those patients who are
10 submitted, according to (AUDIO MALFUNCTION). So they
11 can have a hydration.

12 So here we have two coverages which I found in
13 this document, which can be implemented. And make
14 these to have a more fruitful -- it will be better and
15 it can be implemented in different industries and
16 companies. So first we need to -- like we need to have
17 this evidence which is needed. We need to have a
18 protective shield regarding the -- that divides the
19 sunrays between the ground and the atmosphere for the
20 new constructions.

21 And then what I found here in the document that
22 there is no dehydration and with having this main

1 element, the water, which it lacks, and main substance
2 which it may be supplementary and hydrating for the
3 body. So I don't know if any of you have a question.
4 Let's just go back to -- to the slide and I am ready to
5 hear any questions.

6 JUDGE KULTGEN: Thank you. Does the OSHA panel
7 have any questions?

8 MR. SCHAYER: This is Stephen Schayer from OSHA.
9 No, we do not. Thank you, sir, for your testimony.

10 JUDGE KULTGEN: Any questions from the Solicitor's
11 Office?

12 MS. NAUGHTON: Yes. Your Honor, this is Sheila
13 Naughton from the Office of the Solicitor. We don't
14 have any questions, but I would like to mark Mr.
15 Rengifo's presentation and the linked materials as
16 Exhibit No. 16 and enter that into the record with your
17 permission.

18 JUDGE KULTGEN: Yes. We will enter that as
19 Exhibit -- did you say 17?

20 MS. NAUGHTON: Oh, sorry. 16, yes.

21 JUDGE KULTGEN: 16.

22 MS. NAUGHTON: Thank you.

1 JUDGE KULTGEN: Any questions from the
2 participants?

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

4 JUDGE KULTGEN: Okay. Thank you, Doctor, for your
5 testimony today.

6 DR. RENGIFO: Mucho gracias.

7 JUDGE KULTGEN: That is the end of the witnesses
8 on the list for this morning. Have any of the
9 witnesses that were skipped earlier joined the meeting?

10 MS. CARLON: By looking at the attendee list, Your
11 Honor, none of them have.

12 JUDGE KULTGEN: If any -- can you ask for -- to
13 make themselves known, if they have?

14 MS. CARLON: Absolutely. I can just recall each
15 name quickly. I'm going to just run through the list
16 of absent attendees. And if you have joined under a
17 different name, please go ahead and use the raise hand
18 button at the bottom of the Webex screen to indicate
19 your presence. Or use star three if you called in.
20 First, Pablo Mendez-Lazaro? Susan Nossal? Umair
21 Abbas? Madison Miracle? Poune Saberi? Elizabeth
22 Pleuss? America Ramos? Luis Alberto Pedrosa? Rodrigo

1 Pereira Gomes? Tammy Lettieri? Matthew Cahillane?

2 Looks like, unfortunately, none have joined at
3 this time, Your Honor. You are muted, Your Honor.

4 JUDGE KULTGEN: Thank you. That being the last
5 witness scheduled for this morning, we will break for
6 lunch and the hearing will resume at 1:00 p.m. Eastern
7 Daylight Time. Is there -- I should have asked. Are
8 there any housekeeping matters that need to be
9 addressed before we go off the record? I'm seeing some
10 head shakes from the panel. So then we will go on our
11 lunch break and return at 1:00 p.m. Eastern Time.
12 Thank you.

13 (Lunch break.)

14 MS. CARLON: This is Mariam Carlon from Abt
15 Global, OSHA's contractor. It is 1:00 p.m. Eastern
16 Time and we are now rejoining OSHA's informal
17 rulemaking hearing for Heat Injury and Illness
18 Prevention in Outdoor and Indoor Work Settings.

19 Before we begin, we'd like to go over some
20 logistics for today's public hearing. As a reminder,
21 all attendees are muted and are muted automatically.
22 All Webex attendees can access closed captioning and

1 translated captioning by clicking on the CC icon in the
2 lower left-hand corner of the application. You can
3 individually select your caption language if
4 translation is required.

5 We will pause shortly as I share the same slide in
6 Spanish.

7 MS. CARLON: All YouTube viewers will have access
8 to auto translation the day after the hearing. All
9 Webex attendees delivering testimony will have access
10 to a countdown timer to ensure allotted time is adhered
11 to. We will launch the timer for you, and it should be
12 seen on the right-hand side of your screen. If you do
13 not see this app launched in your Webex window, please
14 follow the instructions on the screen to manually
15 launch this app.

16 If you are speaking today, you will receive a
17 notification on your screen that you are being promoted
18 to the panelist's role a few minutes before it is your
19 time to provide testimony. Once promoted to the
20 panelist's role, you will be able to unmute and turn on
21 your camera. We ask that you do not unmute or turn on
22 your camera until your name has been called, and you

1 have been asked to start your testimony.

2 Speakers connected by telephone should unmute
3 their phones when called to testify. If you submitted
4 a presentation in advance, we will share the file and
5 advance the slides. Please cue us verbally by saying
6 "next slide" when you need us to advance.

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

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

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

22 The first speaker group is Moms Clean Air Force,

1 represented by Elizabeth Bechard, Pita Juarez, Shaina
2 Oliver, and Mary Wagner. Please state your names and
3 affiliation for the record as you all move throughout
4 your testimony.

5 MS. BECHARD: Thank you so much. My name is
6 Elizabeth Bechard. I'm a public health manager with
7 Moms Clean Air Force, and we are a national
8 organization of over 1.5 million parents and caregivers
9 united on advocating on behalf of our kids' right to
10 clean air and a healthy future.

11 And I'm here today on behalf of Moms Clean Air
12 Force and our sister organization, EcoMadres, which
13 supports Latino communities in fighting for clean air
14 and equitable climate solutions. And I want to express
15 our strong support for OSHA's heat injury proposal, and
16 would like to turn it over to my colleague, Pita, to
17 share her perspective.

18 MS. JUAREZ: Good morning everyone. My name is
19 Pita Juarez. Thank you for the opportunity to speak
20 today. I live in Phoenix, Arizona. I am an aunt of
21 ten nieces and nephews, and I serve as a field
22 consultant for Moms Clean Air Force, a national

1 community of more than 1.5 million parents united to
2 protect our children from the dangers of air pollution
3 and the growing threat of climate change.

4 I'm proud to call Arizona home, but as we all know
5 a beautiful desert state comes with extreme heat that
6 is becoming more dangerous every year. I care deeply
7 about this issue, not just because I've seen it in the
8 headlines, but because I've seen the direct impact of
9 extreme heat on the people that I love the most, my
10 family.

11 Both of my brothers work outside. Both are small
12 business owners that, even in the shade, have to bear
13 the brunt of extreme heat. They are among the many
14 Latino workers who keep our communities running,
15 whether that's building homes, maintaining outdoor
16 spaces, or supporting essential infrastructure. Every
17 summer I worry about them. I worry that they will
18 suffer from heat exhaustion or worse, because in
19 Arizona, it's not uncommon for the temperatures to go
20 above 120 degrees. Anything can happen.

21 This is not just uncomfortable, it's life
22 threatening. Both of them experience high fatigue

1 every summer because regardless of how much they have
2 invested in small swamp coolers, or outdoor fans,
3 extreme heat prevails. Extreme heat is a serious
4 growing danger for outdoor workers across the country,
5 and especially here in the southwest. Without proper
6 protections, workers face heat exhaustion, heat stroke,
7 and even death. We see it every single year here in
8 Arizona.

9 I've heard my brothers talk about coworkers
10 getting dizzy, needing to rest under shade, and
11 sometimes pushing themselves beyond safe limits because
12 they don't want to seem weak or get fired from their
13 jobs. They don't always have consistent protections,
14 and that's just unjust. No one should have to risk
15 their health to provide for their family.

16 Latino workers, like my brothers, are
17 disproportionately (sic) represented in outdoor jobs,
18 particularly in agriculture, construction and
19 landscaping. In fact, nearly 80 percent of farmworkers
20 self-identified as Hispanic. These are people who put
21 food on our tables, build our communities, and keep our
22 cities running. But they're also the most vulnerable

1 when it comes to heat exposure.

2 The OSHA heat injury proposal is a long overdue
3 critical step to ensure that outdoor workers have the
4 protections they need to stay safe. I strongly support
5 the proposal and urge OSHA to finalize the strongest
6 possible version without delay. Lives are at stake.
7 Workers should not have to choose between a paycheck
8 and their safety. Strong, enforceable standards can
9 make a real difference and give families the peace of
10 mind that they deserve.

11 Given the heat waves are becoming more frequent
12 and intense we ask that the final rule include
13 additional protections for workers during these heat
14 waves. We ask that the final rule include stronger
15 protections for particular vulnerable people, including
16 pregnant people, elders, individuals with preexisting
17 conditions, and workers who may be exposed to
18 additional stressors, like air pollution on the job.
19 Thank you.

20 JUDGE KULTGEN: Thank you. Is that the end of the
21 testimony from Moms Clean Air Force.

22 MS. BECHARD: Your Honor, we've got Shaina, and

1 Mary, online as well I believe.

2 JUDGE KULTGEN: Okay. You can proceed, Ms.

3 Oliver, or Ms. Wagner, whoever wants to go next.

4 MS. WAGNER: Good afternoon.

5 MS. OLIVER: Okay.

6 MS. WAGNER: I'm sorry. Good afternoon. My name
7 is Mary Wagner, and I am the Nevada field organizer for
8 Moms Clean Air Force and EcoMadres. I have been a
9 proud resident of Nevada for the last 17 years. And
10 I'm a mother of two, one of whom has asthma. We live
11 in Las Vegas, one of the fastest warming cities in the
12 country. Just this June, we've already hit triple-
13 digit temperatures. That means higher energy bills for
14 families like mine, more sickness, and less time for
15 kids like mine to play outdoors. For children, elders,
16 and people with preexisting conditions like my son,
17 extreme heat isn't just uncomfortable, it's dangerous
18 and costly.

19 Working outdoors in this kind of heat can be life
20 threatening. This year alone we have already had three
21 heat-related deaths in Nevada. Exposure can lead to
22 heat exhaustion, heat strokes, and even death if not

1 treated quickly. Extreme heat drives up hospital
2 admissions for respiratory and heart issues. This is
3 personal for my community. Many of our Latino families
4 work outdoors in construction, landscaping,
5 agriculture, and other physical demanding jobs that
6 keep this city going.

7 Latinos are at disproportionate risk. About 80
8 percent of farmworkers in this country identify as
9 Hispanic. And since 2010, Latinos have made up about
10 one-third of heat-related work deaths in the U.S.,
11 despite representing only 17 percent of the workforce.

12 As a Latina mother, I've also experienced
13 firsthand the dangers of being pregnant in Nevada's
14 extreme heat. Pregnant people face higher risk for
15 pre-term labor, low birth weight, and pregnancy loss.
16 Barriers like poverty, and language -- language access
17 only make it harder for mothers in our country to get
18 the care they need during pregnancy.

19 Beyond physical health, extreme heat affects
20 mental health, increases violence, disturbs sleep, and
21 leads to higher rates of hospitalizations and death.
22 Heat is a silent killer, one that doesn't stop, not

1 even at night when families should be able to rest and
2 recover.

3 Without bold action, this crisis will only get
4 worse. By 2050, we could be facing three to four times
5 as many dangerously hot days if we fail to reduce
6 climate pollution.

7 Our key asks are the following: strong support
8 for the rule. Moms Clean Air Force strongly supports
9 OSHA's heat injury proposal as a critical step toward
10 developing strong heat stress and injury prevention
11 standards for workers. We call on OSHA to finalize the
12 strongest possible version of this standard as quickly
13 as possible.

14 We're testifying today because our voice -- our
15 voices matter. This is our chance to speak up for our
16 communities and loved ones, increased protection for at
17 risk pollutions, we urge OSHA to include stronger
18 protections for vulnerable groups like pregnant people,
19 older adults, adults -- those with preexisting health
20 conditions, and workers who may face additional risk,
21 such as exposure to air pollution on the job.

22 We asked increased protection during heat waves.

1 Heat waves are becoming more frequent and more intense.
2 The final rule must include added protection for
3 workers during these dangerous periods. We also ask
4 for cultural responsiveness.

5 We strongly support the rule's inclusion for
6 language access requirements to ensure that heat safety
7 information is available in languages workers and
8 supervisors can easily understand. This must be
9 maintained in the final rule to ensure true equity in
10 workers' protections. Our families, our workers, and
11 our communities deserve better. The time to act is
12 now. Thank you for your time.

13 MS. OLIVER: All right. Thank you for taking time
14 to hear -- hear our comments. My name is Shaina
15 Oliver, field organizer with Moms Clean Air Force,
16 EcoMadres, Colorado Chapter.

17 Over 43,079 Colorado parents and caregivers are
18 united for our children's right to play and live --
19 learn, and live in a safe environment. I first wanted
20 to acknowledge the ancestral lands of the over 574
21 tribal nations of what is now known as the United
22 States.

1 I work and reside on the ancestral lands of 48
2 tribal nations of Colorado. Importantly, I'm a mom of
3 four, and wife, and we are descendants of the Indian
4 Removal Act known as the Long Walk of the Navajo.
5 Living and working in Denver, Colorado, as a working
6 mother with loved ones and family members, our
7 communities are socioeconomically vulnerable and are
8 most likely to work the farms, construction sites,
9 utility sites, and as first responders.

10 And according to the Association of Farmworker
11 Opportunity Programs, it's estimated -- it's estimated
12 that there are up to 500,000 child farmworkers in
13 the -- in the U.S., with some starting work as young as
14 age 10. I know family members who work agriculture
15 jobs in Colorado and they are not the best -- best jobs
16 to have. These work sites do little to provide
17 appropriate cooling spaces and cool water
18 accessibility.

19 I also have a father who is an electrician who's
20 expected to work through all weather conditions, and
21 has worked at many construction and oil and gas sites.
22 Each year, Colorado, along with other states, continues

1 to break record -- break record heat indexes and poor
2 air quality continues to increase along with the heat.

3 According to the American Lung Association's most
4 recent State of the Air report, Colorado's communities
5 Denver, Greeley, and Aurora continue to rank as the
6 sixth worst area for ozone smog pollution, which is
7 made worse by extreme heat and is detrimental to
8 workers -- to outdoor workers, child workers, and
9 pregnant workers who are especially vulnerable.

10 Moms Clean Air Force recognized that farmworkers
11 are at high risk of heat-related stress. They are up
12 to 35 times more likely to die from heat-related stress
13 than the general population. 80 percent of farmworkers
14 identify as Hispanic, and one analysis found that
15 construction workers are 13 times more likely to die
16 than workers in other industries.

17 A 2020 study of child farmworkers in North
18 Carolina found that 48 percent had experienced a heat-
19 related illnesses -- illness within the previous 12
20 months. As moms, we know, extreme heat has adverse
21 impacts on maternal health, which has been linked to
22 preterm birth, low birth weight, pregnancy loss, and

1 heat-related stress in newborn babies, according to the
2 Bureau of Labor Statistics.

3 Exposure to environmental heat results -- resulted
4 in 479 U.S. worker deaths between 2011 and 2022, with
5 an average of 40 fatalities per year during that time
6 period. Colorado parents strongly support OSHA's heat
7 and injury and illness protection plan proposal. This
8 is a critical step towards protecting outdoor and
9 indoor workers faced with extreme weather and heat
10 stressors.

11 Moms Clean Air Force calls on OSHA to finalize the
12 strongest -- strongest possible version of this
13 standard as quickly as possible with the inclusion of
14 additional protection for workers during heat waves and
15 poor air quality days.

16 I now turn it over back to Elizabeth Bechard. And
17 I thank you for taking time to hear our comments.

18 MS. BECHARD: All right. Shaina, and Pita, and
19 Mary, given that, you know, communities across the
20 country have already experienced record breaking heat
21 in just the past few weeks, and that every year it's
22 getting hotter, we want to reiterate our wish that

1 OSHA's heat injury proposal be finalized as rapidly as
2 possible, and that you finalize the strongest possible
3 version of this rulemaking.

4 And we thank you again for your time and your
5 chance -- and the chance to comment today. Thank you
6 so much.

7 JUDGE KULTGEN: Thank you. Any questions from the
8 OSHA panel for any of the four speakers?

9 MR. LEVINSON: Yes, Your Honor, Andrew Levinson
10 for OSHA.

11 First of all, ladies, thank you very much for your
12 testimony. We greatly appreciate you taking the time
13 to join us and offer your thoughts and experience from
14 Moms Clean Air Force.

15 A couple of questions, the first one is, several
16 of you made remarks about strengthening protections
17 during heat waves. Either now or in post-hearing
18 written comments, we would like to know your thoughts
19 on what additional protections you think people should
20 have during heat waves. And if you have a definition
21 of how would workers or employers know when it was
22 actually a heat wave?

1 MS. BECHARD: We would love to follow up in post-
2 hearing written comments on that. Is there -- can you
3 direct us to the best way to do that?

4 MR. LEVINSON: Sure. If you go to the OSHA
5 website for this rulemaking --

6 MS. BECHARD: Okay.

7 MR. LEVINSON: -- we have a webpage that explains
8 all the post-hearing comment procedures. And since you
9 filed a notice of intent to appear, we will be posting
10 a list of questions on the website and emailing it to
11 everybody who filed a notice of intent to appear. So
12 you should keep an eye out for an email from us in the
13 next probably week or so --

14 MS. BECHARD: Okay.

15 MR. LEVINSON: -- with information on that.

16 MS. BECHARD: Sure.

17 MR. LEVINSON: My second question is probably
18 directed toward Ms. Wagner, but your organization,
19 broadly, may want to think about it. One of the things
20 that OSHA has heard repeatedly during this hearing is
21 that we should change the proposed reg to model it more
22 on what Nevada OSHA has done. They recently

1 promulgated a new reg that went into effect at the end
2 of April of this year.

3 And so we were curious, the experience from your
4 members in Nevada, if they've seen a change in the way
5 that employers are handling things in the state, and/or
6 if you think that what Nevada OSHA has done is -- has
7 been effective in protecting workers.

8 And in particular, one of the things I want to
9 direct you towards, the Nevada OSHA standard is much
10 more performance-oriented and includes fewer
11 requirements, like specific temperature triggers, or
12 water amounts, and gives employers a lot more
13 flexibility to adapt the plan to the work environment.
14 And so either if you have thoughts now, or if you'd
15 like to take some time, look at the Nevada OSHA
16 approach, we would love your experience on that.

17 MS. BECHARD: I can jump in here on behalf of Moms
18 and EcoMadres. We would definitely follow up
19 afterwards and respond to that specifically. It's a
20 great question.

21 MR. LEVINSON: Great. Thank you. And I think
22 that concludes the questions from the OSHA, Your Honor.

1 JUDGE KULTGEN: Any questions from the Office of
2 the Solicitor?

3 MS. WILES: Thank you, Your Honor. Linda Wiles
4 from the Solicitor's Office. I do have one follow-up
5 question. And as Mr. Levinson suggested, you can
6 consider including a response in post-hearing comments.
7 This was about some testimony about language access.
8 If you have recommendations for how best to provide
9 language access to folks that you represent. We would
10 love to hear your recommendations on that either now or
11 in post-hearing comments.

12 MS. BECHARD: I will jump in again and say that we
13 can absolutely provide post-hearing comments on that,
14 but I want to offer my colleagues a chance to respond
15 to that now as well, if they'd like to.

16 Or just in writing. We'll certainly follow-up
17 with that question as well.

18 MS. WILES: Thank you. That's all for me, Your
19 Honor.

20 JUDGE KULTGEN: And just for the record, the
21 responses from -- to the questions were made by Ms.
22 Bechard.

1 Do we have any questions from participants?

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

3 JUDGE KULTGEN: Thank you. Thank you all for your
4 participation and testimony today.

5 MS. BECHARD: Thank you so much.

6 MS. CARLON: The next speaker is Sonya Owens.

7 Please state your name and affiliation for the record.

8 MS. OWENS: Can you hear me?

9 MS. CARLON: Yes, we can.

10 MS. OWENS: Okay. Hello, everyone. My name is
11 Sonya Owens. Thank you for the opportunity to comment.

12 Some of the work we do is --

13 (Audio malfunction.)

14 JUDGE KULTGEN: Ms. Owens, at least from my point
15 of view, we have lost your audio. Ms. Owens?

16 MS. OWENS: Okay. We'll continue. We recommend
17 no mandate. This proposed rule is very similar to the
18 earlier one for weekly COVID-19 testing. That mandate
19 resulted in OSHA being sued by the National Federation
20 of Independent Businesses. The court decided
21 essentially three points: the statutes do not
22 authorize the Department of Labor and OSHA, COVID-19 is

1 not an occupational hazard, and OSHA only regulates and
2 enforces occupational hazards. The gist is the heat
3 must be generated from the work itself.

4 If we can progress to slide nine, please:
5 Temporary methods of relief, not scientifically or
6 medically proven to be reliable or predictable in
7 prevention is a basket full of negligence.

8 Next slide: There simply aren't enough laws,
9 rules or training to --

10 (Audio malfunction)

11 THE COURT REPORTER: Ma'am, this is the court
12 reporter. You did cut out again.

13 MS. CARLON: Ms. Owens, are you able to hear us?

14 MR. LEVINSON: This is Andrew Levinson from OSHA.
15 Either Your Honor or Mariam, might I suggest? Maybe a
16 phone call, and if we can connect Ms. Owens by phone,
17 that might be helpful in this instance.

18 MS. CARLON: Yes.

19 MS. OWENS: I'm sorry. I'm experiencing a poor
20 connection. Can you hear me well?

21 MS. CARLON: Now we can hear you. Now that we can
22 hear you, I think it'd be a good idea if we switched

1 over to your phone, if you have your cell phone by you,
2 Ms. Owens?

3 MS. OWENS: No, I don't. Let me -- let me just
4 pause for a second. If you want to go to the -- to the
5 next presenter while I get this set up. Or if you have
6 a couple of minutes, that's fine.

7 MS. CARLON: We can -- we can continue to help you
8 so we can continue with your testimony, if that is all
9 right.

10 MS. OWENS: Okay.

11 (Technical difficulties.)

12 MS. OWENS: I'm not connecting. There. I'm
13 connected. Oh, yes. Let me close this down. Can you
14 see me?

15 MS. CARLON: We cannot see you, if you haven't hit
16 the start video --

17 MS. OWENS: Can you hear me?

18 MS. CARLON: We can hear you loud and clear. Can
19 you hear me?

20 MS. OWENS: Can you still hear me?

21 MS. CARLON: Yes, we can still hear you.

22 MS. OWENS: All right. I'm on a -- on a tablet.

1 I've come off the laptop, and I'll try to progress from
2 here.

3 Can we move to slide 14, please: We looked at the
4 2021 Business Census and found that 49 percent of the
5 businesses have four or less employees, we converted
6 those numbers for OSHA.

7 Next slide please: OSHA --

8 (Audio malfunction)

9 JUDGE KULTGEN: Ms. Owens, we lost your audio
10 again. Ms. Owens?

11 MS. CARLON: Judge Kultgen, I'll try to reach out
12 to her directly offline and see if we can go ahead and
13 get her switched over to phone. If it's okay, to move
14 on to the next speaker, and then we'll go ahead and add
15 her.

16 JUDGE KULTGEN: That makes sense.

17 MS. CARLON: Okay. No problem.

18 MS. OWENS: I didn't -- I didn't hear that. Can
19 you hear me?

20 JUDGE KULTGEN: We can hear you again. The
21 contractor is going to contact you, and we're going to
22 move on to the next speaker. But we will come back to

1 you.

2 MS. OWENS: Okay. I think you're saying that
3 you'll come back to me. Could you be more --

4 MS. CARLON: Yes, we will -- I'm going to reach
5 out to you offline, and then we'll work on --

6 MS. OWENS: All right. I'm going to close off.

7 MS. CARLON: Yes. That's right.

8 MS. OWENS: And I'm going to switch locations.
9 All right?

10 MS. CARLON: I appreciate that. I will contact
11 you directly and we'll get you back on so we can go
12 through your testimony.

13 MS. OWENS: Thank you.

14 MS. CARLON: No problem.

15 All right. Our next speaker is Valerie Collins.
16 We do not see your name in the attendee list. So if
17 you have joined under another name, please use the
18 raise hand button to indicate your presence, and if you
19 have dialed in, please use the -- excuse me -- please
20 dial star 3 to raise your hand.

21 Our next speaker is Julie Samples. Please state
22 your name and affiliation for the record.

1 MS. SAMPLES: Good morning, or good afternoon. My
2 name is Julie Samples, and I'm an attorney with the
3 Oregon Law Center's Farmworker Program, a position I've
4 held since 2001. Thank you for the opportunity to
5 provide comments today.

6 Oregon adopted permanent heat illness prevention
7 rules in 2022, effective 2023. The adoption of the
8 rules was the result of the efforts of farmworkers,
9 including farmworkers who died or suffered greatly
10 because of heat-related illnesses, legal services
11 programs, a union of farmworkers, health care
12 providers, regulators, the governor's office, and
13 others.

14 My comments are based on over two decades of
15 listening to farmworkers, and I share two of their
16 voices with you today. One farmworker told us: I work
17 at the piece rate, and it is hard for me to take breaks
18 because I must meet a quota. I know the importance of
19 drinking water and want to drink water throughout my
20 day, but when the water is located three, four, and
21 five minutes away from where I am working, I cannot
22 drink as often as I should. Water should be very close

1 to the workers so we can drink it easily.

2 Some employers do not allow water in the orchard
3 next to the trees where we are working, but they can
4 easily have water available to us because I have seen
5 this in other orchards. If we cannot drink water
6 easily, how do we stop heat stress?

7 Another farmworker said: Ideally there would be a
8 place to rest under tents where water could be located
9 as well, along with tables and chairs. All my
10 coworkers look for shade to rest, and normally we find
11 it under the plants or bushes, but we must crouch down
12 and sit on the dirt. Without some prescriptive
13 measures, where and how far water is located, where and
14 when rest breaks should be taken, where and what shade
15 is appropriate, what element should be in a prevention
16 plan, who should be trained and on what; you end up
17 with workers crouching down in the dirt at a time when
18 they should be resting.

19 Or worse, farmworkers develop heat-related
20 illnesses and they not only miss days of work, they
21 become ill. One part that makes Oregon's heat stress
22 standards unique is that there are also heat standards

1 that apply in employer-provided labor housing. These
2 standards were enacted in part to improve sleep so
3 workers could rest and hopefully reduce the heat load
4 from one day to the next.

5 Some of the provisions of that standard include
6 cooling areas, so if the rooms where people sleep are
7 not able to maintain an indoor temperature of 78
8 degrees Fahrenheit, or less, employers must provide a
9 cooling area to cool off.

10 I will note that there are some changes to that
11 section that will begin January 1st, 2027. There's
12 also temperature awareness, so employers must provide a
13 thermometer. There's a training component. There's
14 information, so employer must -- employers must display
15 a heat risk and housing poster. And then there's
16 access. So employers must ensure that occupants always
17 have access to a working telephone. Many labor
18 housings are located in an area where cell phones don't
19 always get a signal.

20 The training component is critical to prevent heat
21 illnesses, and it was important to farmworkers that
22 both workers and supervisors receive training to reduce

1 debates about what to do in case of a heat event.

2 While Oregon's regulations were a product of
3 compromise, clarity in regulations favors both
4 employees and employers. Employers know what they must
5 do when and employees know what to expect and are
6 better prepared.

7 In my 24 years of representing farmworkers, I have
8 seen the effects of miscommunication, unclear or
9 ambiguous instructions, and vague rules.

10 In the executive summary to the final rules
11 adopted in Oregon, Oregon OSHA wrote, "In 2021, a
12 deadly heat event in the Pacific Northwest set record-
13 breaking temperatures in Oregon. On June 28th,
14 Portland International Airport reached 116 degrees
15 Fahrenheit, and other parts of the State were even
16 hotter. This extreme hot weather will happen again,
17 and it has made it necessary to enact protections to
18 ensure the health and safety of workers."

19 We urge you to adopt federal standards so that the
20 health and safety of workers across the United States
21 is considered. Thank you.

22 JUDGE KULTGEN: Thank you. Any questions from the

1 OSHA panel?

2 MR. LEVINSON: Yes, Your Honor, Andrew Levinson
3 for OSHA.

4 First, Ms. Samples, thank you very much for your
5 testimony. We greatly appreciate it. A couple of
6 questions -- or I guess, before we get to questions.
7 OSHA, as you may have heard earlier, has a post-hearing
8 written comment period that also does allow for post-
9 hearing written legal briefs. So if your organization,
10 particularly as you're a law center, is interested in
11 filing either additional comments or a legal brief we'd
12 be happy to receive either or both.

13 During the course of this hearing, the agency has
14 heard a number of employer groups ask for OSHA to model
15 its final regulation on what Nevada OSHA has done. Not
16 the Oregon OSHA approach. The Nevada OSHA approach has
17 no specifications and offers a lot more flexibility, it
18 is much more performance-oriented.

19 I heard you offer remarks in your oral testimony
20 about the importance of providing clarity about what's
21 required. Either now or in your post-hearing comments,
22 your thoughts and experience on the difference between

1 performance-oriented and specification-oriented
2 requirements for worker protection would be greatly
3 appreciated.

4 MS. SAMPLES: Yes, we can do that. I will offer,
5 and just, you know, one of the comments that I started
6 with from a farmworker talked about having to crouch
7 down in the shade under bushes. And I think that, you
8 know, technically the bush would offer shade. But in
9 reality workers having to crouch down during a break
10 does not really offer relief. And so while it could
11 comply technically with a requirement of shade, it does
12 not actually offer a rest to have to crouch down.

13 And I think that is one of the issues when rules
14 are -- are not specific enough or not clear enough. So
15 the Oregon rule regarding shade does specify that
16 people should be able to sit in a normal posture fully
17 in the shade. And I think that is just one example of
18 why rules do need to be specific. Otherwise, as I --
19 as I said, you end up with workers having to crouch
20 down. But I can follow up in more detail.

21 MR. LEVINSON: Thank you. My next question
22 relates to your written comments to the NPRM where you

1 requested that OSHA change its proposal to require
2 reacclimatization when an employee has been away from a
3 worksite for seven days instead of the 14 days as
4 currently proposed. Do you have any additional
5 evidence, either medical studies or other literature
6 that you could point us to justify a seven-day trigger
7 for reacclimatization instead of the 14-day trigger?

8 MS. SAMPLES: That is something that we'll follow
9 up with, with the post-hearing comments.

10 MR. LEVINSON: Thank you. Your Honor, the next
11 questions for this witness come from Stephen Schayer.

12 MR. SCHAYER: Yes. Hi, this is Stephen Schayer
13 from OSHA.

14 First, thank you, Ms. Samples, for your testimony
15 and for being here today. I also had a question on
16 your written comments that you submitted. In those
17 comments, you had indicated that OSHA should remove or
18 revise the scope exception for indoor sedentary
19 workers. So I was wondering if you believe that OSHA
20 should limit the indoor sedentary work exemption to
21 only activities performed below an upper temperature
22 limit, and if so if you have any suggestions for what

1 the upper limit should be, or any evidence to support
2 an upper limit like that, that would be very helpful
3 for us. And again, you could address this now or in
4 your post-hearing comments if you'd like.

5 MS. SAMPLES: We can address that in the post-
6 hearing.

7 MR. SCHAYER: Okay. Thank you very much.
8 Appreciate that.

9 MR. LEVINSON: Thank you. And Your Honor, the
10 next questions from OSHA come from Adriana Lopez.

11 MS. LOPEZ-MENENDEZ: Hello, Ms. Samples, Adriana
12 Lopez, OSHA Directorate of Standards and Guidance.
13 Thank you so much for your testimony. I have a couple
14 of questions. Oregon Law Center notes that through
15 their farmworker program and sister agency, Legal Aid
16 Services Oregon, that they have hosted several
17 listening sessions over many years. Are there any
18 summaries or reports from those listening sessions
19 besides the information that you submitted in comments,
20 that the Oregon Law Center can provide to OSHA? And
21 please feel free to send it through our post-hearing
22 comments, please.

1 MS. SAMPLES: Yes, I will -- some of those
2 listening sessions were attended by Oregon OSHA, and I
3 will need to see if Oregon OSHA maintains notes on
4 those.

5 MS. LOPEZ-MENENDEZ: Sure. Thank you. And then
6 can the Oregon Law Center elaborate on the types of
7 work performed in packing houses and nurseries that
8 they think would be considered sedentary under the
9 current proposed regulatory framework?

10 MS. SAMPLES: We'll include that when addressing
11 the other question regarding sedentary work sites.

12 MS. LOPEZ-MENENDEZ: Great. Thank you very much.
13 And then finally, is there a general relationship
14 between the temperature inside packing houses or
15 nurseries, and the outdoor temperature?

16 MS. SAMPLES: We can address that with post-
17 hearing comments.

18 MS. LOPEZ-MENENDEZ: Sure. Thank you very much.
19 Those are all my questions. Thank you for sharing your
20 testimony.

21 MR. LEVINSON: And Your Honor, that concludes the
22 questions from OSHA.

1 JUDGE KULTGEN: Any questions from the Solicitor's
2 Office?

3 MS. WILES: Thank you, Your Honor. Linda Wiles
4 from the Solicitor's Office. I don't have any
5 additional questions. And we would just like to thank
6 Ms. Samples for her participation in this hearing.

7 JUDGE KULTGEN: Any questions from the
8 participants?

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

10 JUDGE KULTGEN: Thank you. Thank you, Ms.
11 Samples, for your testimony today.

12 MS. CARLON: (Audio interference) speaker is Helen
13 Cleary. Please state your name and affiliation for the
14 record.

15 MS. CLEARY: Hi. Good afternoon. Can you hear
16 me?

17 JUDGE KULTGEN: Yes. Yes.

18 MS. CLEARY: Okay. Thank you. Thank you. My
19 name is Helen Cleary, and I am the founder of the OSH
20 Proterie, a platform and network for occupational
21 safety and health leaders. Our members are people who
22 turn regulations into real-world protections for

1 workers every single day. Thank you to OSHA for your
2 commitment and for listening so intently for these past
3 two weeks. We want to give you today the operational
4 safety perspective.

5 Imagine one solo maintenance worker in Utah out of
6 hundreds moving from home to home on a summer day, in
7 one house the air-conditioning is on and the next, I'm
8 not sure, but both feel warm. He'll need to stop, take
9 the temperature, record it, monitor and use a portable
10 fan, and remember to check in with the heat safety
11 coordinator every single time he enters a new location
12 and when there's a change in process or temperature.

13 If they're back from a vacation in Mexico, the
14 company may just limit the hours that they can work.
15 Meanwhile, a road crew in Mobile, Alabama, working
16 eight hours in 100-degree heat faces the same
17 checklist. We don't believe this is reasonable or
18 necessary to protect workers and manage effective
19 programs.

20 OSHA's proposal gets the exclusions and the
21 basics, water, rest, shade and training, right. These
22 are the foundations of effective programs and they save

1 lives. But then the rule adds layers of specificity,
2 multiple heat coordinators, mandated break schedules,
3 prescriptive water requirements, detailed emergency
4 response, constant PPE oversight, and these elements
5 can't be - can't be implemented the same way for large,
6 or small, or mobile workforces.

7 Moreover, they shift the focus from reducing risk
8 to checking boxes, making it more about paperwork and
9 process than risk-based safety protection.

10 The real issue is not the temperature trigger;
11 it's that the rule assigns the same level of risk and
12 response to all workers in all workplaces. A low
13 activity in a mild climate is treated the same as an
14 eight-hour shift in a hot unventilated warehouse. For
15 example, a delivery driver who steps in and out of air-
16 conditioning, or an aerospace engineer working in an
17 aircraft hangar with sliding doors would be subject to
18 the same requirements as a crew in a hot distribution
19 center.

20 And this approach does not reflect the realities
21 of the diversity of American workplaces. It also
22 compels employers to default to additional protections

1 not because it's hotter or necessary, but because it's
2 easier. And that's not risk-based; it's a waste of
3 resources, and worse, it erodes credibility of safety
4 programs.

5 Now, there are regional differences. California's
6 heat scoring mapping tool, developed by CalEPA, scores
7 every ZIP code for heat risk using real health data and
8 local climate. On the same day, Anaheim felt like 82
9 degrees and scored a zero risk, while Palm Springs felt
10 like 103, but it still only scored mild.

11 We appreciate the attempt to keep it simple, but
12 OSHA's reliance on temperature alone makes it less
13 about occupational safety and more about public health.
14 Heat is a hazard that affects everyone, work, home,
15 community. When the standard is triggered by a single
16 environmental factor without regard to duration,
17 workload, or actual exposure, it loses its occupational
18 focus and it creates requirements that are not
19 commensurate with risk.

20 And we're not recommending following the heat
21 scoring map or asking for more complexity. But
22 temperature alone doesn't tell the whole story, and it

1 will waste resources.

2 So let's look at California. California's outdoor
3 heat rule requires the basics at 80 degrees, but high
4 heat requirements apply at 95 degrees for specific
5 industries, required breaks are only for agriculture.
6 Acclimatization is required for new employees and
7 during heat waves, and then it's simply observation.

8 Now, that's more practical. And it's been working
9 for over 20 years for California, a state that is very
10 different than the other 49. But when California
11 proposed a much more prescriptive standard for indoor
12 work, despite employers expressing concerns about
13 necessity and cost, for years, I was there, it was the
14 State itself who hit the wall.

15 The Department of Finance estimated that it would
16 cost billions to implement in prisons, and the rule was
17 stopped in the final hours. Prisons were ultimately
18 excluded. A separate regulation is now being drafted
19 for them. And if California can't make a blanket
20 approach right, and work, how can we expect every
21 employer in the country to do it?

22 So here is what we're asking for. Let's keep the

1 basics: Water, rest, shade, training, and emergency
2 response, but put the how in guidance. Give employers
3 the flexibility to build programs that fit their unique
4 environments and allow them to maintain what's already
5 effective. Focus on outcomes, not just checklists.

6 And I'll leave you with this. We're not here to
7 say no. We're here to say let's get this right,
8 together, OSHA has an extraordinary opportunity to
9 draft a simple standard that many in industry would get
10 behind, one that truly protects workers and uses our
11 limited resources where they matter most.

12 Thank you for your time, your attention, and your
13 commitment to worker health and safety.

14 JUDGE KULTGEN: Thank you. Any questions from the
15 panel?

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

18 Thank you, Ms. Cleary, for your testimony. One of the
19 things that you've touched on is very similar to a
20 point that we've heard throughout the hearing about the
21 need for performance-oriented standards and not
22 specifications. The challenge that OSHA has been

1 wrestling with in this regard is, while one might say
2 that responsible employers or high road employers can
3 be trusted to use, perform a risk assessment and arrive
4 at the right outcomes, there are also plenty of
5 employers might disregard risk assessment or not
6 adequately perform it, and workers would be left
7 without adequate protections. How should OSHA strike a
8 balance between these two scenarios and do something
9 that offers employers the flexibility that you're
10 saying they need, while also offering workers the
11 guarantees that they're going to get adequate
12 protection that they're saying they need? And the -

13 MS. CLEARY: Yeah, and just a -- yeah.

14 (Audio malfunction.)

15 MR. LEVINSON: And just -- either -- we're happy
16 to hear that now or in the post-hearing written
17 comments, that you may have.

18 MS. CLEARY: Yeah. Thank you, Mr. Levinson.
19 We've been thinking about this a lot. And you know,
20 we've participated in the California process for many
21 years, and it's important to strike the balance. And I
22 appreciate that that's what OSHA is trying to do. And

1 it is a huge challenge.

2 And we think there's a way that some of the
3 elements can be more prescriptive and give some basic
4 requirements. But guidance is so important, especially
5 for small employers or people that don't have extensive
6 safety teams that they can reflect back to, and it's
7 something California has done well also. And they've -
8 they have model programs. They have specific guidance.
9 There's a heat campaign that communicates what those
10 elements are.

11 And a big part of this puzzle is enforcement. And
12 if OSHA can focus on enforcement, and the
13 communication, and the education from that lens, I
14 think that makes up some of the gap for any of the
15 open-ended elements. But again, we've been speaking a
16 lot about what specifics can be included and where does
17 it go over the line. And that's, you know, some of the
18 things I pointed out to was, the heat safety
19 coordinator and the PPE, you know, it says that the
20 employer must ensure the PPE is functional or working
21 at all times.

22 Well, if you have a mobile worker in the field

1 who's wearing something very effective, maybe just a
2 scarf that you get wet. The employer -- it's the
3 employee that's going to need to keep it wet to
4 maintain. And will the employer be cited for not
5 maintaining that PPE, and if so they may not offer it.

6 So those are the types of specifics that we think
7 can be dialed back but give some basic guidelines. And
8 so we're working on comments that will outline some of
9 those. And you know, I have copies of the fed OSHA
10 rule, the Cal/OSHA heat rule, the Oregon rule, the
11 Nevada rule, and trying to piece together, you know,
12 what can we pull from each of them, because every
13 region has done something I think that's good, and that
14 works. And then there's some that goes over the line.

15 And so you know, we'll work on something for you
16 because, you know, we will acknowledge that this -- the
17 patchwork approach, you know, that you've heard said
18 over the two and a half or three weeks, that is a
19 challenge too. And you know it's -- there is an
20 opportunity for fed OSHA to develop something that
21 pushes employers in the right direction, and then kind
22 of lets them go and figure it out. So we'll get you

1 more detail on that.

2 MR. LEVINSON: Thank you. And again, this is
3 Andrew Levinson for OSHA. Another question that we
4 would --

5 (Audio malfunction.)

6 JUDGE KULTGEN: One second. Let me ask a
7 question. Ms. Cleary, can you mute your microphone
8 while the questions are being asked? We're getting a
9 really bad echo.

10 MS. CLEARY: I'm sorry. Yeah. Is that better?

11 JUDGE KULTGEN: Yes. You may proceed with the
12 question.

13 MR. LEVINSON: Thank you, Your Honor. Andrew
14 Levinson for OSHA. So I don't know the composition of
15 the membership of your network or organization.
16 Another thing that --

17 MS. CLEARY: Okay. I'm not really hearing you.

18 MR. LEVINSON: -- we're really curious about is
19 you talked about the --

20 (Audio malfunction.)

21 JUDGE KULTGEN: Hold on one moment, Mr. Levinson.
22 I'm not sure --

1 MS. CLEARY: I'm not hearing him.

2 JUDGE KULTGEN: Can you hear, Ms. Cleary? I think
3 she said she can't hear us.

4 MS. CLEARY: Is that better?

5 JUDGE KULTGEN: Yes, we can hear you. Can you
6 hear us?

7 MS. CLEARY: Okay. Yes, I turned it down very
8 low, so hopefully there won't be feedback.

9 JUDGE KULTGEN: Okay. Yeah, that's much better.
10 You may proceed with the question.

11 MR. LEVINSON: Thank you, Your Honor. Andrew
12 Levinson for OSHA; I'm going to start at the -- at the
13 beginning of the question.

14 Ms. Cleary, we don't know the nature of the
15 network members that you have, but you mentioned risk
16 assessments and the ability of employers to tailor what
17 they're doing to their needs and their work
18 environment. If you have thoughts on the ability of
19 small employers, particularly those that don't have the
20 full-time safety professionals on staff to adequately
21 perform risk assessment and make decisions around
22 safety, we would love to know your thoughts and

1 experience on that, again, either now or in the post-
2 hearing comments.

3 MS. CLEARY: Yes. Yes. I think one thing, and I
4 mentioned this earlier is, you know, California
5 doesn't -- does model programs that creates that
6 checklist for you, or gives you, you know, risk
7 assessment on what you should do and what to go
8 through. And so if there's some -- there's opportunity
9 there. And then, you know, we'll examine it further of
10 how instruction on risk assessment can be done.

11 Because you're absolutely right. There are going
12 to be small employers that need that extra support to
13 say, just tell me what to follow. And if there's a
14 guideline and simple checklist, we think that could be
15 effective too.

16 MR. LEVINSON: Thank you. Your Honor, the next
17 questions from OSHA will come from Adriana Lopez.

18 MS. LOPEZ-MENENDEZ: Hello, Ms. Cleary. Adriana
19 Lopez, OSHA Directorate of Standards and Guidance.
20 Thank you for your testimony. In your experience, what
21 are the most common methods that employers are already
22 using to prepare for and respond to severe heat

1 emergencies, for example, heat stroke?

2 MS. CLEARY: For heat emergencies?

3 MS. LOPEZ-MENENDEZ: Yes, for example, for heat
4 stroke (audio malfunction) experiencing.

5 MS. CLEARY: Let's see. I think maybe -- for heat
6 waves, you know, one thing that employers do is the
7 timing of training and reminders aligns with the
8 seasons, so they know when the hot season is coming.
9 And they, you know, gear up and get their workforces
10 ready. It's a big part of communication, and training,
11 and educating employees on what they need to do to
12 remain protected.

13 You know, it happens during specific seasons, you
14 know harvesting seasons, you know, people know when
15 it's going to be hot. And so part of it is the
16 community effort between working with the employers,
17 working with the state, working with Cal/OSHA.
18 Cal/OSHA does a great communication campaign. Like I
19 said, it started, I think, in May.

20 And so everybody is gearing up at the same time to
21 address these hazards, aligned with the enforcement
22 programs, you know, that are out there. But I'll ask

1 for more specifics on what they actually do. But I
2 think a big part of it is education and communication.

3 MS. LOPEZ-MENENDEZ: Thank you. Yeah. Sorry, I
4 guess you're misunderstanding me, I think. I meant for
5 a worker who had (audio malfunction) for example?

6 MS. CLEARY: What happens when they have heat
7 stroke?

8 MS. LOPEZ-MENENDEZ: What are employers doing to
9 prepare and respond to these emergencies?

10 MS. CLEARY: Prepare and respond to emergencies.
11 Well, they do have emergency plans in place. So if
12 somebody is ill, and they do observe the workers, and
13 you know, one thing in California, one of the
14 requirements in California for acclimatization and
15 during high heat conditions -- and yeah, high heat --
16 sorry -- like I'm blanking on the word -- heat waves,
17 I'm sorry, heat waves, during heat waves, they are
18 prepared to support the workers with emergency response
19 plan, and medical first aid.

20 So those things are set up. And that's part of
21 the emergency response plan in general, but they know
22 the hazard is going to be higher during those heat

1 waves. And so they're prepared to -- you know, they
2 communicate, they do have some buddy systems for those
3 solo workers or they, you know, when they're new, they
4 come in, they have buddy systems.

5 That's part of initial training as well. So you
6 bring someone in and you have a buddy that goes out,
7 and doesn't just focus on heat, but focuses on all the
8 things that you have to do when you start a new job.

9 MS. LOPEZ-MENENDEZ: We would be interested in
10 knowing about the buddy system as well.

11 MS. CLEARY: I'm sorry?

12 MS. LOPEZ-MENENDEZ: That's okay. We would be
13 interested if you could expand on the buddy system.

14 MS. CLEARY: Yes.

15 MS. LOPEZ-MENENDEZ: Thank you. Those are all my
16 questions. Thank you.

17 MR. LEVINSON: Your Honor, that concludes
18 questions from OSHA.

19 JUDGE KULTGEN: Any questions from the Solicitor?

20 MS. WILES: Thank you, Your Honor. Linda Wiles
21 from the Solicitor's Office. I don't have any
22 additional questions. Thank you for your participation

1 today.

2 JUDGE KULTGEN: And any questions from
3 participants?

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

5 JUDGE KULTGEN: Thank you. Thank you for your
6 testimony today.

7 MS. CLEARY: Thank you. Thank you for all your
8 efforts these last two, three weeks. I understand how
9 grueling it probably feels. Thank you.

10 MS. CARLON: Your Honor, we wanted to ask if we
11 could recall the last witness, Sonya Owens. It looks
12 like she's back online.

13 JUDGE KULTGEN: Yes, that would be great.

14 MS. CARLON: Did you want her to restart or to
15 continue from slide 14, where she was in her testimony?

16 JUDGE KULTGEN: I'm going to turn that question to
17 the OSHA panel. Do you want her to restart from the
18 beginning?

19 MR. LEVINSON: Your Honor, I think we're happy to
20 leave it up to Ms. Owens if she felt like she would
21 like to start from the beginning. We want to make sure
22 she gets a chance to feel like she's fully heard, if

1 she'd like to pick up where she left off. We're also
2 happy to do that.

3 JUDGE KULTGEN: I think in reading the transcript,
4 it might be helpful to have all the testimony in one
5 place. But I will leave it up to Ms. Owens.

6 You may proceed with your testimony, ma'am.

7 MS. OWENS: Well, before I start, I'd like to make
8 sure that everyone can hear me.

9 JUDGE KULTGEN: Yes.

10 MS. OWENS: Wonderful. Your Honor, I'll take your
11 guidance, and we can just pause right here or start at
12 the beginning. I think that would be helpful for the
13 transcript.

14 As has already been stated, my name is Sonya
15 Owens, and I'm the Founder of the startup Cleanwerks.
16 As a specialty contractor we do safety planning and
17 training. As part of my background is I'm a commercial
18 electrician by trade, and OSHA 500 trainer, as well as
19 being a safety consultant and project manager, and a
20 member of the American Bar Association.

21 If we could move to slide five, please: We
22 recommend no mandate because there are a lot of

1 problems from start to end, and we don't believe that
2 it will achieve OSHA's goals to the saturation that it
3 desires. The proposed rule is very similar to an
4 earlier one for weekly COVID-19 testing. That mandate
5 resulted in a litigation lawsuit from the National
6 Federation of Independent Businesses.

7 The Court decided that the statutes do not
8 authorize the Department of Labor or OSHA to issue
9 mandates. It also said that COVID-19 is not an
10 occupational hazard, and that OSHA only regulates and
11 enforces occupational hazards. The gist is the heat in
12 this mandate must be generated from the work itself.
13 It's not climatic, and that precedence, court case,
14 creates a stumbling obstacle to this mandate.

15 Slide nine please: Temporary methods of relief,
16 not scientifically proven to be reliable or predictable
17 as a preventative is a basket full of liability.

18 Next slide please: There will never be enough
19 laws, rules, or training to overcome or stop human
20 nature. A good example is that the Good Samaritan Law
21 says, I tried to help; but contributory negligence
22 says, but you made it worse.

1 Slide 13 please: Pre-existing illnesses and
2 injuries can become work induced, and work induced can
3 become pre-existing.

4 Next slide: We looked at the 2021 Business Census
5 and found that 49 percent of businesses have four or
6 less employees, and we converted those numbers into
7 OSHA's numbers.

8 Next slide please: OSHA's goal is not to impact
9 only one-third of all businesses with this mandate.

10 Slide 19: Our recommendation is a framework of
11 best practices, not just for heat, but for extreme
12 working conditions.

13 Slide 21: OSHA did this in 2016, so it doesn't
14 have to reinvent the wheel; just replace the tires for
15 better traction.

16 Next slide: OSHA's SHARP Program in 2011 reduced
17 litigation by 52 percent, lost work hours by 87
18 percent, and an overall decrease in claims, 88 percent
19 reduction.

20 Next slide: It determined that one size does not
21 fit all, and that indirect costs can add as much as
22 three times the direct cost to the total cost. So the

1 projected cost of a break at \$42 now becomes \$155 and
2 \$79,000 for 1,900 workers spread out among
3 subcontractors in a medium-sized construction project
4 now becomes \$294,000 per break.

5 Slide 25 please: Let's talk about new tires.
6 Let's change the trigger from temperature, which can be
7 confusing to public safety alerts. It's already
8 active.

9 Next slide: It populates on Google, Apple, and
10 Waze maps, desktops, all mobile devices, and it updates
11 through these devices every 15 minutes.

12 Next slide: The National Weather Service produces
13 a weather app, Weather.gov, that provides a ten-day
14 projection of temperatures, and if you click on any
15 day, you would see hourly temperatures and
16 precipitation for the next 24 hours. This is all I
17 need to change work hours, days off, job assignments,
18 production, and timelines. And I can tell you it's
19 very accurate because I use this app every day to walk
20 my dog. No complaints.

21 Next slide: In the private sector, all 50 states
22 are at-will employment. It's not going to change with

1 the mandate. One of the things that we've looked at as
2 part of our innovation is simplify reporting and
3 recordkeeping for really small subcontractors or
4 family-owned businesses. It's worked really well.
5 OSHA's safety compliance regulations and the
6 requirements that we look for becomes part of the
7 safety terms and conditions to get the contract, to be
8 even considered for the contract, that's worked very,
9 very well.

10 Next slide: In the public sector, it's more of a
11 protected employment environment and listening to much
12 of the comments that have been made in these -- in
13 these hearings, we're thinking about how effective it
14 would be if OSHA issued a mandate for a code of ethics
15 to regulate behavior, much similar to what the American
16 Bar Association has.

17 Next slide: Comprehensive safety training for
18 safety officers. It's just one of the suggestions that
19 we have for higher standards refresher courses.
20 Supervisory authority on site doesn't make much sense
21 to be able to detect a safety hazard and not have the
22 authority to tell a worker to stop, to adjust, or any

1 sort of changes.

2 We'd like OSHA to consider an enhanced
3 whistleblower program, where OSHA trainers and safety
4 officers, if they report a violation to OSHA, that
5 it's -- it becomes a priority in terms of response or
6 investigation from OSHA, because now you have a witness
7 who is trained in OSHA regulations that's reporting
8 this to the Agency to follow up on.

9 We'd like to see job descriptions and daily tasks
10 for safety officers. In our projects our safety
11 officers get a playbook that tells them who is doing
12 what, where, about all the workers on site, and also
13 deliveries. It gives them an idea of what safety
14 issues to expect and to detect.

15 Slide 32, please: SHREWS is a terminology that we
16 use in our training, it stands for sudden health risks
17 effects, affecting workers simultaneously. These are
18 massive risks affecting large amounts of workers, such
19 as pandemics, or severe weather, and various disasters.

20 Next slide: In 44 years, there has been 403
21 confirmed weather-related disasters costing over \$1
22 billion each, more than half of them are severe storms.

1 There's a 67 percent chance of severe storms and
2 cyclones happening. And in the last five years,
3 there's been an average of 23 disasters per year.

4 Slide 36, please. Our FROG, which is our First
5 Responders Operations Guide, jumps on SHREWS.

6 Next slide: Our safety practices become early
7 pre-disaster preparedness, and early pre-disaster is
8 not redundant with pre-disaster. Pre-disaster planning
9 is for the known; early pre-disaster planning is for
10 the unknown.

11 Slide 39, please. Under OSHA's Best Practices
12 Guidance, which has begun as an agency invested program
13 since at least 2016, looking as far back as 2011,
14 right, its voluntary practices is proactive, quickly
15 adapts and adopts, incorporates pre-planning and early
16 prep planning, and it also tames the SHREWS.

17 Next slide: Thank you. I'm available for
18 questions.

19 JUDGE KULTGEN: Thank you. Any questions from the
20 OSHA panel?

21 MR. LEVINSON: Your Honor, OSHA does not have any
22 questions, but I did want to thank Ms. Owens for her

1 testimony. And I did want to point out OSHA has a
2 post-hearing, written comment period, and a post-
3 hearing legal brief period. They're the same time.
4 And since you're a lawyer and a number of the points
5 that you raised in your testimony are legal in nature,
6 I just wanted to make sure that you were aware that
7 that we will be accepting post-hearing legal briefs if
8 you would like to file one.

9 That concludes OSHA's -- OSHA at this time, Your
10 Honor.

11 JUDGE KULTGEN: Thank you. Any questions from the
12 Office of the Solicitor?

13 MS. WILES: Thank you, Your Honor. Linda Wiles
14 from the Solicitor's Office. I don't have questions,
15 but I would like to mark the PowerPoint that Ms. Owens
16 displayed during her presentation as Exhibit No. 17,
17 and ask that it be entered into the hearing record.

18 JUDGE KULTGEN: I will admit Exhibit 17, the
19 PowerPoint that Ms. Owens presented.

20 MS. WILES: Thank you, Your Honor.

21 And thank you so much, Ms. Owens, for your time
22 and participation today.

1 MS. OWENS: You're welcome.

2 JUDGE KULTGEN: Do we have any questions from the
3 participants?

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

5 JUDGE KULTGEN: Thank you. Thank you, Ms. Owens,
6 for your testimony today.

7 MS. OWENS: Thank you, everyone.

8 MS. CARLON: The next -- oh. Sorry.

9 JUDGE KULTGEN: Before we call the next witness,
10 can we take a ten-minute break?

11 MR. LEVINSON: No problems from OSHA, Your Honor.

12 JUDGE KULTGEN: Ms. Carlon, Mariam?

13 MS. CARLON: Yes. No problem.

14 JUDGE KULTGEN: Okay. Let's take a ten-minute
15 break. According to my clock, that would be until 2:20
16 p.m. Eastern Time.

17 (Break.)

18 JUDGE KULTGEN: I think we can proceed.

19 MS. CARLON: Great. The next speaker is Marc
20 Futernick. Please state your name and affiliation for
21 the record.

22 DR. FUTERNICK: Hello. I'm Dr. Marc Futernick, an

1 emergency physician, I'm joining from Pasadena,
2 California. I represent the Medical Society Consortium
3 on Climate and Health, with over 50 medical societies,
4 including my own the American College of Emergency
5 Physicians. I also serve as the managing editor --

6 (Audio malfunction.)

7 JUDGE KULTGEN: Dr. Futernick, your voice is
8 fading in and out. I'm not sure if the court reporter
9 is able to get everything you're saying. Is there a
10 way to get a better signal?

11 DR. FUTERNICK: Yeah. Is it the signal, you
12 think, or the microphone?

13 MS. CARLON: Yeah, it sounds like it's the signal.

14 DR. FUTERNICK: Okay.

15 MS. CARLON: It sounds like you're breaking up.
16 It sounds a little more like your connectivity. If you
17 have headphones by you, I would absolutely recommend
18 you maybe put those on. If not, I can work with you to
19 switch over to calling in instead.

20 DR. FUTERNICK: What I can do is switch to a
21 different Wi-Fi, which I think will have a better
22 connection.

1 MS. CARLON: Okay.

2 DR. FUTERNICK: And let me pop -- pop back in.

3 MS. CARLON: Okay. No problem.

4 DR. FUTERNICK: I'll try that now.

5 JUDGE KULTGEN: Thank you.

6 DR. FUTERNICK: Can you hear me now?

7 JUDGE KULTGEN: Yes.

8 DR. FUTERNICK: Is that better?

9 MS. CARLON: Much better. Is that better, Judge?

10 JUDGE KULTGEN: Much better.

11 MS. CARLON: Okay.

12 JUDGE KULTGEN: Thank you.

13 DR. FUTERNICK: Terrific. Maybe I'll take it from
14 the top. So my name is Marc Futernick, I'm an
15 emergency physician. I'm joining from Pasadena,
16 California. I represent the Medical Society Consortium
17 on Climate and Health, which represents over 50 medical
18 societies, including the AMA, and my own, the American
19 College of Emergency Physicians.

20 I serve as the Managing Editor of the Journal of
21 the Climate Change and Health, so I'm familiar with the
22 scientific literature on this topic. I thank you for

1 the opportunity to provide comments. We very much
2 support the proposed rule and recommend further
3 strengthening to fully protect our workforce from acute
4 heat illness, as well as chronic health impacts of heat
5 exposure.

6 It has already gotten much hotter with many more
7 extremely hot days, whether defined by pure temperature
8 or standard deviations from the normal. This trend
9 will continue and very likely will increase in
10 trajectory. The outdoor and indoor workforce is more
11 regularly being exposed to dangerous conditions that
12 were rare just a few decades ago, and they are already
13 suffering the heat -- the heat health impacts.

14 Some real life examples that we encounter
15 regularly in the emergency department include roofers
16 who pass out in dangerous situations, pregnant women
17 who faint or miscarry working in hot warehouses, and
18 tragically, outdoor laborers such as farmworkers with
19 end-stage kidney failure from chronic dehydration and
20 heat exposure, will be on dialysis for the remainder of
21 their shortened lives.

22 We focus a lot on acute heat stroke, but it's

1 important to know that both chronic and acute extreme
2 heat exposure damages every organ in our body, and
3 leads to severe health consequences that we don't
4 naturally associate with the increasing temperatures.
5 When it is extremely hot, more people die. More people
6 have heart attacks and strokes, two of the top three
7 causes of death. More babies are born premature with a
8 lifetime of health impacts. More people shoot and stab
9 each other when it's hot out. More people die by
10 suicide, along with an increase in many other
11 psychiatric symptoms.

12 We don't think as well as we normally do, both in
13 the moment and as a result of chronic exposure to
14 extreme heat.

15 Sometimes we talk about groups that are at higher
16 risk than average, and people assume that these are
17 small pockets, but they are not. When grouped
18 together, many workplaces will have a majority of their
19 workforce in a high-risk category.

20 So these include older workers, pregnant workers,
21 those on medications for blood pressure, or allergies,
22 or mental health, or many other conditions, those who

1 work in the heat intermittently so they don't fully
2 acclimate. Those who wear heavy or dark uniforms, or
3 carry equipment, and workers with pre-existing
4 conditions like asthma, kidney disease, diabetes, very
5 common conditions. This amounts to most of us who are
6 at risk for severe heat illness.

7 OSHA's mission is to keep America's workforce safe
8 and healthy. This will also make our economy more
9 productive and resilient. We know how to prevent heat-
10 related deaths at work. It's time to end workers dying
11 of heat exposure, as well as the chronic illness from
12 long-term exposure to extreme heat without adequate
13 safeguards, such as water, shade, and rest.

14 I'd also like to respond to a few of the specific
15 questions posed by OSHA. So onsite wet bulb globe
16 temperatures provide a better indication of physiologic
17 stress than other measures that have been discussed.
18 Heat index is an excellent surrogate in the shade, but
19 for workers exposed to direct sunlight, something like
20 wet bulb globe thermometers would be better at
21 predicting health harms.

22 Based on research on heat-related deaths that have

1 occurred, requiring monitoring and implementation of
2 protective plans at a heat index of 80 degrees makes
3 the most sense if we're to realize the opportunity to
4 prevent worker deaths, the most severe outcome.

5 We have strong data that indicates rare
6 temperatures are dangerous, even in moderate ranges,
7 and temperature climates -- I'm sorry -- and temperate
8 climates have endured some of the most lethal heat
9 waves due to lack of acclimatization. So think about
10 the Pacific Northwest heat dome that was just
11 mentioned, Montreal, Tokyo, places like that that have
12 had large numbers of deaths.

13 Using the percentile for temperature, such as 85th
14 percentile, or 90th percentile for that region, is
15 likely better than one specific value for the entire
16 country.

17 Clothing modification can be impactful, so would
18 be a reasonable option in a monitored plan if it was
19 implemented between those thresholds for high heat
20 versus dangerous heat. And that could include changes
21 in color, fabric, limiting the additional equipment
22 carried; so there are modifications that would be

1 reasonable.

2 Real-world experience demonstrates the
3 effectiveness of common-sense solutions such as water
4 availability, shaded rest breaks, and employee and
5 supervisor education in preventing fatalities. It's
6 likely we need to push farther to prevent the
7 repetitive damage borne by outside workers that leads
8 to chronic kidney, cardiovascular, and neurologic
9 illness.

10 Research and experience demonstrate that
11 acclimatization is an essential component of any
12 effective plan. The first week of outdoor work is the
13 most dangerous and should be managed carefully.

14 Thank you for your consideration of our input.
15 Please implement a strong rule that protects the health
16 of our workforce, which will optimize the productivity
17 and resilience of our economy overall. Thank you.

18 JUDGE KULTGEN: Thank you. Any questions from the
19 OSHA panel?

20 MR. LEVINSON: Yes, Your Honor. Andrew Levinson
21 for OSHA. First of all, Dr. Futernick, thank you very
22 much for your testimony. We, in addition to having the

1 opportunity to respond now, OSHA also will be accepting
2 post-hearing written comments. So if you'd like to
3 expand upon your thoughts in the post-hearing written
4 comments, we would also be happy to -- to receive
5 those.

6 I want to hone in on, you proposed, I think it was
7 85 percent of the average temperature as a potential
8 heat trigger that you think would be better than an 80-
9 degree heat index. Is that correct? And do you think
10 that one trigger is sufficient, and do you have any
11 literature to support that approach over other
12 approaches?

13 DR. FUTERNICK: I would say our organization is
14 not officially promoting that approach. I wanted to
15 share that philosophy. We can share some more
16 information about the impact that would take. I do
17 think some of these approaches may need to be
18 localized. I think having a strong baseline that we
19 know protects everyone makes sense, so that heat index
20 of 80.

21 But I could see how there could be temperatures
22 below that that reach these thresholds of 90 or 95

1 percentile for that area, that would also be dangerous
2 for the workers that wouldn't be caught by that. And
3 so we would propose that we use good science to
4 establish some of those other safeguards as well.

5 MR. LEVINSON: Thank you. And anything you can
6 expand in post-hearing comments, we'd be happy to
7 receive. I want to also go back to your point about
8 the importance of acclimatization, and carefully
9 managing, I think, was the word that you phrased, that
10 first week of work. Any thoughts that you have on
11 acclimatization, and when that period of
12 acclimatization should occur, is it really just when
13 you hit that 85 percent threshold or first week above
14 80 degrees?

15 And any thoughts that you have on people who
16 return to work, for example, after a vacation if
17 acclimatization or reacclimatization should happen?
18 We'd be happy to hear the thoughts of the various
19 medical groups that -- that you represent.

20 DR. FUTERNICK: Thank you. It's not an extremely
21 well-studied or understood physiologic concept in terms
22 of those kind of details. I thought that question

1 earlier was quite interesting. Is it a week off, or
2 two weeks off? We know that it takes a full three
3 weeks or more to acclimate fully. We will -- we will
4 search for some more hard data to share with you that
5 may guide these decisions about the length of time
6 being away.

7 I wouldn't -- I wouldn't feel qualified to say a
8 week versus two weeks, but three weeks I think would
9 certainly be enough that someone should be
10 reacclimated.

11 MR. LEVINSON: Thank you. And Your Honor, that's
12 all for questions from OSHA.

13 JUDGE KULTGEN: Any questions from the Solicitor's
14 Office?

15 MS. WILES: Thank you, Your Honor. Linda Wiles
16 from the Solicitor's Office. I don't have any
17 additional questions, but thank you, Dr. Futernick, for
18 being a part of the hearing today.

19 JUDGE KULTGEN: Any questions from the
20 participants?

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

22 JUDGE KULTGEN: Thank you. And thank you, Dr.

1 Futernick, for your testimony.

2 DR. FUTERNICK: Thank you.

3 MS. CARLON: The next speaker group is the Society
4 of Chemical Manufacturers and Affiliates, represented
5 by Sedra Beckman and Robert Helminiak.

6 Please state your name and affiliation for the
7 record as you both move throughout your testimony.

8 MS. BECKMAN: Robbie, would you like to go first?

9 MR. HELMINIAK: Sure. There we go.

10 Hi, everybody. I'm Robert Helminiak with the
11 Society of Chemical Manufacturers and Affiliates,
12 SOCMA. We're the specialty chemical industry. And
13 I'll give you a tiny bit of background, and I will give
14 you a little bit of our high-level input before I turn
15 it over to my colleague, Sedra Beckman, to give you a
16 little bit more detail on some more on-the-ground
17 examples.

18 So we're the specialty chemical industry. I'm
19 sure many of you know specialty chemical industry, but
20 just to make sure. We're not, you know, the orange
21 barrel that rolls off the line 24 hours a day. We are
22 actually what we call, small-volume, high-value

1 products.

2 A really simple way of thinking of it is, you
3 know, you can take something that we manufacture and
4 pour it into one of those orange drums and then the end
5 product, whatever that might be, maybe a consumer good,
6 has a certain quality to it. So for example, it could
7 be, you know, make something more dent resistant, or it
8 could make something reflect, you know, UV light, or it
9 could make something harden under UV light.

10 We make products, we make a lot of, you know,
11 APIs, the active pharmaceutical ingredients, we make a
12 lot of products that go into the semiconductor space.
13 We make a lot of products that go into the agriculture
14 space. Another thing that's really important to note
15 for this industry is that we are not continuous process
16 manufacturers. And most regulations are really written
17 with that, with continuous process in mind.

18 We're batch manufacturers. And what that really
19 means is, you know, we will bring in raw materials and
20 inputs. We will, you know, go through the
21 manufacturing process and produce our chemical for
22 maybe an hour, maybe a week, a month, a year, whatever

1 it would be, but then we bring in new inputs. We might
2 actually retweak the equipment itself, meaning we can
3 bring in, you know, adding a knockout pot, or changing
4 a distillation tower, or something, and manufacture
5 something entirely different.

6 So our facilities are a little bit fluid in that
7 sense, because we don't just make the same thing every
8 single day, you know, all the time. And that -- that
9 creates some challenges just for general regulatory
10 compliance, because as I said, regulations are usually
11 written for continuous process facilities.

12 Now, I'll note that safety is the top priority of
13 SOCMA, and we reflect our members' facilities and their
14 views in that -- in that note. We have a number of
15 programs like ChemStewards, which is a continuous
16 improvement program. We also have -- we offer safety
17 training for members as well. And our members actually
18 have, you know, robust heat safety practices already in
19 place regardless of federal law, state law, state
20 regulations, any of that, they already have this all in
21 place because safety is such a top priority.

22 What we should keep in mind related to heat

1 illness is that this is really -- these are targeted
2 issues, these are not systemic failures when we're
3 seeing challenges here. And we'd recommend that OSHA
4 keep that in mind as they're moving -- moving forward
5 with the development of this rule, whether we move to a
6 final rule, or whatever the next step might be.

7 Minimally, SOCMA's recommendation is that OSHA
8 make several changes, because there are a lot of
9 unintended consequences, and frankly, there's not
10 enough flexibility in this rule. You know, one of the
11 significant unintended consequences is this is -- this
12 creates significant resource -- this is going to take
13 significant resources, and SOCMA members are primarily
14 small- medium-sized businesses.

15 And the mandates that are included here that lead
16 to those -- that resource consumption, those are
17 resources that would probably be better used by the --
18 by the companies for -- to promote worker safety in
19 other areas where they can control it and would have a
20 better positive overall effect.

21 I'm just going to mention a couple of areas that
22 are a real challenge before I turn it over to Sedra.

1 You know, one of the things that I recommend for every
2 rule for every federal agency is avoid duplication. We
3 don't need redundant regulations, and we certainly
4 don't need regulations that will potentially conflict.
5 We also need to -- in this -- for this rule, as I said,
6 this rule is frankly too prescriptive. We need a lot
7 more flexibility.

8 You know, some of the requirements in the rule
9 require PPE, but it's PPE that might be a problem in a
10 chemical facility, or there are requirements for safe
11 venting, or fans, and they might not be allowed to be
12 near, you know, some type of hazardous material that we
13 have in the facility. So there are some regulatory
14 inconsistencies that could be a challenge. And if this
15 rule is very prescriptive, it's going to cause a
16 significant conflict.

17 As a number of other speakers have said, we
18 strongly recommend using flexible heat triggers instead
19 of just a flat rate for the entire country, different
20 regions are different. They just -- there should be a
21 much more regional, flexible approach. As I mentioned,
22 you know, some of the PPE requirements may conflict

1 with other requirements for other regulations related
2 to hazardous materials and facilities.

3 You know, one of the other issues is just the
4 paperwork issue, and that's perpetually an issue for
5 SOCMA members. This is -- the recordkeeping
6 requirements here, you know, extend to things like
7 first aid, and that aren't even required in other OSHA
8 regulations. And it's really just -- it creates -- it
9 creates additional burden that really doesn't have a
10 significant benefit to this rule.

11 You know, before I turn it over to Sedra, I'll
12 mention, you know, the top priorities, the things that
13 OSHA has to keep in mind as a -- finalizing this rule
14 is it has to be a practical rule. It has to be
15 flexible; it has to be a flexible rule, both in the
16 application of any safety measures, as well as the
17 assessment of when to apply those safety measures,
18 meaning the heating -- the heating degree days, or
19 temperatures, or climate zones, whatever.

20 SOCMA would strongly urge OSHA to review this
21 rule, and really take a step back and make sure to
22 apply that flexibility.

1 But with that, let me turn it over to Sedra.

2 MS. BECKMAN: Thank you. Robbie.

3 My name is Sedra Beckman. I'm the Health, Safety
4 and Environmental Manager for CJB Industries, Inc. in
5 Valdosta, Georgia.

6 CJB is a small, family-owned specialty chemical
7 manufacturer, like Robbie talked about. In South
8 Georgia, we have a climate that is humid subtropical.
9 Our daily temperatures rise to greater than 80 degrees
10 in April and stay above 80 degrees until October,
11 sometimes November.

12 Our business model is a total chemical
13 manufacturer. Not just a batch, but a total. So we
14 don't make anything for ourselves. We make it for
15 other companies. They send us their recipes, they send
16 us their chemicals, they send us their packaging, they
17 even send their vehicles to us to pick up their
18 materials. So we've got to be flexible on our
19 equipment, our processes, and most of all, our people.

20 So I'm also the chair of SOCMA's Health and Safety
21 Committee. And like Robbie had mentioned, we don't
22 support the rule in the way it is written. So this

1 rule would unfairly burden companies in regions like
2 ours where the hot weather is ambient. It's part of
3 our daily life. Companies that use temporary labor to
4 fill in for full-time employees would not be able to
5 use that temporary labor anymore, so if we had an
6 employer with five call outs today, we would not be
7 able to bring in five temporary employees to fill that
8 gap.

9 So we would actually be at a disadvantage as far
10 as having to train those temporary employees and get
11 them in slowly through the acclimatization process, and
12 not be able to have them work on the floor, even though
13 they live and work in this environment on a daily
14 basis.

15 And so we strongly urge looking at the
16 acclimatization period and the acclimatization
17 schedule. As our employees work in this environment,
18 we do change our schedules and we do update -- like
19 Robbie said safety is a huge priority for us. So we
20 start in April, we give training, we make sure that our
21 employees understand the heat. The first thing we do,
22 our April training as a group is, we talk about what

1 heat stress is, we talk about medical emergencies. We
2 weave heat stress first aid into several other
3 trainings. It's part of our weekly reminders that go
4 out. It's part of the life here.

5 We also would disagree with the idea of recording
6 the heat-related injuries or illnesses that don't meet
7 the requirement outlined in 29 CFR 1904, requiring
8 documentation of cases that are first aid would be
9 unnecessary and could create confusion with the
10 recordkeeping process. The current rule clearly states
11 that such cases are not recordable, and this proposal
12 would conflict with that intent.

13 We also believe that there are two effective
14 measures currently in place that could be applied to
15 companies that tend to be bad actors, that don't think
16 about their employees, that don't put these in place,
17 that would be the General Duty Clause and the National
18 Emphasis Programs on heat.

19 Thank you for your time today.

20 JUDGE KULTGEN: Thank you. Any questions from the
21 OSHA panel?

22 MR. LEVINSON: Yes, Your Honor. Andrew Levinson

1 for OSHA.

2 First of all, thank you both very much for your
3 testimony today. And I guess my -- we've heard from
4 many stakeholders that they would like a final reg that
5 is much more flexible, and/or performance-oriented.
6 And what we're wrestling with is the tension between
7 how do we provide significantly more flexibility, while
8 at the same time assuring certain minimum protections
9 for workers. And -- and let me give you a
10 hypothetical.

11 If we simply said, provide workers with water, and
12 an employer provided an eight-ounce bottle of water to
13 a worker for an entire day when it was 100 degrees out,
14 would that be adequate or not? And how would employers
15 know that it was not adequate? And how would OSHA
16 enforce that scenario?

17 And so there are two sides of that coin and the
18 flexibility, of how do we make sure that the
19 flexibility doesn't turn into, effectively, no
20 protection. And any thoughts that you have now, or in
21 post-hearing comments would be very welcome.

22 MR. HELMINIAK: Sure, Andrew, we will certainly be

1 happy to address that in follow-up comments. I'll work
2 with Sedra and our Health and Safety Committee. But
3 number one, what I would say is, employers should know
4 what is adequate in these situations. And it should --
5 and the employer should have the flexibility to be able
6 to accommodate workers in different ways. Like that
7 universal approach doesn't necessarily work. Maybe a
8 regional approach does work, but the more prescriptive
9 it gets, the more likely you are to -- the more likely
10 you are to like sort of fence people in and prevent
11 people from taking other actions that might actually be
12 even better.

13 So what I would say is, a minimum threshold might
14 be a good idea. But being too prescriptive actually
15 prevents the company from thinking, and taking action,
16 and developing their own plans. I mean, you guys know
17 how it works with, for example, you know, PSM, you
18 know, you come up with an overarching plan for your own
19 facility that works for you.

20 That's -- like I said, that flexible approach is
21 going to be the most effective approach. And of
22 course, at the end of the day, as I mentioned at the --

1 at the outset, there are only -- there are not a lot of
2 these, you know, heat illness issues that arise. And
3 frequently it is likely due to someone not following
4 the rules anyway, meaning it's not that they didn't
5 know. It's not that they didn't know what they should
6 do; it's that they opted, basically, to not.

7 And that's what we would encourage OSHA to look
8 more at. Look more at actual enforcement, and make
9 sure that we're focusing on people that are not
10 meeting, you know, basic criteria that they should --
11 that they know that they should be meeting, instead of
12 broadening out rules for people that are already -- for
13 companies that are already in a good place, that are
14 already following the rules, that are already good
15 actors, that have a lot of these programs voluntarily
16 in place.

17 MR. LEVINSON: Thank you. My next question
18 relates to something that Ms. Beckman touched on, which
19 is acclimatization and the need, in particular, for
20 temp workers. And I'm just curious if you have
21 thoughts on how you approach work hardening, or other
22 sorts of situations with temp workers where they're not

1 used to working in your facilities, and then you bring
2 them on, and -- and do you address acclimatization for
3 temp workers now, and if so how?

4 MR. HELMINIAK: Sure. Just before Sedra jumps in,
5 I can say there are a lot of -- a lot of SOCMA members
6 certainly have seasonal workers. And I can reach out
7 to our members, work with Sedra again, with the Health
8 and Safety Committee, and get a cumulative answer, sort
9 of from the group.

10 But Sedra, is there anything you would like to add
11 there?

12 MS. BECKMAN: I think, Robbie, you said that best
13 that it would -- if we do the group consensus --

14 MR. HELMINIAK: We'll do that.

15 MS. BECKMAN: -- it'd be better.

16 MR. LEVINSON: Okay. Thank you.

17 The next question from OSHA, Your Honor, comes
18 from Stephen Schayer.

19 MR. SCHAYER: Yes. Hello, I'm Stephen Schayer
20 from OSHA. First, thank you to Ms. Beckman and Mr.
21 Helminiak for being here today, and for your testimony.

22 I had a question about triggers that was based on

1 the SOCMA written comment that we received. So in your
2 comment there, it was mentioned that many of your
3 member companies expressed concern that the high heat
4 trigger in the proposal, which is a heat index of 90
5 degrees, was too low. And you indicated that many of
6 your member companies currently use an ambient
7 temperature of 95 degrees as the applied trigger.

8 As you know, the proposed rule relied on heat
9 index, which takes into account ambient temperature and
10 humidity. So just wondering if you would support, or
11 your membership would support an increased high heat
12 trigger based on a heat index, say for example, 95
13 degrees, or if not, you know, if there are any high
14 heat triggers that would be based on heat index that
15 would be feasible for SOCMA and your membership.

16 MR. HELMINIAK: I'll certainly go back and ask the
17 committee. But again, I think we would need to look at
18 it from a more regional approach. Having just a
19 static, single, definitive, whether it's heat index, or
20 temperature, whatever it might be, it is problematic.

21 You know, as Sedra mentioned, you know, in some
22 cases we have companies where the employees live in the

1 region. They work there all the time, like they have a
2 different sort of comfort level, even with that region
3 than a different region where they might need lower
4 thresholds. I will go back and I'll see if we -- if we
5 can -- if we have a specific finite number. But I
6 suspect the answer is going to be that we really need
7 flexibility, and a much more regional approach.

8 MR. SCHAYER: Sure. Thank you. And if there's
9 any evidence that you could submit to the record on,
10 you know, geographical -- and/or evidence, and data
11 that would support geographical approaches. And also,
12 you know, at what level that could be done? Is it
13 based on state, or region, or local level? You know,
14 things -- things like that would be helpful.

15 MR. HELMINIAK: Okay.

16 MR. SCHAYER: Thank you.

17 MR. LEVINSON: Your Honor, the next question from
18 OSHA comes from Deirdre Green.

19 MS. GREEN: Good afternoon. This is Dr. Deirdre
20 Green with OSHA Standards and Guidance. This question
21 is regarding recordkeeping. In the written comments
22 that you guys submitted, you mentioned that the

1 proposed recordkeeping provision for temperature
2 monitoring would be burdensome. As is, the proposal
3 provides the flexibility of maintaining temperature
4 records for indoor work areas in a written form or
5 electronically, and many monitoring devices have the
6 storage capacity to retain records for the proposed
7 six months. Do you think that using electronic
8 monitoring devices would make the proposed
9 recordkeeping requirement less burdensome?

10 MR. HELMINIAK: I'll get you a better answer in
11 writing afterwards, but I suspect that, you know, even
12 when we're talking about electronic. I don't know that
13 that solves the problem. I think there's a lot of
14 temperature fluctuation in these sites, and I think
15 that the recordkeeping benefit is, probably not great.
16 I suspect it does not, but I will get you a better
17 answer.

18 MS. GREEN: Thank you very much. That's all for
19 me.

20 MR. LEVINSON: All right. Your Honor, the next
21 question from OSHA comes from Zoe Petropoulos, who is
22 joining us online.

1 MS. PETROPOULOS: Hi. This is Zoe Petropoulos
2 with the Directorate of Standards and Guidance. I have
3 a few questions about paragraph (d), which is
4 identifying heat hazards. And these are related to
5 comments that SOCMA submitted. My first question, in
6 the written comments, you mentioned that many member
7 companies with outdoor work sites measure temperatures
8 on site daily, and that these members conduct more
9 frequent monitoring during the warmer months.

10 So my question is if you have any specifics, any
11 data, or examples on what that frequency of monitoring
12 that members conduct in the warmer months looks like?
13 Anything you're able to provide now or in post-hearing
14 comments?

15 MR. HELMINIAK: I don't have anything at my
16 disposal, but I can go back to the members, we can get
17 some -- we can get some examples, certainly.

18 MS. PETROPOULOS: Got it. And a related question,
19 you're -- as you're likely aware, the current language
20 in the proposal for monitoring outdoor work sites is
21 that employers, quote, "Must monitor with sufficient
22 frequency". And so we're curious if your organization

1 has any thoughts on this language in the context of
2 what members are already currently doing?

3 MR. HELMINIAK: I can go back and poll my members
4 and get you guys a better, more comprehensive answer
5 than I could -- than I could estimate right now.

6 MS. PETROPOULOS: Okay. We heard -- I'll just
7 add, we heard yesterday from a witness that they --
8 they actually did not like that language, and they
9 thought it was too ambiguous and that they would prefer
10 more objective criteria to know what frequency they
11 should monitor. So we're curious if your organization
12 has any thoughts on that witness's perspective?

13 MR. HELMINIAK: I will have to go back and look at
14 the witness's testimony because I'm not sure, and I
15 can't say off the top of my head, but I can follow up,
16 and we can give you a written answer to follow up.

17 MS. PETROPOULOS: Okay. And if it's helpful, this
18 would -- this comment yesterday was from The Brewers
19 Association.

20 MR. HELMINIAK: Okay.

21 MS. PETROPOULOS: And then I have one more
22 question for you about monitoring of temperatures and

1 heat index. So in your member company's indoor
2 facilities, so transferring from outdoor to indoor now.

3 MR. HELMINIAK: Uh-huh.

4 MS. PETROPOULOS: Are there any work areas that
5 remain at consistent or predictable temperatures or
6 heat indexes?

7 MR. HELMINIAK: That's going to be -- that's going
8 to depend on company to company. I'm sure there are, I
9 don't know -- I don't know what percentage of them are.
10 It's probably pretty minimal, but again, I can go back
11 to the members and ask.

12 MS. PETROPOULOS: Okay. My follow-up question is
13 for those members who may have work areas that do
14 remain at consistent or predictable temperatures.
15 We're interested in their thoughts on the current
16 language in paragraph (d) of the proposal that outlines
17 the monitoring plans that indoor employers with indoor
18 work areas would need to create.

19 And we're wondering if that language that is
20 currently there around monitoring plans, would allow
21 them to avoid what SOCMA described in their comment as
22 like the hourly monitoring of every single work area.

1 We're wondering if that -- your members view that
2 language as allowing them to avoid that or not. And if
3 there are changes that SOCMA would recommend for
4 capturing these situations, we would be welcome to it.

5 MR. HELMINIAK: Okay. I will go back and ask them
6 as well. I will ask them that as well.

7 MS. PETROPOULOS: Thank you. And I do have one
8 more question for you about rest breaks. I know in
9 SOCMA's comment there was mention of break areas, and
10 there was mention that, you know, water would be
11 provided, typically, near work areas. And I'm
12 wondering if you could discuss how your members
13 currently handle rest breaks. Specifically, if they
14 are provided to workers as workers believe they are
15 needed, or if they are scheduled rest breaks. If it
16 varies by member, we're curious what the various
17 members' plans on rest breaks currently are.

18 MR. HELMINIAK: It's going to vary by member.
19 It's going to vary by member and facility. I speculate
20 that they all sort of tailor it to almost their
21 individual employees, because as I said, we're small-
22 medium-sized businesses, so they know, you know, who is

1 on the floor, who is moving indoors and outdoors, you
2 know, what temperatures they're used to. Anything --
3 any specific reason for them to be treated in a unique
4 fashion. They're going to know that, and it's probably
5 going to be on an individual, case-by-case basis.

6 There is not -- I strongly suspect there's not
7 going to be any generic approach, like they may have a
8 minimum, they may say you must take a break every so
9 often, but I suspect that that approach is going to be
10 literally facility to facility, maybe even almost
11 employee to employee.

12 MS. PETROPOULOS: Got it. And if there are
13 examples of what you just described, if there are
14 members that do have minimums, but it's flexible
15 otherwise, or if there's kind of generic flexibility
16 and that workers kind of dictate when they take breaks,
17 we're interested in hearing that. As you probably are
18 aware, the proposed standard includes rest breaks if
19 needed at the initial trigger, and then the mandatory
20 scheduled rest breaks at the high heat trigger.

21 And so we're wondering if this would be feasible
22 for your members, and if it would - if any part of it,

1 or all of it, would be consistent with what they're
2 already doing.

3 MR. HELMINIAK: Got it. I will check with them.

4 MS. PETROPOULOS: Okay. Thank you so much. And
5 sorry for all the questions; but that's it for me.

6 MR. LEVINSON: Thank you. And Your Honor, before
7 I go on to the next person, I actually wanted to have a
8 follow-up question related to rest breaks.

9 We've heard from people in other industries, such
10 as construction, where people are doing concrete pours
11 and they have kind of batch processes that can't be
12 interrupted. We're curious if there are things in your
13 industry where there are similar chemical processes,
14 manufacturing processes that can't be interrupted, and
15 how you accommodate breaks in those scenarios, and what
16 techniques your members have used for those sorts of
17 scenarios to deal with heat, would be particularly
18 helpful.

19 And for the record, that was Andrew Levinson from
20 OSHA.

21 Your Honor, the next question from OSHA comes from
22 Patti Downs, who is joining us online.

1 MS. DOWNS: Hi, everyone. Patti Downs with the
2 Directorate of Standards and Guidance. Both today and
3 in the written comments submitted, SOCMA discussed how
4 some controls are not appropriate in chemical
5 manufacturing environments as they can cause other
6 risks of harm to employees. For example, I think in
7 the written comments it mentioned fans or cooled air
8 directed at work areas may increase worker exposure to
9 airborne contaminants or affect calibration of scales.
10 So OSHA is interested in learning more about what
11 controls your members have implemented to reduce
12 exposures in these areas.

13 MR. HELMINIAK: Okay. I may have to follow up
14 with you on that question, but I can certainly reach
15 out to our members and --

16 MS. DOWNS: Okay.

17 MR. HELMINIAK: -- get some -- get some good
18 examples there.

19 MS. DOWNS: Great. Thank you. We've also
20 heard -- oh, Patti Downs from the Directorate of
21 Standards and Guidance again. We've also heard from
22 other commenters that several provisions in the rule

1 would not be feasible for workers who move between
2 indoor and outdoor work sites. So we're wondering if
3 you have procedures or protections -- I'm sorry -- what
4 procedures or protections do your member companies
5 currently have in place for those types of workers?

6 MR. HELMINIAK: Again, this is going to be on a
7 facility-by-facility, maybe even an employee-by-
8 employee basis, but I will -- I'll get you guys some
9 examples from our members.

10 MS. DOWNS: Thank you so much. That's all for me,
11 Andy.

12 MR. LEVINSON: Thank you. And before I go to the
13 last question, I just wanted to remark, and I may
14 butcher your name -- Mr. Helminiak?

15 MR. HELMINIAK: Yes.

16 MR. LEVINSON: Okay. I saw you scribbling notes,
17 and I just wanted to let you know OSHA is going to be
18 producing a list of the questions that we've asked that
19 will be out about a week or so after the conclusion of
20 the hearing.

21 MR. HELMINIAK: Okay.

22 MR. LEVINSON: We'll be posting it on the website,

1 and we will be emailing it to everybody who spoke and
2 filed a notice of intent to appear. So while you're
3 furiously scribbling notes, I wanted to let you know
4 we've got you covered.

5 (Laughter.)

6 MR. LEVINSON: And want to make life a little
7 easier for you.

8 MR. HELMINIAK: Well, thank you, I appreciate it,
9 because I was getting nervous because my notes were
10 getting long.

11 MR. LEVINSON: Yeah. The other thing is, the
12 YouTube videos are also available the day after, and so
13 you can go on the website and click on today's hearing,
14 and you can always rewatch the YouTube video as well.

15 Our last question from OSHA comes from Adriana
16 Lopez here in the room.

17 MS. LOPEZ-MENENDEZ: Hello, Adriana Lopez, OSHA
18 Directorate of Standards and Guidance. Thank you for
19 your testimony. Just wanted to know, do your members
20 typically have a way to store ice on site, such as an
21 ice maker or freezer?

22 MR. HELMINIAK: I'm fairly certain that most of

1 them do, but let me confirm that and go back and get
2 you a firm answer and get you some examples of exactly
3 what they would do for ice storage.

4 MS. LOPEZ-MENENDEZ: Thank you. That's all for
5 me.

6 MR. LEVINSON: Okay. Your Honor, that concludes
7 the questions from OSHA.

8 JUDGE KULTGEN: Any questions from the Solicitor?

9 MS. WILES: Thank you, Your Honor. Linda Wiles
10 from the Solicitor's Office. I just wanted to verify
11 some of the comments you made today. And just to
12 confirm my understanding.

13 I think I heard you say a couple of things about
14 reporting HRIs or use of PPE. I wanted to ensure that
15 you are basing your comments on the proposal and the
16 reg text that was proposed in OSHA's rule, and not
17 considering the framework that was presented during the
18 SBREFA process, because the recordkeeping requirement
19 is limited to indoor monitoring temperatures, and that
20 was referenced in some of our -- my OSHA colleagues'
21 questions about electronic monitoring --

22 MR. HELMINIAK: Uh-huh.

1 MS. WILES: -- and PPE is an optional control, but
2 I think I understood you to say that some -- in some
3 instances, PPE may not be available to employees at
4 your members' work sites. So I just wanted to provide
5 an opportunity for you to clarify that testimony.

6 MR. HELMINIAK: Sure. And I will come back with
7 you in writing on that as well. But the PPE example
8 was just to ensure -- what I want to make sure that we
9 do in this -- and as I said, all regulation really to
10 make sure that there's not a conflict, to make sure
11 that there isn't some type of safety requirement that
12 mandates you not wear something, or that you do
13 something in the facility, but then have another
14 conflicting requirement related to heat illness that
15 tells you to -- direct you to do something else. PPE
16 was really just the example that I was using in that
17 instance, but I will make sure to revisit this with my
18 members.

19 MS. WILES: Thank you so much. Linda Wiles again
20 from the Solicitor's Office. And just to follow up on
21 something that Andy said, there will be an official
22 transcript of the hearing also produced after the

1 conclusion of the hearing, and that will be posted to
2 the rulemaking docket, as well as the video recordings
3 up from the YouTube live stream, and the questions
4 document that OSHA will be preparing.

5 That's it from me, Your Honor.

6 JUDGE KULTGEN: Thank you. Any questions from
7 other participants?

8 MS. CARLON: Yes, Your Honor, we have one from Mr.
9 Lundegren. Please state your name for the record.

10 MR. LUNDEGREN: Thank you. This is Bruce
11 Lundegren at the Office of Advocacy at the U.S. Small
12 Business Administration.

13 Hi, Robert and Sedra, good to see you both.
14 First, let me thank you, your association and your
15 members who participated in the SBREFA panel on this
16 rule. That was very much appreciated and very helpful.

17 Robert, I wanted to follow up on a question. And
18 obviously, a lot of the small businesses that have
19 provided input have said that they'd like a rule that
20 is less prescriptive, and more flexible, and a
21 performance-oriented type of standard. And there was
22 an earlier question that said, if you had a performance

1 standard would say something like: Provide water to
2 your employees. But it would entail a lot more than
3 that.

4 A performance standard would say something like:
5 You shall provide water in sufficient amount -- amounts
6 to ensure that each employee is adequately hydrated.
7 You know, so could you talk a little bit more about
8 what -- what does a performance standard entail and how
9 would that be -- ensure employee safety and health?

10 MR. HELMINIAK: Sure. I'm going to -- again
11 promise to follow up in writing, but you know, in this
12 instance, yes, that was a general example, to provide
13 water. But you know, at each one of our facilities,
14 our members are actually looking at these, you know, on
15 an individual basis. You know, every facility is going
16 to be different in different regions of the country.
17 And they're going to have, you know, a different actual
18 plan for their employees, for their wellness.

19 And the flexibility that's really necessary for
20 these plans varies -- is integral because it -- there
21 are many factors that can really influence it. For
22 example, the temperature may fluctuate over the course

1 of the day. So having -- having a flexible plan is
2 actually a much better approach than having something
3 that is purely prescribed and purely the -- purely a
4 checklist is effectively what we really want to avoid
5 there, is what we want is that flexibility. But I
6 will, as I said, follow up in writing, Bruce. Okay?

7 MR. LUNDEGREN: Sure. Bruce Lundegren from the
8 Office of Advocacy again. And Robert, if I could, a
9 lot of the small businesses have talked about
10 impracticality, and I think there was an earlier
11 question on this. Also, I think Mr. Levinson asked,
12 impracticality, and feasibility, or creating a greater
13 risk. And obviously in your industry, in your sector,
14 you are dealing with complex chemical reactions.

15 So is this something that a final rule should
16 include a provision? And how in particular are these
17 types of mandatory breaks, and things like that, how
18 are they a challenge in your sector?

19 MR. HELMINIAK: Sure. We -- you're right, Bruce,
20 we do have a lot of -- there are a lot of hazardous
21 materials on site. There are a lot of federal and
22 state rules that we have to comply with in the handling

1 of all of those. And we want to make sure that
2 there's -- there isn't a conflict here. Whatever the
3 final rule that OSHA may come up with needs to ensure
4 that there is, in fact, no conflict, because we don't
5 want to take somebody out of a potential heat illness
6 issue and put them in a different type of risk.

7 We don't want to put them in a place where
8 they're -- you know, violating some type of other type
9 of standard. Or even going broader, even outside of
10 just the OSHA space. You know, there's -- there are
11 EPA regulations that we have to comply with as well.
12 And that is absolutely something that OSHA has to keep
13 in mind as they develop a final rule.

14 MR. LUNDEGREN: Okay. That's great. Thank you,
15 Robert.

16 Thank you, Your Honor. That's all I had.

17 JUDGE KULTGEN: Thank you. Thank you for your
18 testimony, Ms. Beckman and Mr. Helminiak.

19 MR. HELMINIAK: Thank you.

20 JUDGE KULTGEN: Before we call the next group of
21 people, we will wait for questions until after the five
22 speakers on the screen right now have provided their

1 testimony. So we will not be doing questions after
2 each one. But the individuals should remain on the
3 webinar to respond to questions after the testimony of
4 Ms. Grant.

5 MS. CARLON: Great. The next speaker is Robert
6 Byron. Please state your name and affiliation for the
7 record.

8 DR. BYRON: Good afternoon, Your Honor, and Agency
9 representatives. Thank you for the opportunity to
10 speak. My name is Robert Byron. I'm a physician who
11 practiced internal medicine in Southern Montana for
12 over 35 years, caring for patients in the clinic, the
13 emergency room, and the hospital. Most of that time
14 was spent caring for patients who had limited access to
15 health care, primarily due to financial reasons. And
16 all of that time has been spent caring for patients
17 considered high risk of suffering from exposure to
18 extreme heat.

19 Thus, I come before you today on behalf of my
20 patients and the hundreds of thousands of other workers
21 in need of common-sense protections for life altering,
22 potentially life threatening heat illnesses.

1 Even in Montana, located in the northern part of
2 the Continental U.S., as we are, and not a subject to
3 the increasingly frequent and extreme heat events in
4 the southern U.S., the 2021 Climate Change and Human
5 Health in Montana Report, for which I was one of the
6 lead authors, identified heat as one of the most
7 important climate-related health concerns already
8 affecting Montanans' health.

9 When I started practicing in the 1980s, the heat
10 waves were much less frequent. That began to change,
11 and I routinely caution patients about, particularly
12 those with chronic medical conditions, to be aware of
13 the heat. As time progressed, I didn't just caution
14 those that were high risk. I cautioned everybody
15 because the extreme heat is such a health risk.

16 You've heard a lot about the health risks, and I
17 won't go into those, but I will emphasize two, and one
18 in particular is the impact on pregnant women and their
19 fetuses. If somebody my age, as an elderly person,
20 dies from a heat exposure, that's bad and we don't want
21 it to happen, but if it impacts a pregnant woman or her
22 child, such the child is born prematurely or with

1 intrauterine growth retardation, that child is impacted
2 for their entire lives. They do not grow out of it,
3 and that is -- everything we can do to prevent that is
4 necessary.

5 The other aspect that you've probably heard -- may
6 not have heard much about, and that is the hundreds of
7 thousands of people who are at increased risk for
8 adverse impacts from heat exposure because of the
9 medications they have to take every day for common
10 conditions like high blood pressure, heart failure, and
11 mental health conditions that affect their body's
12 ability to regulate temperature and put them at
13 increased risk for heat effects.

14 As tragic as hospitalizations and deaths are,
15 especially when most are preventable, what's missing
16 from those numbers are the huge economic impacts of
17 heat-related illnesses on people as well as businesses.
18 The lost wages resulting from decreased productivity
19 due to heat, as well as the time required to treat and
20 recover from those illnesses, is devastating to
21 individuals and businesses alike.

22 One study found that heat-exposed agricultural

1 workers were 14 percent more likely to experience a
2 traumatic injury, compared to non-heat exposed ag
3 workers. And a 2021 study found that occupational
4 injuries increased on hot days, both indoors and
5 outdoors, including injuries not directly related to
6 heat, such as slips and falls. And then a 2021 report
7 from the Adrienne Arsht-Rockefeller Foundation
8 estimated extreme heat accounts for as many as 120,000
9 work-related injuries per year.

10 For all those reasons, I urge you to implement
11 strong heat standards that provide appropriate warning,
12 protections and preventative measures for both indoor
13 and outdoor workers. And I thank you for your time and
14 for listening.

15 JUDGE KULTGEN: Thank you. Please remain on the
16 webinar and we will call the next witness.

17 MS. CARLON: The next speaker is Robin Richard.
18 Please state your name and affiliation for the record.
19 Ms. Richard? Ms. Richard, it looks like you are
20 unmuted, but we are not able to hear you.

21 JUDGE KULTGEN: Ms. Richard, you may want to leave
22 the meeting and come back. We will recall you later,

1 and hopefully then you'll have a connection. Hopefully
2 you can hear me, and hopefully then you'll have a
3 connection and we'll be able to hear you.

4 MS. CARLON: And I'll just send her some
5 instructions in the chat?

6 JUDGE KULTGEN: Thank you.

7 MS. CARLON: The next speaker is Eve Shapiro.
8 Unfortunately, we do not see your name in the attendee
9 list, so if you have joined under another name, please
10 use the raise-hand feature to indicate your presence.
11 And if you've called in, please select star 3 to raise
12 your hand.

13 The next speaker is Hazel Chandler. Please state
14 your name and affiliation for the record.

15 MS. CHANDLER: Hi. I'm Hazel Chandler. I'm a
16 grandmother -- a mother, grandmother, a great
17 grandmother, 80-year old climate refugee. I've had to
18 flee Phoenix because of extreme heat, and -- and
19 medical reasons, and medications that I'm on that put
20 my life at extreme risk. I am currently staying with
21 my daughter in Prescott, where it's about 20 degrees
22 cooler, and I can handle the weather here.

1 I want to talk to you about the real people that
2 are behind this. We often talk about, you know,
3 regulations, and all of this different -- but these are
4 real people that are being impacted by heat.

5 I wanted to share with you a story that really
6 impacted to me, because it's easy to believe that, oh,
7 it's just homeless, it's just people that are, you
8 know, not careful, et cetera, et cetera, that are being
9 impacted.

10 A few months -- about four years ago I was
11 volunteering for Moms Clean Air Force and -- oh,
12 volunteering -- I was working for Moms Clean Air Force
13 and a volunteer showed up, that was a brand new mom.
14 She just had had her baby, and she wanted to get really
15 active. And over three or four months, she got really
16 active with me, and was one of my best volunteers.

17 And after Labor Day weekend, I get this panic call
18 from her; and her husband, who is a doctor, who was out
19 hiking with six other doctors, died of heat stroke, out
20 while out hiking. She was absolutely devastated, she's
21 a 20-something -- mid-20s with -- with a tiny baby, at
22 that time was only four months' old. I continued to

1 follow, follow her, we've kept close tabs, and there's
2 a couple things that have stuck out that I just think
3 that is really, really important.

4 For that reason, I really want to make sure that
5 we get it right when OSHA puts heat things in place.
6 One of the things is that when -- when it's -- it's
7 hot, when people -- people, their brains are not
8 working as well. And so you know, we often can't
9 depend on another person looking out for the group as
10 reliable when everyone is experiencing the same heat.
11 So we need to keep that in mind that it, you know --
12 it's just really important that we have things in place
13 so that we have people that are checking on each other
14 that may not have the exposure to the heat.

15 The other thing that I, you know, realized after
16 listening to her story and this -- all of this is that
17 it happened so fast, you know, they -- her husband and
18 his -- his colleagues, basically took a wrong turn, and
19 were only out an extra, like, hour, and the entire
20 group was in serious heat problems. All of them were
21 evacuated, but he was dead on arrival to the hospital,
22 in fact, he was dead when help arrived.

1 This left a mom, a baby, parents, all kinds of
2 people grieving. And behind every one of our workers
3 that are exposed to extreme conditions there -- they
4 have loved ones that care about them, and depend on
5 them for an income. And it's -- it's a huge loss, that
6 the trauma is -- goes through the entire family.

7 So I encourage you to make sure you think about
8 the people when you're making these rules. And how can
9 you best protect the people, and the families, and
10 people that love them? Please, without delay we -- I
11 encourage you the strictest possible protection so that
12 we don't have other families like Amy and Chloe that
13 are without their husband and their dad.

14 JUDGE KULTGEN: Thank you. Do we have any
15 questions from the OSHA panel?

16 MR. LEVINSON: Your Honor, I think there was still
17 Megan Grant.

18 JUDGE KULTGEN: You're right.

19 MR. LEVINSON: And then I don't know if Ms.
20 Richard was able to rejoin.

21 JUDGE KULTGEN: Yes. My apologies. I did this
22 out of order. Let's call the next witness.

1 MS. CARLON: The next witness is Megan Grant, and
2 we do not see your name in the attendee list. So if
3 you have joined under a different name, please use the
4 raise-hand button to acknowledge your presence. And if
5 you've dialed in, please use star 3 to raise your hand.

6 And Your Honor, at this time, we do have Robin
7 Richard back on the line as well.

8 JUDGE KULTGEN: Great. It doesn't appear that Ms.
9 Grant is on the line. So let's go ahead with Ms.
10 Richard. You may proceed.

11 DR. RICHARD: Okay. You can hear me now?

12 JUDGE KULTGEN: Yes, we can.

13 DR. RICHARD: Great. My name is Robin Richard.
14 I'm a general internal medicine physician and a fellow
15 of the American College of Physicians, who has been
16 serving rural communities in the Four Corners area for
17 22 years. My number one concern with today's testimony
18 is the health and well-being of the many people here
19 who work in hot indoor and outdoor spaces in myriad
20 occupations.

21 Just yesterday, I saw a woman whose work in a
22 commercial kitchen is making her unwell, as the

1 workspace is too hot and lacks mechanisms for cooling,
2 and had to write a letter to her employer to make
3 accommodations. I appreciate the proposed rule and the
4 opportunity to testify. Simply, my patients need
5 protection from heat.

6 No one's health or life should be sacrificed to
7 heat, as heat-related illness is preventable with
8 simple and achievable measures, and federal protections
9 are long overdue in becoming more essential as
10 temperatures rise.

11 I've reviewed the NIOSH recommendations from the
12 2016 Criteria for a Recommended Standard. This
13 document provides robust and achievable recommendations
14 regarding heat protection standards and provides many
15 tools to implement such standards. NIOSH's
16 recommendations are based on knowledge of heat stress
17 and strain, and geared toward making sure workers'
18 bodies are not exceeding the ability to maintain safe
19 core temperatures in warm conditions.

20 I'd like to focus on four areas: One, heat
21 trigger levels. Wet bulb globe temperature in
22 conjunction with metabolic demand is the best measure

1 for heat triggers. This is why the military developed
2 it and uses it for people in basic training. It's also
3 used by athletic programs and should be the standard.
4 If heat index of 80 degrees is used, it must be highly
5 localized, adapted to indoor environments, and take
6 into account heat, radiation, metabolic demand, and
7 clothing.

8 Two, acclimatization. 70 percent of heat-related
9 deaths occur during the first week of work due to lack
10 of acclimatization. The body needs time to adapt its
11 compensatory mechanisms. NIOSH recommended schedules
12 for acclimatization are appropriate and should be used
13 for new and returning workers.

14 The next is medical screening. One of the prior
15 participants spoke about this. It's critical, as many
16 people work in risky environments, have common chronic
17 medical conditions, and take medications that make them
18 more prone to heat-related illness. These people need
19 extra education about how to care for themselves in the
20 heat, and need appropriate accommodations so they can
21 work safely.

22 Finally, work/rest cycles. Studies show heat

1 exposure leads to worse cognitive and physical
2 performance, resulting in increased injuries and lower
3 productivity. The rest work cycles must be adequate to
4 allow the body to cool and maintain safe core
5 temperatures. And again, NIOSH has a number of
6 recommended standards for that.

7 OSHA's mission is to ensure America's workers have
8 safe and healthful working conditions. OSHA carries
9 out its mission by setting and enforcing standards.
10 I'm asking OSHA to fulfill its mission and make America
11 healthier by heeding NIOSH recommendations in aspects
12 of the proposed rule, and codifying them into robust
13 heat protection standards for both indoor and outdoor
14 workers. Thank you.

15 JUDGE KULTGEN: Thank you. And now we will do --
16 any OSHA panel questions for Dr. Byron, Dr. Richard,
17 and Ms. Chandler.

18 MR. LEVINSON: Your Honor, OSHA, thanks all of the
19 witnesses for their testimony, but we have no questions
20 at this time.

21 JUDGE KULTGEN: Any questions from the Solicitor's
22 Office?

1 MS. WILES: Thank you, Your Honor. Linda Wiles
2 from the Solicitor's Office. I also don't have any
3 questions. And I thank all the participants for their
4 attendance and participation today.

5 JUDGE KULTGEN: And any questions from the
6 participants?

7 MS. CARLON: There are none at this time, Your
8 Honor.

9 JUDGE KULTGEN: Okay. Thank you, Dr. Byron, Dr.
10 Richard, and Ms. Chandler.

11 I hate to do this, but can we take another five-
12 minute break?

13 MS. CARLON: No problem.

14 JUDGE KULTGEN: Okay. We'll be back at 3:30
15 Eastern Time.

16 (Break.)

17 JUDGE KULTGEN: Okay let's call the next witness.
18 And again we'll call these five that are on the current
19 slide and then do questions.

20 MS. CARLON: Great. The next speaker is Eduardo
21 Melendrez. We do not see your name in the attendee
22 list, so if you have joined under a different name,

1 please use the raise hand button to acknowledge your
2 presence. And if you have joined by phone, please use
3 star three to raise your hand.

4 The next speaker is Logan Harper. Please state
5 your name and affiliation for the record.

6 DR. HARPER: Hello, my name is Logan Harper, and
7 I'm a family physician in Denver, Colorado, who has
8 collaborated with the Centers for Disease Control and
9 Prevention and the City of Denver's Office of Climate
10 Action on various heat resilience initiatives over the
11 last year. But I'm here representing myself. I'd like
12 to start by thanking OSHA for hosting this hearing and
13 taking a vital step towards protecting our nation's
14 workers from the dangerous health impacts of extreme
15 heat.

16 As many others have testified, extreme heat is one
17 of the deadliest extreme weather events, killing
18 thousands of Americans and causing billions in economic
19 damages and health care costs every year. Workers are
20 on the front lines of this disaster, and I see those
21 impacts frequently amongst my patients. One I'd like
22 to highlight is a young man with poorly controlled

1 asthma. He does tough manual labor all day, but
2 there's no safe, cool place to store his inhaler at the
3 job site. And on top of that, the hot weather and the
4 bad air quality that comes with it can both trigger his
5 asthma exacerbations.

6 So as a result of all this, he spends his hard
7 days wheezing and coughing, sometimes barely able to
8 catch his breath. And then he gets very little relief
9 from his rescue inhaler because it's been sitting out
10 in a hot environment. In addition to changing his
11 asthma meds, at our last visit, I had to sign a letter
12 to his employer limiting his work hours just in an
13 effort to keep him out of the emergency department.

14 In addition to asthma, we know extreme heat
15 worsens a long list of serious health conditions. And
16 we know climate change is making it worse. For -- for
17 instance, just two weeks ago, Fairbanks, Alaska, where
18 only two percent of homes have air-conditioning, issued
19 its first ever heat advisory. And without adequate
20 protections, the impact on workers will continue to get
21 worse. Currently, we see about 120,000 worker injuries
22 from extreme heat every year in the US. That number is

1 projected to increase to 450,000 by 2050 without
2 adequate adaptation. And by then, the average
3 agricultural worker will spend twice as many days
4 working in unsafe heat as they do today.

5 Fortunately, there are simple solutions that can
6 make a huge difference in workers' health without
7 sacrificing productivity. Recent studies have found
8 that implementing structured rest, shade, and hydration
9 protocols for agricultural workers not only protects
10 them from heat stress and kidney injuries, it was found
11 that these interventions reduced the total amount of
12 time they spent working, but their productivity
13 actually increased. And that's because the workers are
14 able to get more done in less time when they get
15 adequate relief from heat stress.

16 OSHA's proposed standard is an excellent place to
17 start and it would make a big difference for the
18 workers' health and safety in this country. I don't
19 have time to go into detail in my three minutes, but
20 for suggested evidence-based revisions that will
21 strengthen these protections, I direct you to the
22 letter submitted by the Medical Society Consortium on

1 Climate and Health.

2 And in closing, we live in a time where worker
3 health and safety regulations are often at odds with
4 the realities of the warming climate. Currently, only
5 seven states have occupational heat risk regulations,
6 and some of the hottest states in the nation have
7 banned local governments from protecting their workers
8 from heat. So OSHA now has an opportunity to save
9 thousands of lives by urgently passing the strongest
10 version of this rule. Thank you for your time.

11 JUDGE KULTGEN: Thank you.

12 MS. CARLON: The next speaker is Patrick
13 Armstrong. Please -- please state your name and
14 affiliation for the record.

15 MR. ARMSTRONG: Patrick Armstrong. Good
16 afternoon. I'm a father of four, and it's a little bit
17 nerve-wracking. It's a very -- it's a very honored
18 good privilege. I'm going to start -- I only have
19 three minutes. I was not able to compose my thoughts
20 onto a tablet or anything. However, I'm talking on the
21 phone. It's audio only. I am not aware if you were
22 able to see me while I punched in. Let's just use that

1 word, please. And I want to give everyone due
2 diligence. It has taught -- I have to talk about
3 dignity.

4 And I'm going to go -- I have an OSHA #510. I've
5 been in construction for 15 years. I started very
6 young. I -- and I've been -- I've been working hard.
7 It's 88 degrees in Texas right now. And I'm a safety
8 manager, okay? So I need some help at the safety
9 manager point. It's, like, 88 degrees in Texas. You
10 can come to this job site. Please use me as a
11 consultant. About 95 percent of the workers do not
12 have glasses because it's too [redacted] hot, okay?
13 You want to nitpick a little bit of PPE? Nitpick a
14 little bit of dignity. Thank you.

15 I also have a certification -- I'm a certified
16 crane operator. I had a heat stroke in 2022 at a
17 [redacted] -- pardon my language, and I can stop at any
18 time. I believe in God. God is good -- at [redacted]
19 Facebook data center where it pertained to science
20 principles -- radiant energy, radiant thermal rays from
21 the sun created by God, okay? I had to do decking,
22 which was not according to my normal scope of work. I

1 didn't know what to do. It was a Monday. My daughter
2 graduated high school. I built the Ranger's stadium.
3 She graduated from that high school. That weekend I
4 had a family [redacted] party. I go to work Monday.
5 God damn it.

6 JUDGE KULTGEN: Mr. Armstrong, I'm going to ask
7 you to try to refrain from using cuss words. You may
8 proceed.

9 MR. ARMSTRONG: God bless you. Thank you. I do
10 need to compose myself. OSHA does not talk about heat
11 stress. Heat stress is vague. What about
12 hyperthermia -- hyperthermia? There's a scientific
13 term. God bless all the medical people who have spoke
14 during this session. I totally agree with all the
15 medical professionals, the doctors. God bless you.
16 Thank you for doing what you're doing. Thank you for
17 speaking up. To the elderly lady who spoke up on
18 behalf of fathers, God bless you. We have fathers here
19 who don't see their children, okay?

20 We're working ourselves to death. Again, I work
21 in the construction. I am feeling 100 percent
22 privileged to be here. And I will get cool, calm, and

1 collected in this AC right now. But I have people who
2 are out in the AC -- who are not out in the AC and it's
3 88 degrees in Texas. You want to talk about other
4 things, humidity and get science. We can get science
5 and everything. God bless America. God bless OSHA.
6 George Washington was a risk taker. God bless him.

7 We lost a lot of -- we lost a lot of financing on
8 the way. God bless my president. God bless everybody.
9 85 percent of the workforce at the Ranger's Stadium
10 were immigrants. That is the American dream. We lost
11 the American dream along the way. We need to -- I'm
12 going to close by saying we need to treat all workers
13 with dignity.

14 We do not have breaks here unless it's mandated by
15 a company. Well, I was on a crane company -- the last
16 one. This company is from [redacted] -- was from
17 Europe. We do not take breaks. I worked 14 hours
18 building heavy cranes for wind farms. It was
19 beautiful. I was out in the farms, God's country --
20 snakes, wildlife. I'm a proud hunter, okay? Again,
21 I'm a third-generation veteran. And you know, I have
22 health problems. I have a bad liver, okay? I -- I've

1 struggled for two years trying to find jobs because I
2 got to change. And now I'm back in. Yesterday, I
3 worked 14 hours as a safety rep. And I can tell you
4 with all my heart, I didn't work a minute of that day
5 because I do what I love and that should matter.

6 It should matter. Every life should matter. We
7 can do more. We can do better. This country is great.
8 It's founded on original principles. We lost the
9 principles on the way. I want to make America great
10 again. God bless you all. Do I have any more time?

11 JUDGE KULTGEN: No. Your time has expired. But
12 please stay on the line in case the panels have
13 questions. We'll proceed to the next witness.

14 MR. ARMSTRONG: Thank you.

15 MS. CARLON: The next speaker is Manijeh Berenji.
16 Unfortunately, we do not see your name in the attendee
17 list. So if you have joined under a different name,
18 please use the raise hand button to indicate your
19 presence. And if you have dialed in, please use star
20 three to raise your hand.

21 And our next speaker is Terese Blackwell-Davis.

22 As well, we do not see your name in the attendee list,

1 so if you have called in, excuse me. If you have
2 joined under a different name, please use the raise
3 hand button to acknowledge your presence. And if you
4 have dialed in, please use star three to raise your
5 hand.

6 Okay. At this time, they are both absent, Your
7 Honor.

8 JUDGE KULTGEN: Okay. Does the OSHA panel have
9 any questions for Dr. Harper or Mr. Armstrong?

10 MR. LEVINSON: Your Honor, Andrew Levinson for
11 OSHA. At this time, OSHA does not have any questions,
12 but we do thank Dr. Harper and Mr. Armstrong for their
13 testimony today.

14 JUDGE KULTGEN: Does the Solicitor's Office have
15 any questions?

16 MS. WILES: Thank you, Your Honor. Linda Wiles
17 from the Solicitor's Office. I also do not have any
18 questions. And I'm very thankful for the witnesses'
19 participation today.

20 JUDGE KULTGEN: And do we have any participant
21 questions?

22 MS. CARLON: There are none at this time, Your

1 Honor.

2 JUDGE KULTGEN: Okay. Thank you, Dr. Harper and
3 Mr. Armstrong for your testimony today.

4 MS. CARLON: The next speaker is Annie Carrell.
5 We do not see your name in the attendee list, so if you
6 have joined under a different name, please use the
7 raise hand button. And if you've dialed in, please
8 select star -- star three to raise your hand.

9 As well for both Elizabeth Jamison and Annette
10 Juarez. I'm going to say your names both individually,
11 but we do not see either of your names in the attendee
12 list. So if you have joined under a different name,
13 please use the raise hand button to indicate your
14 presence. And if you've dialed in, please select star
15 three to raise your hand. But that is Annette Juarez
16 and Elizabeth Jamison.

17 Our next speaker is Bruce Krawisz. Please state
18 your name and affiliation for the record.

19 DR. KRAWISZ: Well, my name is Bruce Krawisz, and
20 I am a physician who specializes in pathology and
21 studies the health effects of global heating and of air
22 pollution. I live in Marshfield, Wisconsin.

1 In 2022, Europe experienced an unusually hot
2 summer marked by heatwaves, droughts, and forest fires.
3 A study conducted by the Barcelona Institute for Global
4 Health and published in the journal, Nature Medicine,
5 estimated that more than 61,000 deaths were caused by
6 extreme heat in Europe in the summer of 2022.

7 Heat is also the leading cause of weather-related
8 death in the United States. Extreme heat is a risk to
9 the health of mothers and babies. Extreme heat
10 exposure before birth is associated with more preterm
11 births, more low birth weight babies, and more
12 stillborn babies. A study entitled "Analysis of Heat
13 Exposure during Pregnancy" was published in the Journal
14 of the American Medical Association in 2023. 400,000
15 pregnancies were studied in California, in Kaiser
16 Permanente health system. They recorded how many
17 unusually hot days each pregnant patient experienced
18 and what complications these patients encountered
19 during labor and delivery.

20 The study showed that exposure to unusually hot
21 days during pregnancy was associated with increases in
22 abnormal blood clotting, heart attacks, heart

1 arrhythmias, difficulty breathing caused by fluid in
2 the lungs, kidney failure, high blood pressure, heart
3 failure, and shock. In this study, statistically
4 significant associations were observed between heat
5 exposure during pregnancy and increased risks of severe
6 labor and delivery complications.

7 In summary, global heating compromises the health
8 of babies even before they are born and harms women
9 while they are pregnant. Please support precautions
10 for outdoor workers during extreme heat. Thank you.

11 JUDGE KULTGEN: Thank you, Dr. Krawisz.

12 MS. CARLON: The next speaker is Natasha
13 Lapcinski. Please state your name and affiliation for
14 the record.

15 MS. LAPCINSKI: Hello. Thank you all so much. My
16 name is Natasha Lapcinski and I am calling in to
17 provide my testimony from Minneapolis, Minnesota. The
18 reason why I decided to join today's testimony is
19 because I felt that it was paramount that everyday
20 people that are impacted by these things have an
21 opportunity to speak.

22 For myself, I'm a restorative justice and

1 transformative justice practitioner. And what that
2 means is I bring people together after severe harms of
3 violence. Sometimes we receive phone calls from
4 organizations or everyday people that work in
5 organizations that are sometimes harmed by policies.

6 It is not uncommon for me to get a phone call from
7 someone who has an employer who's not treating them
8 well. And unfortunately, it is very often the case
9 that the legal route is not necessarily effective for
10 them. A lot of times people are working with employers
11 that are exposed to a lot of egregious situations. I
12 don't think that comes as a surprise to anybody here.
13 But speaking from my personal experience, I just
14 want --

15 JUDGE KULTGEN: Ms. Lapcinski, you are frozen. At
16 least for me. You appear to be back. You may proceed.

17 MS. LAPCINSKI: Sorry about that. I'm not quite
18 sure where it left off, but I will just continue with
19 saying that I think stories are really important when
20 we're considering policies.

21 So for myself, I remember in college -- and this
22 was already nearly 20 years ago to age myself -- and I

1 remember we all came back from summer break and one of
2 our friends commented, oh, my goodness, look at all you
3 ladies. You lost weight. And as we went around the
4 room talking about why we lost weight, it was because
5 one of us was working in a factory and didn't have
6 access to water and necessary breaks, another person
7 worked on a farm. And myself, worked at a zoo where I
8 worked in the background doing a variety of things, but
9 was put in a kitchen that had no air-conditioning. So
10 we're standing over steaming hot, hot plates, roasting
11 hot dogs over roller grills, and deep frying stuff
12 without adequate air-conditioning. That was so many
13 years ago.

14 Fast forward to present day. My partner of eight
15 years works in -- works in the HVAC industry. And if
16 you can imagine going into people's homes without
17 heating or cooling, especially during the hottest
18 temperatures, it is excruciating. And I think
19 something that is really important to know is that,
20 while it's nice and good to say that of course
21 employers would take care of their employees -- while
22 that very well may be the intention of some, it is

1 incredibly common for everyday people to not feel safe
2 enough to report heat stroke to their employers.

3 My partner has been with his organization for many
4 years, and a number of his colleagues do not report the
5 heat-related illnesses because they know that they will
6 be fired if they do. That is atrocious. And that is
7 something that's happening all across the United States
8 and to pretend otherwise is really quite dangerous.

9 Just a couple years ago, a couple of his coworkers
10 in their early 20s had heart attacks during their peak
11 heat season. I say all this to say that if, just by
12 reflecting on a couple of personal experiences -- I can
13 drum up tons of stories. I imagine we all can. And if
14 we can't drum up personal stories, then it might be
15 that it's been a while since we've been in either
16 positions or in jobs where we've had to experience this
17 very thing.

18 Right now I'm out of breath and sweating, partly
19 because I'm in a building where we do have air-
20 conditioning, but the room I'm in doesn't have any
21 right now. I'm going to move to a different location
22 in a minute here. But if I'm sweating profusely while

1 just sitting here in an 85 degree day in Minnesota, I
2 can only imagine what my partner is currently
3 experiencing at this very moment. He on average loses
4 five pounds -- this is not an exaggeration -- during
5 some of his shifts and so do his coworkers. And then
6 he spends his days off recovering.

7 This is just one personal story. And as you see
8 my face, I want people to understand that these are
9 real lives and real people. I truly thank the people
10 that have testified here today, the organizations that
11 have lent their time, and everybody on the OSHA team
12 that's working diligently to make sure that voices are
13 heard from everybody. Thank you so much.

14 JUDGE KULTGEN: Thank you. Do we have questions
15 from the OSHA panel for either Ms. Lapcinski or Dr.
16 Krawisz?

17 MR. LEVINSON: Your Honor, Andrew Levinson for
18 OSHA. The agency thanks, Dr. Krawisz and Ms.
19 Lapcinski, but we do not have any questions for them.

20 JUDGE KULTGEN: Any questions from the Office of
21 the Solicitor?

22 MS. WILES: Thank you, Your Honor. Linda Wiles

1 from the Solicitor's Office. I likewise do not have
2 any questions. And I thank the participants for being
3 here and sharing their stories today.

4 JUDGE KULTGEN: And any participant questions?

5 MS. CARLON: There are none at this time, Your
6 Honor.

7 JUDGE KULTGEN: Thank you. And thank you, Dr.
8 Krawisz and Ms. Lapcinski.

9 MS. CARLON: At this time, all of the attendees on
10 this slide are absent from the attendee list. So I am
11 just going to reiterate the instructions in case you
12 have joined under a different name or have joined via
13 phone as I read through each name on the list.

14 If you have joined via another name, please use
15 the raise hand button to indicate your presence. And
16 if you've joined via phone, please use star three to
17 raise your hand. William Gary McLeod? Megan Metcalf?
18 The Anh Nguyen? Brenda Nuyen? And James Schwarz?

19 The next speaker is Ethan Sims. As well, we do
20 not see your name in the attendee list. So if you've
21 joined under another name, please use the raise hand
22 button. And if you've called via phone, please use

1 star three to raise your hand. And our next speaker is
2 Tracie Wagman. Please state your name and affiliation
3 for the record.

4 MS. WAGMAN: Thank you for the opportunity to
5 address this group today. My name is Tracie Wagman and
6 I'm the CEO of ColdVest. And I think I'm the last
7 person between you all being able to go home at the end
8 of the day. So I promise I will keep this to three
9 minutes.

10 Every day I speak to companies and employees
11 working in extreme heat. As per the committee's
12 request in the proposed rule -- the proposed heat rule,
13 I'm here to make the committee aware of ColdVest, a no-
14 ice, close proximity treatment option for heat stroke
15 and heat-related illness. ColdVest is an FDA Class 1
16 medical device for rapid core body cooling that
17 requires no ice, no power, and no refrigeration. It is
18 lightweight, portable, and can be stored in any
19 condition, making it uniquely qualified to satisfy
20 OSHA's close proximity care requirement for heat stroke
21 and heat-related illness.

22 ColdVest can be deployed by nonmedical personnel

1 in less than two minutes and has better rates -- better
2 cooling rates than ice sheets. We would respectfully
3 ask this committee to go even further and mandate
4 immediate cooling within three to four minutes for
5 emergency response.

6 Less than two weeks ago, I received a call from
7 one of our customers in the southeast. This company
8 couldn't possibly have ice ready at every location. In
9 spite of their best-in-class awareness and prevention
10 an employee in his 20s at one of their sites suffered a
11 critical heat stress incident.

12 It started with confusion and then loss of
13 consciousness. The manager on duty deployed ColdVest
14 and in a matter of minutes, began cooling the employee.
15 When EMS arrived, they were able to continue cooling
16 with ColdVest en route to the hospital. Upon arrival
17 at the hospital, emergency doctors confirmed he had
18 heat stroke and because of the quick action that was
19 taken at the time of the heat event, the employee was
20 treated and released without being admitted. He made a
21 full recovery.

22 Emergency protocols are a critical component of

1 any heat regulation because emergencies happen even
2 with the best preparation. And in settings where it is
3 more difficult to have ice, we offer a solution. When
4 heatstroke strikes, action needs to be taken quickly.
5 We would like the committee to know that our product
6 exists so action can be taken quickly to treat heat
7 incidences anytime, anywhere, by anyone.

8 OSHA is taking decisive steps towards ending
9 preventable heat deaths. By adding clear direction for
10 a no-ice rapid cooling device, you will ensure that
11 every company has a viable and affordable way to
12 protect their employees in the case of a heat
13 emergency, and that every worker, whether in a
14 warehouse, on a roof, or on a farm, has a realistic
15 chance of survival when seconds matter.

16 Thank you for your leadership and for considering
17 this vital addition to the final rule. No matter what
18 the final rule looks like, emergency response is
19 critically important in saving lives. I would ask the
20 slides to go to slide 4. This is a slide in --
21 comparing our ColdVest cooling rates with ice sheets,
22 which is the proposed cooling method in the emergency

1 protocols of the heat rule. Thank you. I'm done.

2 JUDGE KULTGEN: Thank you. Any questions from the
3 OSHA panel for Ms. Wagman?

4 MR. LEVINSON: Yes, Your Honor. Zoe Petropoulos
5 will be asking the question from OSHA.

6 MS. PETROPOULOS: Hi, this is Zoe Petropoulos with
7 the Directorate of Standards and Guidance. So I know
8 in that last slide, you showed there were cooling rates
9 that were achieved with the Cool -- ColdVest. And I
10 believe this was from field test data conducted by
11 Korey Stringer Institute, but correct me if that's
12 wrong. We were just wondering if those data are not
13 already available in the rulemaking docket, if you
14 could share those in your post-hearing comments. And
15 you know, if there are data that you can versus can't
16 share, you know, we're welcome to anything you're --
17 you're able to.

18 MS. WAGMAN: Thank you for your question. This is
19 Tracie Wagman from ColdVest. Yes, you're correct. It
20 was with the Korey Stringer Institute. And I will
21 share the data in the post-hearing comments.

22 MS. PETROPOULOS: Thank you so much. We

1 appreciate it.

2 MR. LEVINSON: Your Honor, that concludes OSHA's
3 questions.

4 JUDGE KULTGEN: Any questions from the Solicitor's
5 Office?

6 MS. WILES: Thank you, Your Honor. This is Linda
7 Wiles from the Solicitor's Office. I don't have
8 questions, but I would like to mark Ms. Wagman's
9 presentation as Exhibit number 18 and ask that it be
10 admitted into the hearing record.

11 JUDGE KULTGEN: Yes, I will admit those slides as
12 Exhibit number 18. Do we have any participant
13 questions?

14 MS. CARLON: There are none at this time, Your
15 Honor.

16 JUDGE KULTGEN: Thank you. And thank you, Ms.
17 Wagman.

18 MS. WAGMAN: Thank you.

19 JUDGE KULTGEN: One last time, let's call the
20 individuals who did not -- who were not available
21 earlier just to make sure no one has joined the call.

22 MS. CARLON: Of course, from the top we have Eve

1 Shapiro? Or actually -- I from the very top we have
2 Valerie Collins? I apologize. Then we have Megan
3 Grant? Eduardo Melendrez? Manijeh Berenji? Terese
4 Blackwell-Davis? Annie Carrell? Elizabeth Jamison?
5 Annette Juarez? William Gary McLeod? Megan Metcalf?
6 The Ahn Nguyen? Brenda Nuyen? James Schwarz? And
7 Ethan Sims? At this time, it looks like they are all
8 still absent, Your Honor.

9 JUDGE KULTGEN: Thank you. Are there any
10 housekeeping matters from OSHA or the Solicitor's
11 Office before we close today?

12 MR. LEVINSON: None from OSHA, Your Honor.

13 MS. WILES: None from me as well, Your Honor.

14 JUDGE KULTGEN: Thank you. We are now at the end
15 of all scheduled witnesses for today. During the
16 hearing -- during the hearing over the last several
17 weeks, OSHA received a request to add a second post-
18 hearing comment period, specifically for final legal
19 briefs, in addition to the 90 day comment period set at
20 the beginning of the hearing. OSHA has decided to
21 retain the single 90 day post-hearing comment period.

22 Accordingly, hearing participants may submit

1 additional evidence or statements relevant to the
2 proceeding within 90 days of the end of the hearing,
3 which will be September 30th, 2025. At that point, the
4 record for the rulemaking will close.

5 This public hearing on the heat illness and injury
6 prevention proposed rule is concluded. Let the record
7 show that all persons and organizations who filed a
8 timely notice of intention to appear have been extended
9 the opportunity to do so. Let the record also show
10 that following the presentation of oral comments and
11 testimony, an opportunity has been extended for
12 questioning of the witnesses by NOITA filers and
13 members of OSHA's panel.

14 On behalf of the Department of Labor, I wish to
15 publicly thank all those people who gave up their time
16 and testimony to contribute to this hearing today. To
17 all participants, thank you for your interest in the
18 important matter. This hearing is hereby adjourned.

19 (Whereupon, at 2:39 p.m., the hearing was
20 adjourned.)
21
22

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