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Transcript of Day 2

Tuesday, June 17, 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

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13 Day 2 of 12

14 Tuesday, June 17, 2025

15 9:30 a.m.

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PARTICIPANTS

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PRESIDING:

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HEATHER LESLIE, Administrative Law Judge,

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Office of Administrative Law Judges, United States

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Department of Labor

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OSHA PANEL:

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LISA LONG

10

STEPHEN SCHAYER

11

GARY ORR

12

TIFFANY DEFOE

13

BRENDA FINTER

14

ZOE PETROPOULOS

15

JOO-HYUNG SHIN

16

DEANA HOLMES

17

OFFICE OF THE SOLICITOR OF LABOR:

18

LINDA WILES

19

JENNIFER LEVIN

20

DANIEL MOCZULA

21

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ALSO PRESENT:

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MARIAM CARLON, Abt Global

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P R O C E E D I N G S

JUDGE LESLIE: We are now on the record. The hearing will come to order. This is 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 Setting. 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 Heather Leslie, Administrative Law Judge for the U.S. Department of Labor, and I will be presiding over this hearing today. The purpose of this hearing is to receive, 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 to submit their information. The hearing schedule and

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

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

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

1 exhibits in the record.

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

11 Today, after each speaker or panel of speakers
12 completes giving oral testimony, OSHA representatives
13 will have an opportunity to ask questions of the
14 speaker or panel. When OSHA has finished asking
15 questions, there will be an opportunity, as time
16 permits, for persons who filed a timely notice of
17 intention to appear to question the witness or panel.

18 Participants may only direct questions to
19 witnesses with whom they have no organizational
20 affiliation. This is the process I intend to follow.
21 After OSHA has finished asking questions of a witness
22 or panel, I will ask participants who wish to ask

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

4 Based on the hearing schedule, and the number of
5 participants who wish to ask questions, I will
6 determine the order in which participants will question
7 the particular witness or panel, and any time
8 restrictions on that questioning.

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

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

1 shake your head in response to a question.

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

10 Now, unless there are any further announcements or
11 other housekeeping matters, I believe that we can
12 proceed with the public testimony. The expected
13 speaking order is currently displayed on the screen.
14 Our contractor will introduce each speaker in turn and
15 promote them to be panelists. When you are called to
16 testify, please state your name and affiliation for the
17 record, and speak slowly and clearly so our court
18 reporter can record these proceedings accurately.

19 MS. CARLON: The first speaker group will be Conn
20 Maciel Carey's (CMC) Employers Heat Illness Prevention
21 and Rulemaking Coalition, represented by Eric Conn,
22 Beeta Lashkari, and Richard Steinberg.

1 Please state your name and affiliation for the
2 record.

3 MS. LASHKARI: Thank you, Mariam.

4 And thank you very much, Your Honor.

5 And to OSHA for this opportunity to testify.

6 My name is Beeta Lashkari. I am an attorney at
7 the law firm, Conn, Maciel, Carey, and I represent the
8 Employers Heat Illness Prevention Coalition. For
9 background, the Coalition is made up of a broad and
10 diverse group of employers and trade associations
11 representing many industries, including construction,
12 manufacturing, energy, delivery and distribution,
13 retail, warehousing, petroleum refinery, liquid
14 terminal operations, and many more, with millions of
15 employees across hundreds of thousands of workplaces in
16 every state in the nation.

17 The Coalition represents every size employer from
18 large international corporations to small businesses
19 with brick-and-mortar locations. The common thread
20 among the Coalition's diverse members is that they are
21 responsible and conscientious employers that care
22 deeply about their employees' health, and safety.

1 Indeed, although no two are the same, each employer in
2 the Coalition already has in place a heat illness
3 prevention program.

4 Our motivation here is to ensure that OSHA
5 promulgates a Heat Injury and Illness Prevention
6 standard that is effective in its purpose, protecting
7 workers from heat illness hazards, and reasonable in
8 the burdens it places on employers. With that, I'd
9 like to share several of our key concerns. First, the
10 final rule should provide maximum flexibility for
11 employers and be performance-based.

12 So first, let me reiterate what has been said time
13 and again throughout this rulemaking. A one-size-fits-
14 all standard will not work. Promulgating a one-size-
15 fits-all standard as reflected in the proposed rule, as
16 drafted, will make compliance impossible for numerous
17 employers, including most Coalition members.

18 The focus should, instead, be on providing maximum
19 flexibility to employers and embracing that - that
20 performance-based approach. Crafting the standard as
21 performance-based makes sense for many reasons. First,
22 because of the diverse set of employers and industries

1 intended to be covered, while employers have similar
2 goals, their approaches by necessity vary.

3 Second, because of the nature of the hazard
4 itself. There is substantial complexity associated
5 with assessing heat hazards. For example, with respect
6 to any heat-trigger threshold, that determination
7 requires looking at various factors, which again, vary
8 from place to place. Third, there are countless
9 effective approaches to address heat hazards.

10 Although Coalition members' existing programs tend
11 to include elements like water, rest, shade, and
12 training, we recognize that even for those employers in
13 the same industry, the details of these programs are
14 very different, as they should be. So a common theme
15 in our testimony today is that we urge OSHA to
16 promulgate a standard that is performance-based and
17 that gives employers maximum flexibility to allow them
18 to implement engineering and administrative controls
19 that are feasible and appropriate for their workplaces
20 and activities.

21 Coalition members and other employers know first-
22 hand which practices work, and what approaches might

1 seem wise on paper but do not work, or do not work
2 as -- as efficiently in the field. A performance-based
3 approach where the regulatory obligation is the
4 outcome, not the method by which the outcome is
5 achieved, will enhance, not lessen, worker safety.
6 Performance-based standards provide employers with the
7 necessary flexibility to most effectively protect their
8 employees.

9 However, they will not be tied to an untailored
10 method that forces an unreasonable or inefficient
11 decision and does not work for their business or
12 employees. Flexibility, again, will allow for more,
13 not less, effective programs. Two, certain provisions
14 in the proposed rule are technically or economically
15 infeasible, and the time and cost estimates are too
16 low. The Coalition believes that the estimates are --
17 underestimate the burden on employers, and we encourage
18 a review of these.

19 The current estimates don't accurately represent
20 the technical and economic feasibility of various
21 provisions in the proposed rule. By way of example,
22 the estimates for how long it will take to either

1 modify or create programs -- heat illness and injury
2 prevention programs are extremely low. I think it's
3 estimated that it will take 2.5 hours to modify
4 existing programs, and anywhere from 6 to 30 hours to
5 create a program, depending on whether one is used --
6 whether a template is used or one is created from
7 scratch.

8 And again, these numbers are too simplistic and
9 not based in reality. Even with the template,
10 employers want to still make sure that their wording is
11 accurate and easy to understand, not just to copy/paste
12 from the standard, that it tailors certain sections
13 appropriately, that there are no conflicts with
14 existing programs, and so on. So the estimates don't
15 seem to take any of that into account, not to mention,
16 very importantly, rollout and implementation time.

17 And that just considers the first go-around.
18 Program development is iterative. It's not just one
19 and done. And to that end, we do encourage OSHA to do
20 everything possible to allow employers to maintain
21 their existing effective programs. That is crucial,
22 and we understand, was the agency's intent. However,

1 there seems to be some language in the NPRM that
2 suggests otherwise. It doesn't follow that employers
3 who have existing programs that are effective need to
4 modify them in this way, just to fit a square peg in a
5 round hole.

6 Three, any heat trigger should be higher. They
7 should allow for ambient temperature to be an option,
8 and account for local environmental conditions. The
9 Coalition encourages OSHA to adopt the approach taken
10 by Nevada and not include any specific heat triggers.
11 Rather, OSHA should allow employers to make decisions
12 about implementing mitigation measures on the basis of
13 more flexible, reasonable factors, like employers' job
14 hazard analyses, JHAs.

15 However, to the extent that triggers are
16 maintained, both the initial and high-heat triggers
17 should be higher than what's in -- currently in the
18 proposed rule, and should also include a ambient
19 temperature option, as well as account for local
20 environmental conditions. First, the -- the hazard of
21 heat is very dependent on the environment, and I know
22 that this has been said many times.

1 Coalition members have employees located in every
2 state and know that effective protocols in the arid
3 southwest are very different from the approaches used
4 in -- in the humid Gulf Coast Region. What that means
5 is that a federal standard must provide employers that
6 ability to establish programs based on their
7 particularized environments. This comes back to our
8 message that there simply is no one-size-fits-all
9 approach.

10 We also encourage OSHA to make ambient temperature
11 a heat metric option that employers can choose from to
12 base their programs, and to set easy to understand
13 numerical values that are, of course, reasonable and
14 science-based for the ambient-based heat triggers, and
15 that's not unusual by any means. Indeed, several state
16 plan states' heat illness prevention standards use
17 ambient temperature as their heat metrics.

18 That includes California and Washington, and I'd
19 consider those two of the country's more -- more
20 stringent state plans. So employer -- to that -- so
21 the message here is employers should be empowered and
22 encouraged to develop thoughtful and tailored solutions

1 on how to measure heat. Ultimately, this flexibility
2 benefits both employers and employees by allowing for
3 more robust prevention programs that can address the
4 full spectrum of heat hazards.

5 Fourth, OSHA should add flexibility to the
6 proposed requirements for outdoor and indoor heat
7 monitoring. Based on the requirements of the proposed
8 rule, it seems to us that, in most cases, employers
9 will need to monitor heat at an unnecessarily high
10 frequency.

11 The -- the NPRM includes examples where if the
12 forecast is close to the trigger, but not at the
13 trigger, additional reviews of the forecast must be
14 conducted. While we understand this point, there must
15 be a reason approached -- a reasoned approach to this,
16 which we think the proposed rule lacks. The level of
17 monitoring in the proposed rule essentially puts
18 employers in the position of becoming full-time
19 weathermen.

20 Many employers, especially small businesses, just
21 do not have the technical or economic resources to
22 dedicate staff completely to this task. So to the

1 extent monitoring requirements are maintained, it
2 should be sufficient for employers to read the forecast
3 or take measurements at a reasonable frequency, and
4 then implement measures for -- per any initial or high-
5 heat trigger requirements accordingly.

6 Fifth, any final standard should provide flexible
7 acclimatization requirements and allow for self-managed
8 acclimatization. Again, following Nevada as an
9 example, I -- we think OSHA should allow employers to
10 make decisions about implementing mitigation measures
11 on -- on the basis of - of more flexible factors like
12 JHAs. But to the extent that any acclimatization or
13 requirements are maintained, we do think that they need
14 to be flexible and include that option for self-
15 maintained acclimatization.

16 Although, we appreciate the offering in the
17 proposed rule of -- of a -- a couple of different
18 options for how to approach acclimatization, we really
19 feel that these options are not viable for most
20 employers. First, the technical, economic, and
21 administrative burdens associated with the
22 acclimatization protocols are unnecessary,

1 overwhelming, and impractical.

2 The protocols require a significant administrative
3 oversight to ensure compliance. Managing such complex
4 processes across a large workforce, for example, is
5 costly and demands significant resources that many
6 businesses simply do not have. The associated costs
7 can be substantial, with some industries estimating
8 an -- an average of thousands of dollars per employee
9 in direct expenses, not including the impact on
10 productivity.

11 Indeed, the administrative burdens are so
12 extensive that full compliance may be impossible for
13 most employers. These challenges underscore the need
14 for a more practical, adoptable approach. Beyond the
15 administrative costs associated with these protocols,
16 there are significant costs associated with the time
17 lost when employees are acclimatizing under gradual
18 exposure schedules.

19 That's at least, in part, because during these
20 time periods, workers cannot perform their regular
21 duties. And while we certainly recognize that, you
22 know, OSHA makes clear that employees can perform other

1 duties, like housekeeping, training, so long as they're
2 not exposed to temperatures above the initial heat
3 trigger, the reality is that many employers don't have
4 those, you know, other jobs and -- and tasks to
5 backfill.

6 So these employers would very likely be required
7 to send employees home, with pay, and hire additional
8 staff, or to even shut down. So if acclimatization
9 requirements are maintained, we do think that they
10 should be more flexible, that there should be more
11 flexible options, and include an allowance for self-
12 managed acclimatization because, by its nature,
13 acclimatization is unique, and individualized, and
14 depends on the employee's personal health and
15 background, as well as their experience and exposure to
16 hot environments.

17 Six, OSHA should add flexibility to any program
18 requirement and reasonably limit any review cycles.
19 The Coalition encourages more flexibility with respect
20 to the program requirements, as well as that -- that --
21 that frequency requirement. OSHA should allow greater
22 flexibility for employers to -- this is very important.

1 We do think OSHA should allow greater flexibility
2 for employers to retain their current effective
3 programs, even if those plans do not contain every
4 element outlined in the proposed rule. Implementing --
5 imposing a one-size-fits-all approach in this way is --
6 is inefficient and unnecessary. Instead, OSHA should
7 recognize the programs that -- that programs can be
8 effective in various forms, and give credit to those
9 employers have a really -- already developed mature and
10 effective programs.

11 Additionally, just on the -- the proposed cadence
12 for reviewing the programs places unnecessary burdens
13 on employers without clear benefits to worker safety.
14 Unlike other hazards, where it -- sort of technical
15 advancements and -- and updated practices sort of
16 justify more frequent reviews of programs, heat-related
17 mitigation strategies are well established, and do --
18 don't -- we do not think require that same level of
19 constant reassessment.

20 We think a more reasonable approach would be to
21 limit mandatory -- reviews to situations where there
22 are substantial changes in workplace conditions, such

1 as material shifts in tasks, schedules, or physical
2 environments that are more meaning -- that are more
3 likely to meaningfully increase heat exposure risks.

4 Seventh, any mandatory rest break requirements
5 aren't necessary. Again, the Coalition encourages OSHA
6 to adopt the approach taken by Nevada and not include
7 any specific rest break requirements. Rather,
8 employers should be able to make decisions about
9 their -- the mitigation measures, those controls, using
10 the hierarchy of controls on the basis of their more
11 flexible standards, more flexible criteria, like --
12 like a JHA.

13 However, to the extent any mandatory rest break
14 requirements are maintained, the implementation of
15 those -- of those breaks, that the proposed rule
16 frequency of every -- every two hours, that will
17 require constant scheduling adjustments and create
18 significant operational challenges. So concerns about
19 those mandatory breaks apply to -- would apply to
20 employers in -- in all industries, but are especially
21 concerning for industries where those breaks can -- can
22 actually cause greater hazards.

1 You know, for example, telecommunication workers
2 who have to climb poles or -- or towers to install or
3 maintain equipment, as well as construction workers who
4 face, already, significant risks, due to fall hazards,
5 especially during the climbing up and down periods. So
6 those rest breaks would -- would only increase those --
7 those hazards -- those existing hazards.

8 Eight is OSHA should not include proposed record-
9 keeping requirements in a final rule. The requirement
10 for employers to document and retain records of indoor
11 heat measurements for six months introduces significant
12 administrative challenges that could hinder operational
13 efficiency, particularly in industries where -- with
14 variable workflows, remote sites, or limited
15 administrative resources.

16 So with the exception of training records, keeping
17 track of any other types of heat-related illness data
18 is unduly burdensome with -- with no safety benefit.
19 It -- this is really about the paperwork. As such, you
20 know, documenting indoor heat measurements, whether in
21 written or electronic form, places an undue
22 administrative burden on employers. And again, that's

1 especially so for -- for smaller businesses that --
2 that might not have those -- those ready resources.

3 And the time required to document heat
4 measurements is -- is highly variable, but we heard
5 from Coalition members that it could entail anywhere
6 from 10 to 30 minutes per shift, per work area. When
7 scaled across multiple work areas or shifts, this task
8 becomes a considerable -- a considerable paperwork
9 drain, diverting again, you know, focus from other
10 important safety initiatives, we're -- we're diverting
11 from, you know, real safety initiatives and -- and
12 having to maintain paperwork instead.

13 So with that, the Coalition incorporates, by
14 reference, its comments on the SBAR, the Small Business
15 Advocacy Review panel report that we submitted back on
16 December 22nd, 2023, and on our public comments on the
17 NPRM, which were submitted on January 14th of this
18 year. So again, while the Coalition does not support
19 promulgation of the heat rule as drafted, we are
20 supportive of promoting -- of promulgating -- of the
21 promulgation of a tailored performance-oriented rule
22 that is flexible, and that aligns with -- with our

1 testimony here today, and with our public comments.

2 Thank you again for this opportunity to comment.

3 I will now pass it over to Rich Steinberg of Kinder
4 Morgan, who is participating through one of our
5 Coalition members, ILTA.

6 MS. CARLON: Unfortunately, we do not see Mr.
7 Steinberg in the attendee list.

8 So if you have joined under a different name,
9 Richard Steinberg, please use the raise hand feature
10 and I will be able to promote you.

11 MS. LASHKARI: Mariam, did Rich raise his hand?

12 MS. CARLON: Mr. Steinberg?

13 MR. STEINBERG: Can you hear me?

14 MS. CARLON: Yes, we can.

15 MR. STEINBERG: Okay. How about start video? How
16 about now? Great. I apologize. I was hoping I
17 wouldn't be one of those guys that I saw yesterday with
18 technical problems.

19 I appreciate the opportunity to provide my input
20 today. After listening to testimony yesterday and this
21 morning, I don't think I have any new issues to bring
22 to the panel, but I hope to bring some perspective to

1 some of the concerns, and maybe give you some examples
2 that make sense to you. So I work for Kinder Morgan.
3 We're 11,000 employees who --

4 (AUDIO MALFUNCTION)

5 MR. STEINBERG: -- a variety of climates and
6 weather conditions. We move things like natural gas to
7 your house and businesses across the country. We move
8 petroleum fuels to your gas stations and jet fuel to
9 airports in North -- Northern California, as an
10 example. We do the same in New Jersey. We also supply
11 the DOT road salt that they use in the winter.

12 In Florida, we -- we move both liquid and dry bulk
13 fertilizers. And then, we moved crude from the oil
14 fields in both North Dakota and west Texas. So we
15 operate in four different business units, each of which
16 prepares for employee safety during the summer months
17 in different ways, tailored to -- specifically to the
18 roles that they play in the field.

19 Our safety culture and strategies at Kinder Morgan
20 have evolved over the years to focus more on
21 prevention. Heat injuries are no different, no less of
22 a concern to us than any other work-related risk. With

1 a variety of operations I just described to you within
2 Kinder Morgan, that there's no one-size-fits-all for us
3 to address this specific heat issue -- heat-related
4 issue. Instead, we choose, like the most risks, to
5 study it, use our empirical data to trend issues, and
6 develop site-specific, task-specific initiatives to
7 mitigate this risk.

8 An example of this is our hundred days of summer
9 initiatives. Each business unit has their own version
10 of it. Over the last ten years of implementing these
11 programs, we've learned that the success of these
12 summer campaigns are largely attributed to the
13 implementation of location-specific Heat Illness
14 Prevention Plans. For you government people, HIIPPs.

15 These hundred days of summer training programs and
16 awareness initiatives have all been critical in
17 highlighting the importance of teammates, recognizing
18 early symptoms of heat-related illness, and taking the
19 appropriate steps for early intervention and preventing
20 the issue. As a company, the proof of our success for
21 our safety culture is reflected in our Sub 1 TRIR
22 Injury Rate that we've experienced for the last several

1 years.

2 With the implementation of these initiatives I
3 mentioned, we've dramatically decreased heat-related
4 recordable injuries of both Kinder Morgan employees and
5 contractors by 80 percent over the last eight years.
6 More specifically, this last year, we had two heat-
7 related injuries in all 11,000 employees and 13 million
8 man-hours of contractor hours working on our sites.

9 So I'm here today to express to you that we, as
10 employers, and I, as a lifelong safety professional, we
11 share the concerns about this rule as it's currently
12 drafted. Some of those concerns were discussed earlier
13 and yesterday. More specifically, I want to address
14 four of them that Beeta brought up to give you some
15 better context.

16 Beeta said that the final rule should provide
17 maximum flexibility for employers and be performance-
18 based. This is how our company successfully addressed
19 this heat concern. We have the institutional knowledge
20 of the hazards on our work environments, and the
21 empirical data to focus our efforts on the actual
22 hazards. We've already developed our work-hazard

1 assessments, our job-hazard analysis, which we -- and
2 then, the JHA, we update that day to make sure it's
3 accurate for the task and the situation.

4 Our experience in developing thousands of these
5 JHAs has taught us that this proposed rule leaves out
6 two critical variables of geographic influences in the
7 nature of the task. The geographic variables -- a
8 Houston employee, like me, may not have a physical
9 reaction in 95 degree weather the same as an employee
10 that in Dayton, Ohio's body would.

11 In Houston, this is just how we live. I -- I'm
12 used to 95 degree weather and 99 -- 95 percent
13 humidity. I mean, there's not a concern to acclimate
14 when I started at 85 degrees and 95 percent humidity
15 this morning at 5 o'clock, when I went and take my dog
16 out for a walk. But the way the rule is written, at 5
17 o'clock this morning, walking my dog, I would have hit
18 the current triggers before the sun even comes up and
19 before I went to work that day. And the nature of the
20 task, for me, the -- the -- the heat risk is directly
21 related to the effort for your task required from your
22 body that day.

1 Are you a flag person on a construction crew, or a
2 maintenance worker in the field, or a hole watch in a
3 confined space? Those put different levels of stress
4 on an individual's body, and they shouldn't all be
5 created -- treated the same. It's unreasonable to have
6 a single, prescriptive approach with specific heat
7 triggers. The right way to account for these variables
8 should be to anticipate these risks in the WHA that
9 looks at the specific task's risks.

10 And then, the JHA brings in the project-specific
11 risks on that day, like what the feels like temperature
12 is and how we'll manage it. If you're going to operate
13 a big D10 dozer that day, and the feels-like
14 temperature is more than 95 degrees, then let's have
15 coolers of water out, ready, in the field. And let's
16 put up some tents for rest and break shelters. And
17 let's give out popsicles at -- at the break stations
18 today, and let's only use a dozer that has -- has AC in
19 it.

20 Or if we have to use the one without, let's rotate
21 the operators every 30 minutes with the other two dozer
22 operators who do have the air conditioning. Maybe,

1 let's only get the work done between 7 in the morning
2 and 10 in the morning. That's a plan. A prescriptive
3 number on a piece of paper that shuts down a job is not
4 a plan. And on the idea that employees can easily be
5 reassigned to other tasks to perform once they've been
6 exposed to a specific heat trigger, well, it's just not
7 feasible.

8 We live in a world of specialized workforce that's
9 trained for specific roles, in many cases require
10 federally-approved operator qualification
11 certifications, OQ qualifications, to complete a task.
12 This idea that workers can be interchanged is -- is
13 just incorrect. So in the examples given in the rule,
14 those employers will be required to send employees
15 home, with pay, hire additional staff or just shut
16 down. This is just not a realistic approach.

17 In yesterday's testimony by the AFL -- AFL-CIO
18 rep, she even shared that an employee could even view
19 this move to what they view as an undesirable role, or
20 shift, as retaliation for acknowledging that they had a
21 heat-related concern. I want to stay away from that.
22 Number two, Beeta mentioned that OSHA should allow

1 employers to retain their current plans in effect. I
2 wholeheartedly agree with this.

3 Most employers, like Kinder Morgan, have been
4 taking steps to minimize heat injuries for years, even
5 without an OSHA standard in place. OSHA should allow
6 employers to continue to use existing HIIPPs, even if
7 those plans don't have every element that's in the
8 current draft version. In other words, if it's been
9 working, we should be allowed to keep doing it.

10 Number three, she mentioned that the time and cost
11 estimates are too low - too low. This can be seen in
12 details related to the lone workers. So first, as it
13 relates to the loan worker program, I would say the
14 heat injury rulemaking is not a place for anything
15 related to loan-worker programs. That's separate.
16 It's got its own benefits; it's got its own challenges.

17 I see no way to prevent heat-related issues by
18 developing some mechanism to call someone out in the
19 field and ask him, hey, how are you feeling? You
20 tired? You hot? You sweaty? Well, of course he is.
21 He's - he's working in the oil field in west Texas, in
22 August. We choose to create a culture where we

1 engineer out those hazards, or teach them to recognize
2 the signs and take appropriate actions to address them
3 before there's an issue.

4 Loan-worker programs as a whole are potentially
5 valuable, but not related to heat injury, and really
6 have no place in this rule. All that being said, if
7 you still choose to include it, the - the current
8 effort and cost estimates are incorrect. For example,
9 at high heat, OSHA proposes that each employer
10 communicate with each loan worker every two hours.

11 First, under that, the assumption that comes with
12 it is that it's going to take 15 seconds. I couldn't
13 use my cell phone where I have the numbers already in
14 it, and call four of my relatives, and ask them how
15 they're feeling, and get an answer and off the phone
16 in -- in one minute. I don't know about anybody on
17 this panel, but I couldn't -- I -- it's just not
18 reasonable to think I could get all four of those calls
19 done in one minute.

20 Well, reaching out to four different teammates and
21 four different jobs couldn't be completed in one minute
22 either. This effort and assumption is just

1 unreasonable, and it's -- it's unachievable. Second,
2 OSHA didn't even consider the remoteness of our work,
3 just to call a person up, in the field, on a cell
4 phone. Have you ever seen the Verizon guy out in west
5 Texas in an oil field saying, can you hear me now? No,
6 because the answer would be no.

7 There's no consideration for the need for extra,
8 like, cell repeaters that would have to be installed at
9 our facilities, or in our trucks, or extra cell towers,
10 or -- or extra -- or buying satellite phones, or even
11 Elon's satellite internet. Something to make this
12 actually work. OSHA needs to fully understand these
13 limitations and be sure to include those costs more
14 accurately if it's going to implement such a thing.

15 The fourth thing I have, that Beeta mentioned, was
16 that OSHA should follow the general approach taken by
17 Nevada. I -- I haven't personally fully read all of
18 the Nevada documents, but I think that OSHA needs to
19 not include any specific heat triggers or prescriptive
20 mitigation elements in the rule. Instead, allow
21 employers to make decisions about implementing the
22 right mitigation measures on their job-hazard analysis

1 and prevention plans. We've already proven that it
2 works.

3 So to kind of wrap up, OSHA's final rule should be
4 practical to implement, which this one is not. It
5 should not include elements like loan worker that
6 doesn't result in any safe work -- safer work
7 environment related to heat illness, and it should
8 allow us to continue to successfully protect our
9 employees like we do already, every day.

10 I ask that the panel and OSHA consider recalling
11 the standard or promulgate a more flexible standard
12 that allows all of us who have a proven track record of
13 already addressing this issue to keep doing what
14 we've -- doing if it's been working. Let those --
15 those of us that focus on this for a living define the
16 detailed implementation in our particular situation.
17 That's what we do, and the data proves out that we're
18 good at it.

19 Thanks again for the opportunity to comment. I'd
20 be happy to answer any questions from the panel.

21 JUDGE LESLIE: Does that conclude your
22 presentation?

1 MR. STEINBERG: Yes, ma'am.

2 JUDGE LESLIE: Thank you.

3 Does OSHA have any questions for this panel?

4 MS. LONG: Yes, we do.

5 I'm Lisa Long. I'm the Deputy Director in the
6 Directorate of Standards and Guidance, and I'll start
7 with a question, and then, my colleagues will have some
8 questions. So my question is, you note that an element
9 of the HIIPP requirement requires employers to include
10 all policies and procedures necessary to comply with
11 the rule, which you say is burdensome, and this is from
12 your NPRM comments. What alternatives would you
13 suggest to ensure employees are protected and
14 understand the policies that keep them safe?

15 MS. LASHKARI: Yeah, absolutely, Ms. Long.
16 Very -- thank you very much for your question. So
17 certainly, we think that we're -- we -- we are not
18 against a -- a programmatic approach. We are -- we
19 have programs in place, and we would incorporate our
20 policies. Those would be based on our -- I think,
21 based on our JHAs. The policies would be derived from
22 the JSA -- JSAs or JHAs, and then, incorporated into

1 the program.

2 MS. LONG: Thank you.

3 I'm going to turn to my colleague, Gary.

4 MR. ORR: Yeah. Thank you, Lisa.

5 I'm Gary Orr. I'm with OSHA, Directorate of
6 Enforcement Programs. Ms. Lashkari and Mr. Steinberg,
7 thank you, not only for your testimony here today, but
8 your comments were very extensive and -- and very
9 helpful. So we -- we appreciate the time and effort
10 you guys have put into doing that.

11 My particular question is going to be on water.
12 And you guys have talked a little bit about the
13 extensive burdens of some of the requirements of the --
14 of the proposal, so I wanted to ask you, in particular,
15 there is a requirement for a quart of water every hour
16 when you reach a threshold. And -- and a couple of
17 things that I want to ask about that -- one is, do you
18 have any kind of language that you -- I -- I -- I -- I
19 gathered from your testimony that you think water is
20 important, so that's -- we -- we know that water is
21 important.

22 How would we explain to the public what that

1 requirement should be? And -- and I'd note, Mr.
2 Steinberg, you talked about some specifics, so maybe
3 some examples of what you guys have seen is how that
4 requirement plays out. Thank you.

5 MR. STEINBERG: I mean, I -- I -- I don't see it
6 in a promulgated rule. What -- what I saw yesterday
7 that's -- that was referenced by, I believe, the
8 representative from the Chamber of Commerce, was a
9 nonenforceable guidance document, right? Government
10 and OSHA, specifically, is good at producing proper
11 guidance documents, but you could include, in a
12 nonenforceable guidance document, recommendations as to
13 volumes of water based on -- what we do in our -- our
14 evaluation is, we have a matrix that's built on which
15 trigger have you hit, at what -- how hot it is versus
16 what's the level of work -- minimum work all the way to
17 heavy workload. And that, kind of, dictates how much
18 time, work, rest cycles, and -- and volume of water to
19 be intake. But all of that could be put together in a
20 guidance document much, much easier than trying to
21 promulgate a rule.

22 MR. ORR: And it -- so one of the -- one of the

1 concerns, then, is the guidance document would not be
2 enforceable, right? So that -- it is a language that
3 you would suggest that might -- we could put into a
4 regulation that would then be enforceable for -- and --
5 and I -- I understand you guys have a lot of expertise,
6 and we've just got to, and -- and I know you've been
7 listening to testimony.

8 We have a lot of smaller employers, too. And so
9 they don't have a lot of expertise, so they need more
10 specifics, oftentimes. If you have any suggestions,
11 or -- or now, or if you have any post-hearing comments,
12 that'd be great, too.

13 MR. STEINBERG: We'd be happy to provide you some
14 post-hearing comments.

15 MR. ORR: Excellent. Thank you.

16 MS. LONG: Thanks. And I should say that in any
17 of these questions, if you can respond to them now,
18 that's great but also welcome to provide more in your
19 post-hearing comments.

20 MR. STEINBERG: Sure.

21 MS. LONG: Now, Steve.

22 DR. SCHAYER: Yes.

1 Thank you, Ms. Lashkari and Mr. Steinberg for your
2 testimony. We very much appreciate it.

3 I'm Stephen Schayer from the Directorate of
4 Standards and Guidance at OSHA.

5 And my question kind of follows up a little bit on
6 what Gary was mentioning. So in your testimony, you
7 indicated that any final rule should provide maximum
8 flexibility for employers, and be performance-based,
9 suggesting Nevada's newly adopted heat standard as an
10 example. And I noted also, in your written comments,
11 that you had mentioned that flexibility must be paired
12 with clarity to ensure that employers can easily
13 determine whether their selected measures meet OSHA's
14 requirements without unnecessary ambiguity.

15 And you had said in the written comments that
16 balancing flexibility and performance with clarity can
17 be achieved by incorporating limited essential
18 prescriptive elements within an otherwise performance-
19 oriented framework that uses non-mandatory appendices.

20 So I was just wondering if you could talk a little
21 bit more about that, and describe, perhaps, which
22 limited elements of the Heat Injury and Illness

1 Prevention Plan you think should be, or could be,
2 prescriptive in an approach like this, and which you
3 think should be handled through nonmandatory
4 appendices? And anything you can provide on this would
5 be very helpful. As you can imagine, this is something
6 that we struggled with too, as -- as Gary mentioned,
7 trying to ensure that there's flexibility but also
8 clarity.

9 MS. LASHKARI: Absolutely. Thank you very much,
10 Dr. Schayer, for your question. I -- we think that --
11 and I certainly don't want to speak for our -- for all
12 employers, but there are certain foundational elements,
13 I think, that address heat, perhaps: water, rest,
14 shade. That -- those were -- I know that that's a -- a
15 long-standing, you know, common phrase from OSHA that's
16 been around for a long time. I think training is
17 certainly one that we very much encourage, especially
18 for heat hazards where it's not -- those are not
19 uniquely workplace-related, right?

20 Work -- we -- there are heat hazards outside the
21 work -- workplace as well. I think training, and
22 education, and knowledge, providing that to our

1 employees, is incredibly important. So I think maybe
2 those are some of the -- some -- some foundational
3 elements. But again, I think we really stress the --
4 the JHA approach -- JSA approach, which is -- which,
5 again, I don't know of any -- many, you know, safety
6 professionals who are -- are unaware of -- of, you
7 know, JHAs or JSAs.

8 So again, we think that the -- the -- really, that
9 should be the driving force for -- for determining when
10 to apply a -- sort of, a -- a heat -- any kind of heat
11 standard, and then, also, which measures are most
12 appropriate, as well.

13 DR. SCHAYER: Okay. Thank you. And if you have
14 any additional suggestions in your post-hearing
15 comments, we would appreciate that.

16 I also wonder if -- Mr. Steinberg, if there's
17 anything you can share from your company's approaches,
18 that would be helpful too in post-hearing comments.
19 Any examples of JHAs or things, we would appreciate.
20 Recognize you may not be able to share, but if you --
21 if you could, that would be helpful to us, so.

22 MR. STEINBERG: Absolutely.

1 DR. SCHAYER: All right.

2 And then, I just had two questions on
3 acclimatization. Switching over to that topic. So you
4 mentioned in your testimony that you recommend that
5 OSHA allow for self-managed acclimatization through
6 health awareness training. And was just wondering if
7 you could talk a little bit about what content you
8 think the training would entail, and how employers
9 could demonstrate that self-acclimatization is
10 effective so as to be in compliance with any
11 acclimatization provision in a standard?

12 MS. LASHKARI: Absolutely. Thank you, Dr.
13 Schayer, and we'd be happy to consider this for post-
14 hearing comment as well. I think that the -- the gist
15 of this, though, is that employees know their bodies
16 best. I will say, I think, unlike water, rest, and
17 shade, acclimatization might be a little bit more of
18 a -- a little bit more of a foreign topic to folks.

19 I'm not sure if it -- you -- that, you know, it
20 was something I definitely had to learn up on. So --
21 so I think, certainly, the education piece is -- is
22 critical. It's -- it's about informing employees about

1 the -- the hazards associated with not being
2 acclimatized and what that means. And I think that
3 there's -- I -- I think that self-managed
4 acclimatization is very important because, again, it
5 gets back to employees know their -- their bodies best
6 and -- and how much they can -- they can tolerate
7 and -- and how much -- you know, whether they've been
8 in substantial or similar conditions.

9 I know that there is an exception in the proposed
10 rule for acclimatization where, if you've been in, I
11 think, it's same or similar conditions in the previous
12 14 days, in doing similar work, that you wouldn't need
13 to -- that employers wouldn't have to impose those
14 acclimatization requirements. And we were -- we
15 certainly advocated for -- for that exception from --
16 from the get-go, I think, when -- when this rulemaking
17 started back with the ANPRM.

18 I think we saw some language that was in the --
19 in - in the NPRM package that was what -- that seemed
20 to narrow that exception quite a bit, but -- but
21 certainly, those types of factors, right, that
22 employees know what they have been doing and -- and --

1 and whether they might need to climatize or not is - is
2 all, sort of, wrapped in into that self -- self-managed
3 acclimatization option that we're -- that we are --
4 that we wanted to float out there. But again, we're
5 more than happy to elaborate on that in -- in post-
6 hearing comments.

7 DR. SCHAYER: Okay. Thank you very much.
8 Appreciate that. And one other question about
9 acclimatization. In your written comments, you had --
10 also are recommending -- recommended allowing employers
11 to implement alternative effective methods for
12 acclimatization, and you had suggested proactive
13 monitoring, or wearable technologies that might monitor
14 individual physiological responses.

15 So just wondering if you have any examples of such
16 technologies that your members or employees are
17 exploring, or using, or -- yeah. Or if you could
18 discuss, you know, if you're currently using a -- such
19 approaches, what actions would be triggered by abnormal
20 readings? So essentially, how you are -- how you
21 implemented physiological monitoring or -- or
22 wearables. So if any of your members have done that,

1 it'd be very helpful to have that information and their
2 experience with it.

3 MS. LASHKARI: Absolutely, Dr. Schayer. We're
4 more than happy to - to share that in post-hearing
5 comment as well. And I would say, just to - to level
6 set, not -- not all our Coalition numbers have the -
7 the resources or the opportunity to use such
8 technology. So certainly that's something that we
9 would only want to consider as -- as an option.

10 But I know that some have utilized, I think, the
11 heat -- like, monitoring watches that record, you know,
12 core body temperature, I think heartbeat rate, other --
13 other types of, you know, body condition metrics.
14 So -- but we're -- we're more than happy to elaborate
15 on that in -- in post-hearing comment.

16 DR. SCHAYER: Perfect.

17 And thank you very much to you both.

18 That concludes my questions. I'll turn it back to
19 Lisa.

20 MS. LONG: Thanks.

21 And now, we're going to turn to our colleague
22 online, on -- with some questions on rest breaks. We

1 have Dr. Tiffany DeFoe.

2 MS. DEFOE: For the record, this is Tiffany Defoe
3 with the Directorate of Standards and Guidance, OSHA.

4 In -- in your comments on the NPRM, the Coalition
5 suggested that OSHA should provide information in non-
6 mandatory guidance to help set some guard rails around
7 the frequency of as-needed breaks used by employees.
8 And you also noted that members of your Coalition have
9 had success with using self-paced rest breaks to avoid
10 overheating, and also, to support hydration, fatigue
11 reduction, and overall safety in their facilities.

12 And I'm wondering if -- if there is any further
13 information that -- that you can share, either now or
14 in post-hearing comments, about how frequently self-
15 paced rest breaks are used, in their experience -- in
16 your members' experience, how long they tend to last,
17 and the general heat conditions and other preventions
18 strategies that are prevalent in the members'
19 facilities where these self-paced rest breaks have been
20 used successfully to avoid overheating?

21 MS. LASHKARI: Sure. Thank you very much, Ms.

22 DeFoe. We're certainly happy to provide more specific

1 numbers that we can tap back and -- into the Coalition
2 and get more specific numbers per -- and you know,
3 it -- in consideration of post-hearing comments.
4 However, I do want to say just on the -- on the -- the
5 piece about some -- some -- providing some non-
6 mandatory guidance on the as-needed rest breaks.

7 We did hear some concern from some Coalition
8 members, not all, but just of -- sort of that potential
9 for employee abuse of taking longer -- taking rest
10 breaks when they don't need them, or for taking longer
11 ones than are -- that -- than are necessary. So that's
12 why we wanted to -- that was part of the motivation for
13 providing some non-mandatory guidance on that.

14 But more than happy to -- to reach back out to the
15 Coalition and get more -- more numbers on -- on sort of
16 when rest breaks are needed. For the most part, I
17 would say folks are noticing that it's, you know --
18 it's an honor system and employees, they -- when
19 they -- when they feel that something is coming on,
20 that they -- they take the break and -- and we give
21 them however -- you know, however much time they need
22 to -- to, you know, reasonably get back out there.

1 And Rich, if -- if you have any experience you can
2 certainly speak to that.

3 But I -- I -- again, I think maybe this would
4 be -- on -- on the specific numbers, Ms. DeFoe, I think
5 we'd -- we'd like to consider that for post-hearing
6 comment.

7 MR. STEINBERG: Yeah, I -- I mean, I -- I -- I
8 echo the fact that that -- that's a staple of our
9 programs across our company right now, is -- is -- is
10 self-auditing, and -- and supervisor participating, not
11 a regimented, this is at what time you need to go take
12 a break. And we've been so very successful at it. I
13 just mentioned 11,000 employees, 13,000 man-hours of
14 contractors, we had two last year. Neither one of them
15 were reportable, by the way, right? They were just
16 recordable -- recordable injuries. So neither one of
17 them met a level of severity to -- to -- to be
18 reportable. So again, a -- a staple of our program,
19 and we'd be happy to share some information afterwards.

20 MS. DEFOE: Thank you so much. I appreciate it.

21 MR. STEINBERG: Oh, sure.

22 MS. DEFOE: And yes, I did take away from your

1 comments as well with concern about, you know,
2 retaliation claims, for example, in the case where
3 employers might try to address some, you know -- an
4 instance of overuse. So yes, we understand that about
5 the guidance requests, but any further information on
6 those concerns as well is welcome. Thank you.

7 MR. STEINBERG: Sure. Thank you.

8 MS. LONG: Thanks, Tiffany.

9 And now, we're going to turn to Brenda Finter,
10 who's also online for a few questions.

11 MS. FINTER: Good morning. My name is Brenda
12 Finter. I'm with OSHA -- I also want to say
13 department -- Directorate of Standards and Guidance.

14 My first question is about rest breaks. Based on
15 your testimony today, you mentioned difficulty for some
16 employees safely accessing break areas, specifically
17 tower workers and construction workers. Can you please
18 explain what employers are currently doing, or could
19 do, as an alternative to prevent HRI for these workers?
20 And feel free to submit your response in post-hearing
21 comments if you don't have answers today.

22 MS. LASHKARI: I think I would like to -- thank

1 you very much for your question, Ms. Finter. I think I
2 would like to reach back out to the Coalition to get,
3 sort of, the specific measures that they are using. I
4 believe that they are -- they -- they tend to be
5 flexible, though. I mean, especially with construction
6 work, it just, it -- it really depends on the -- the
7 location of the project.

8 MS. FINTER: Okay.

9 MS. LASHKARI: So I think that it really varies,
10 but -- but I'm more than happy to -- to submit post-
11 hearing on -- comment on that.

12 MS. FINTER: Okay. Thank you. Also, in your
13 written comments, you mentioned facilities that are
14 difficult to cool, including temperature-sensitive
15 environments. What types of employers have you found
16 with temperate-sensitive environments where cool air
17 could not be provided, and how did they ensure
18 employers were able to cool off? And again, if you
19 want to provide that after the hearing, that's fine.

20 MS. LASHKARI: I think -- thank you very much for
21 your question, Ms. Finter. I think that would be
22 the -- I think we will want to address that in post-

1 hearing.

2 MS. FINTER: Okay. One last question, and it has
3 to do with observation of signs and symptoms. You
4 noted that many of your Coalition members find
5 observation for signs and symptom requirements too
6 vague, as there are many signs and symptoms that are
7 not outwardly visible, and not unique to heat illness.
8 What suggestions do you have to make the observation
9 requirements more specific and feasible?

10 MS. LASHKARI: Sure. Thank you very much, Ms.
11 Finter. I think one thing we want to emphasize there
12 is the importance of employees reporting to
13 supervisors. So that -- and that would certainly be
14 part of any -- any training program is just making sure
15 our employees are aware of reporting their -- any signs
16 or symptoms because, again, they know their bodies the
17 best -- to their supervisors. I think a -- a -- a
18 major concern of our Coalition is any kind of --
19 requirement on employers, so the -- the supervisor, to
20 have to take on that responsibility because who knows,
21 right?

22 As a supervisor, I don't know if employee, you

1 know, X is sweating a little bit more today than
2 yesterday, or if this, you know -- this person might be
3 a little bit more -- or faint, or -- or something like
4 that. I think that is very, very difficult and --
5 and -- and is a slippery slope for -- for the -- for
6 the supervisors -- for the employer to take on. But
7 certainly, we want our employees to be the ones
8 approaching us, telling us, hey, I think that -- you
9 know, I might be experiencing a -- an HRI. You know,
10 I -- I need help, and -- and we would immediately
11 provide that.

12 MS. FINTER: Thank you.

13 MS. LONG: Thanks, Brenda.

14 Now, I'm going to turn to Joo-Hyung for -- with
15 some questions on economics.

16 MS. SHIN: Thank you, Lisa.

17 My name is Joo-Hyung Shin from OSHA.

18 My first question is about the mandatory rest
19 breaks. So in your submitted comment, you say that
20 the -- OSHAs cost estimates of mandatory rest breaks do
21 not incorporate any, quote, "cost for the
22 inefficiencies associated with work interruptions at

1 inopportune time", end quote. Can you elaborate more
2 on these work interruptions, and especially, if -- if
3 possible, provide us with any estimates of the average
4 time loss associated with these work interruptions for
5 to support our econ feasibility analysis.

6 MS. LASHKARI: Thank you very much for your
7 question. I think, as I understand, I think we had --
8 we have included in our comments about, sort of, that
9 rest breaks and how -- is this the mandatory -- I think
10 this is the mandatory rest breaks, and how the -- the
11 time going to and from the rest break area, as well as
12 donning and doffing PPE, does not count towards the --
13 the total amount of rest break time.

14 And I think that there were estimates in the NPRM
15 that were -- in our -- in our estimation, was lower
16 than what we were hearing from Coalition members, in
17 terms of how much time that could take, particularly
18 with the -- with PPE donning and doffing, certain
19 Coalition members have folks in -- in quite a lot of
20 PPE due to other types of hazards, maybe lead exposure.

21 And donning and doffing PPE is -- is -- it takes a
22 lot of time because you want to make sure there's no

1 contamination when you do it; you have to be careful.

2 So -- so certainly, I think that those were -- those

3 were part of our comments and -- and the reason for --

4 for mentioning that we think that the -- the estimates

5 in there are too low.

6 MS. SHIN: Thank you. I have --

7 My last question is for Mr. Steinberg. We were

8 very - the program that you were talking to us about,

9 very intriguing for us economists. We were - we would

10 be grateful if you could provide - if you could - any -

11 your experience, in terms of - on cost estimates - not

12 cost estimate - time estimates that it took for you to

13 develop your program that - of the - to be very

14 effective, this will then - will very greatly help with

15 our feasibility analysis about, you know, is it

16 feasible to develop a HIIPP that is effective as yours,

17 so thank you.

18 MR. STEINBERG: Well, thank you.

19 MS. LASHKARI: And --

20 MS. LONG: And finally, I'm going to turn to Dr.

21 Zoe Petropoulos, who is online. And Zoe has one

22 question on triggers, and then, I believe she'll read

1 some questions into the record.

2 MS. PETROPOULOS: Real quick.

3 Ms. Lashkari, were you about to say something?

4 MS. LASHKARI: Oh, yes. Just that we did do -- we
5 did include in our NPRM comments some numbers on, I
6 believe, programs and how long our Coalition members,
7 it -- how long it took them to develop those. I think
8 a lot of it is -- is -- is variable, but -- but many of
9 the steps that are, sort of, in -- that are needed in
10 program development.

11 So it just is, like, planning, right? Even the
12 planning phase takes a lot of time for -- for a program
13 development. As I was hearing our Coalition first talk
14 on this, it really opened my eyes to just how much time
15 it really does take, making sure it goes through review
16 cycles, all the stakeholders provide their input, and
17 certainly, that implementation piece is -- is
18 fundamental, right? A program is just four corners of
19 a document without implementation. So rollout,
20 implementation, buy-in. Those are certainly things
21 that -- that take time but are -- are very essential as
22 well.

1 MR. STEINBERG: And if I could just add to that.
2 And not only are there all those obvious elements on
3 the front end, but the first version of this does not
4 look like the version we have today, right? It took
5 years of implementing it, and trying things out, and
6 trying cooling vests that didn't work, and trying other
7 elements to be -- to get to where we are.

8 So there's -- there's a -- there's a number that's
9 a little bit of a -- of a swag will have to be thrown
10 in there, but I don't want to lose track of that piece
11 as well.

12 MS. PETROPOULOS: Thank you.

13 In the interest of time, I'm going to read some
14 questions now for your consideration and your post-
15 hearing comment. So I'm going to start with some
16 questions about triggers. So you mentioned some
17 concerns with the triggers in your testimony today. In
18 the Coalition's written comment, you suggested that
19 OSHA could include references to the National Weather
20 Service, excessive heat watches and excessive heat
21 warnings, to represent the initial heat trigger and
22 high-heat trigger. To support the use of the National

1 Weather Service heat advisories and warnings as
2 appropriate triggers, and ensure that they are
3 sufficiently protective, if you have any data to
4 support that the incidents of heat-related injuries and
5 illnesses predominantly occur when one or both are
6 issued, could you share those in your post-hearing
7 comment?

8 My next question is, you mentioned geography as an
9 important factor to consider. And if you could, in
10 your post-hearing comment, point to any evidence that
11 employers would use to craft trigger levels based on
12 their specific location, we would appreciate that in
13 your comment.

14 My next question is about monitoring. You
15 mentioned in your testimony that the frequency of
16 monitoring outlined in paragraph (d) of the proposal,
17 and can you discuss in your post-hearing comment,
18 potentially a little bit more in detail, what a
19 reasonable and appropriate frequency for monitoring
20 might be, and any information you can share on what
21 frequency your Coalition members currently use for
22 conducting monitoring?

1 And then, finally, the last topic I have some
2 questions on is fan use. So in the Coalition's comment
3 on the proposal, there was reference and description of
4 kind of the -- the fan use provision. And you wrote
5 that your Coalition's members think that evaluations of
6 fan use can be based on temperature alone, and that it
7 can be based on employers' reasonable determinations of
8 harmful fan use.

9 So I just have a couple of follow-ups. In coming
10 to this conclusion, can you discuss how your members
11 accounted for the scientific literature cited by OSHA
12 that indicated humidity is an important factor to
13 consider? And can you clarify how you would envision
14 employers determining harmful fan use?

15 And then, finally, you also wrote, on the same
16 topic, that the table provided by OSHA on page 70783 is
17 overly complex and confusing. And if you could
18 describe in your post-hearing comment if there are ways
19 OSHA could communicate that information in a clearer
20 way, we would appreciate it. Thank you.

21 MS. LONG: Thank you.

22 That concludes OSHA's questions for that sequence.

1 Thank you for your responses.

2 JUDGE LESLIE: Thank you.

3 Does the solicitor have any questions?

4 MS. WILES: I do.

5 I just have two brief things that I wanted to
6 touch upon. I -- I want to first thank you, Ms.
7 Lashkari and Mr. Steinberg, for being here today. Your
8 testimony has been invaluable and very insightful in
9 terms of providing some real world implications and
10 experiences with addressing this heat hazard.

11 You touched upon this, and I know my OSHA
12 colleagues have asked you a bunch of questions about
13 rest breaks, but there is one angle about it that I
14 wanted to get your input on, and that's with employees
15 being able to self-manage their needed rest breaks. Is
16 there anything that you have in place, or your members
17 have in place, that will not discourage employees from
18 taking needed rest breaks?

19 I'm thinking, in particular, of the proposal's
20 anti-retaliation provision. Is that something that
21 would be necessary to ensure that employees are
22 encouraged to take rest breaks when needed, to report

1 their symptoms early on so that they can be addressed
2 before an HRI is developed, or are you finding -- are
3 your members finding that, with their current plans,
4 that they have a system in place that allows employees
5 to self-manage, to take rest breaks as needed without
6 fear of retaliation?

7 MS. LASHKARI: Sure. I'm happy to take that
8 question. Thank you very much. I think -- I think it
9 is the latter. I think that -- well, there's a --
10 there's a -- in our -- in our Coalition, that there's a
11 lot of feedback about how there's a lot of trust
12 between the employers and the employees. And I would
13 say that the, sort of, as needed breaks policies,
14 many -- many of them are not, sort of, even specific to
15 heat.

16 It's just if you are feeling ill, or you feel like
17 you cannot work safely, come to us. We'll -- you --
18 please report it, and you -- I -- and that, actually, I
19 think, you know, they require those to be reported of
20 their -- from their employees. So I think it really
21 goes to -- to that piece. And certainly, I mean, no
22 one in the -- in the Coalition supports any -- any form

1 of retaliation, so I think, you know, there is -- there
2 is no question about that.

3 MR. STEINBERG: Yeah. And further to that, I've
4 already -- I mean, we do -- we implement site safety
5 observations throughout the day. So we're looking --
6 we have people out looking for concerns, and then, when
7 someone does, you know, you're your brother's keepers
8 kind of approach. In -- in our programs, awareness is
9 the biggest thing. So we have -- awareness is the
10 biggest helpful tool that we have, in that it helps
11 supervisors know what to look for.

12 It helps the individual employee to know how --
13 what to look for when they're feeling it. And when
14 they do bring it up, right, we try and mention
15 empirical data. We track near misses. We track these
16 safety observations. We celebrate it when someone
17 brings something up to us. That was hard on the front
18 end, right?

19 There were people that took advantage of it in
20 different parts of our company at different times. But
21 once the culture got settled, we celebrated those
22 opportunities. When Beeta identified that Rich was

1 starting to overheat and suggested we take a break, or
2 when an individual came up on his own. So you start
3 celebrating those, you start making it something
4 positive. We -- we tend to try to spin away from the
5 negative aspects, like retaliation, view of
6 retaliation, or -- or anything that would keep somebody
7 from stopping what they're doing before it becomes an
8 issue.

9 MS. WILES: Thank you so much for sharing that.

10 I'm sorry. I should have been announced on the
11 record. I'm Linda Wiles from the Solicitor's Office
12 and -- here at the Department of Labor.

13 Just one other quick follow up. This is for you,
14 Mr. Steinberg. You had mentioned that you have -- your
15 company has spent much time developing its plans, and
16 they've tailored --

17 MR. STEINBERG: Uh-huh.

18 MS. WILES: -- it to site-specific tasks, specific
19 needs of the workplaces that you have throughout your
20 organization. I didn't hear mention anything about
21 first aid and emergency procedures, but I imagine that
22 that's a key component of your program? And then,

1 I'm -- to follow up what some of my other colleagues
2 had raised. If you are able to share either an
3 outline -- if you cannot submit your plan into the
4 record, sort of, like an outline of the components of
5 your plan, and maybe how you address and implement heat
6 prevention measures at your workplace, I think that
7 will be a valuable resource for OSHA as it considers a
8 final rule.

9 So that's one request. And then, the other thing
10 is that there was mention about loan worker programs
11 being very unique and individualistic. If you could
12 provide some summary or explanation as to how you
13 address loan workers currently, I think that will also
14 be really helpful as well.

15 MR. STEINBERG: Great. I'll -- I'll work with
16 Beeta to submit this post-hearing.

17 MS. WILES: Thank you so much.

18 MR. STEINBERG: Now -- and I want -- want to draw
19 attention to one fact that I made in my -- in my
20 statement. I don't believe the loan worker element is
21 relevant when we're talking about heat exposure. In
22 general, loan workers working by themselves, whether

1 it's heat-related or -- yesterday, as mentioned,
2 cardiovascular issues, or security, or whatever, all of
3 those may be valid in a -- in a loan worker program,
4 but I don't believe it's specifically a benefit to the
5 heat injury illness program --

6 MS. LASHKARI: And --

7 MR. STEINBERG: -- by itself.

8 MS. LASHKARI: -- if I can --

9 Oh. Sorry, Rich.

10 MR. STEINBERG: Go ahead.

11 MS. LASHKARI: If I may? I think - I know just
12 circling back to Dr. Schayer's question is about sort
13 of an element of, sort of, you know, throughout - for
14 our heat programs, certainly emergency response if -
15 if it's not specific in the - in the heat program
16 already, it's already a generalized emergency response
17 program that obviously would also apply in - in case of
18 heat-related illnesses. Either way, there - there
19 obviously are emergency response procedures in place.

20 MS. WILES: Thank you so much.

21 That's all from me.

22 MR. STEINBERG: Thank you.

1 JUDGE LESLIE: Thank you.

2 Mariam, are there any participants who wish to ask
3 a question?

4 MS. CARLON: Yes, we do have a few.

5 The first one is Mr. Schneider. Please state your
6 name for the record.

7 JUDGE LESLIE: Mr. Schneider?

8 MR. SCHNEIDER: Hi. My name is Scott Schneider,
9 and I -- I -- I have questions for you about the JHAs.
10 You talk about using JHAs to determine whether somebody
11 is at risk of heat stress. To do that, you have to
12 have some sort of criteria to use to determine that.
13 So which criteria do you recommend be used for heat --
14 for JHAs for heat? And also, what -- what, you know --
15 what qualifications would somebody need to have to be
16 able to do a JHA, and to -- and how often would they
17 have to be redone, and how much time and cost would
18 there be associated with all -- doing all those JHAs
19 for each individual job and task?

20 MS. LASHKARI: So I thank you very much for your
21 question, Mr. Schneider. And I -- I'll try to address
22 as many in there -- there are a few in there, but I'll

1 try to address it -- as many -- as many as I can. I
2 think for -- at least, for purposes of the criteria, I
3 know that the Nevada rule, it mentions it has a
4 definition for occupational exposure to heat illness,
5 and that's what is -- sort of, drives the JHA.

6 And -- and in the -- in the proposed -- in the
7 Nevada rule itself, it includes elements that -- that
8 go towards occupational exposure to heat illness. And
9 those include factors like air temperature, relative
10 humidity, those types of things. It's -- it's an
11 including, but not limited to, type of definition. So
12 these are factors to consider and -- and that would be
13 based, again, on -- on the employer's reasonable
14 discretion.

15 As to -- I'm -- I'm sorry -- I'm sorry, Mr.
16 Schneider. I -- I -- I lost the -- I -- the few of the
17 specifics, but we're happy to --

18 MR. SCHNEIDER: Right, right.

19 MS. LASHKARI: -- to follow up in post-hearing.

20 MR. SCHNEIDER: Well, you know, I --

21 MR. STEINBERG: Yeah. Scott, I don't know if I
22 can come up with a cost for how much it costs for us to

1 put together a JHA specifically heat-related. I can
2 tell you that we have JHAs for every routine task in
3 the company. Yes, it's taken us a long time to do so,
4 but we have already put that time in. There's
5 different kinds of JHAs. There's JHAs that are
6 partially filled out, meaning if you're going to - if
7 you're going to load a rail car, there are some things
8 that we've learned over the years that are safety
9 concerns that need to be mitigated, and there's
10 mitigation techniques already on the JHA.

11 And then, when you get to work that day, before
12 you can start or get a permit to do any work from --
13 from our permit writers is that -- that you take care
14 of the -- the elements related to the JHA that are
15 effective today. Like, is the rail car wet today, is
16 it raining outside, is it hot outside, all the
17 different elements that may come in. So we update that
18 JHA before the person climbs up on that rail car, or
19 does whatever the job is, as it relates to the hazards
20 that day. So we -- we've learned what a -- a majority
21 of the hazards are, but we don't assume that every day
22 is going to be the same. We make a job-specific, day-

1 specific, and -- and climate-specific that day.

2 MR. SCHNEIDER: Yeah. Thank you very much. I --
3 I understand that, and I -- I guess, one of my concerns
4 is the vast majority of construction companies are not
5 Kinder Morgan. They're much smaller. They are --
6 have, you know, 20 employees or less, and I don't --
7 I'm just wondering what the burden would be for them.

8 The paperwork burden, the cost burden, the time
9 burden to do a JHA for every job and -- and what kind
10 of expertise would be needed to -- for that small
11 company, which doesn't have safety and health
12 expertise, to be able to make a decision based on vague
13 criteria that aren't -- aren't spelled out as to
14 whether or not there's a heat hazard for that job.

15 MR. STEINBERG: I guess the best answer is -- is,
16 we had 13,000 man-hours of contractors last year, many
17 of which were construction companies, and we had one
18 injury. So the -- those --

19 MR. SCHNEIDER: Okay, I'm talking --

20 MR. STEINBERG: -- requirements are in our
21 contractor safety requirements that they fill out
22 these -- that they complete JHAs, and follow that

1 process, and -- and they are doing so successfully.

2 JUDGE LESLIE: And Mr. Steinberg, before you
3 answer again, I just want to remind both of you to
4 identify yourself before you answer. Since OSHA is not
5 directing their questions to either one of you, just
6 for the hearing record, if you could identify yourself
7 before you answer --

8 MR. STEINBERG: Understood.

9 JUDGE LESLIE: -- I would appreciate it. Thank
10 you.

11 MR. SCHNEIDER: Okay.

12 Well, thanks very much for your point -- for
13 your -- for your questions.

14 MR. STEINBERG: Thanks, Scott.

15 JUDGE LESLIE: Thank you, Mr. Schneider.

16 MS. CARLON: Mariam, are there other ones too?
17 Other participants who wish to ask a question?

18 MS. CARLON: Yes, Your Honor.

19 The next person is Ms. Barbarash. Please state
20 your name for the record.

21 JUDGE LESLIE: Please go ahead and ask your
22 question, Ms. Barbarash. Ms. Barbarash, you are on

1 mute, ma'am.

2 MS. BARBARASH: Thank you so much. I'm --
3 apologize for that. My name is Ellie Barbarash. I'm
4 from the American Federation of State, County, and
5 Municipal Employees. I'm a safety advocate -- senior
6 safety advocate there. I appreciate this opportunity
7 to ask a question.

8 I especially appreciate seeing Conn Maciel because
9 you produced something that I found really valuable.
10 When our member, Ron Silver, was killed in August at
11 the Baltimore Department of Public Works, out of
12 heat -- heat exposure, you produced -- you were asked
13 to create a report by the City of Baltimore, and you --
14 you issued one, written on September 30th, released on,
15 I think, October 24th, about a -- a report of
16 investigation and program assessment.

17 And you made several specific programmatic
18 recommendations to the City of Baltimore, but my
19 confusion is that what you put in writing in that
20 report seems to, perhaps, not mesh with what you are
21 saying here. So in particular, the few things I'm
22 going to start by talking about is you recommend three

1 stages of heat threshold triggers at which specific
2 program -- program elements kick in.

3 An initial heat trigger, set at a heat index of 80
4 degrees; a high-heat trigger set at a heat index of 90;
5 and an extreme heat stop work trigger, set at a heat
6 index at 105 degree F. You put that in writing and
7 sent it to Baltimore, and you mandate -- you asked for
8 mandated cool down rest periods during periods when the
9 heat index is at or above the heat index trigger.

10 You know, you -- you have to have a mandatory 15-
11 minute minimum paid -- minimum paid rest break every 2
12 hours. And then, you even say that the -- it -- that
13 the extreme stop work authority, there should be
14 cessation of work by solid waste -- waste collection
15 personnel. And you added a footnote that said, while
16 no OSHA or state law requires workers to stop work at a
17 particular heat or heat index level, because of the
18 extraordinary physical demands of solid waste
19 collection, we believe at such a high heat index, the
20 work simply cannot be done safely, regardless of how
21 much water is provided or what breaks are mandated.

22 So I just want to leave it there and ask if you

1 can address what appear to be discrepancies in that
2 programmatic recommendation and what you are
3 recommending to our panel now. Thank you.

4 MS. LASHKARI: Thank you, Ms. Barbarash. This is
5 Beeta Lashkari.

6 Your Honor, I would like to maybe just suggest
7 that this is -- this is irrelevant for the -- the
8 rulemaking hearing.

9 JUDGE LESLIE: Is that your answer, Ms. Lashkari?

10 MS. LASHKARI: It is.

11 JUDGE LESLIE: Thank you.

12 Do you have any other questions, ma'am?

13 MS. BARBARASH: At the moment, I don't. I may
14 again, but at the moment, that's my question. Thank
15 you.

16 JUDGE LESLIE: Thank you.

17 Do we have any other participants, Mariam?

18 MS. CARLON: Yes, we do.

19 The next question is from Ms. Berkowitz. Please
20 state your name and affiliation for the record.

21 JUDGE LESLIE: Thank you.

22 MS. BERKOWITZ: Let's see. I can't seem to start

1 the video, but can you hear me?

2 JUDGE LESLIE: I can hear you, Ms. Berkowitz.

3 MS. BERKOWITZ: Okay. Thank you.

4 First of all, I know you're avoiding answering
5 questions about the report you did in -- in Baltimore
6 on the death of Ron Silver, but I have to say it was an
7 incredible report. And we know, of course, that the
8 Maryland OSHA standard would have -- had that been in
9 place, would have prevented this death.

10 I want to focus -- I have two questions, if that's
11 okay? The first is, if there are no heat triggers --
12 like, you don't want any prescriptive heat triggers or
13 other prescriptive requirements, how does an employee
14 know whether an employer is failing to address a heat
15 hazard, or where they should be addressing a heat
16 hazard, and therefore, can contact OSHA before someone
17 is harmed by heat? And I -- I could ask it to Beeta or
18 Richard, yeah.

19 MS. LASHKARI: Ms. Berkowitz --

20 JUDGE LESLIE: Yeah, can you repeat your last
21 few -- your last sentence barely got it -- pages that
22 sounded like -- that you might have been turning, and I

1 did not quite catch that.

2 MS. BERKOWITZ: Oh, okay.

3 If there are no heat triggers that -- or other
4 prescriptive requirements, how would an employee know
5 whether an employer is following the OSHA standard or
6 is -- is failing to address a heat hazard, and could
7 then contact OSHA before someone is harmed by heat?

8 MS. LASHKARI: Thank you very much, Ms. -- Ms.
9 Berkowitz. I think -- it's a -- it's a -- I think,
10 certainly, we want to make sure that employees are --
11 and -- and I don't think that we're suggesting no
12 elements. I mean, I -- I think -- just as I mentioned
13 to Dr. Schayer's question, training is a huge element,
14 right? And so I think that would be, certainly, a way
15 for employees to know whether their employers are
16 addressing heat appropriately or not.

17 MS. BERKOWITZ: But how do they know when they're
18 supposed to be trained?

19 MR. STEINBERG: So let me -- I -- I can throw out
20 there. For -- for -- for our example, we have a --
21 a -- a heat injury.

22 JUDGE LESLIE: And to the -- can you please

1 identify yourself?

2 MR. STEINBERG: I'm sorry. This is Rich Steinberg
3 with Kinder Morgan. I can take that question if you'd
4 like?

5 JUDGE LESLIE: Thank you.

6 MR. STEINBERG: Specific to our program, we -- we
7 have, in areas where it's relevant, a heat injury
8 checklist for the day. And -- and I'm not saying it
9 doesn't have numbers on it, in terms of temperatures.
10 It also reflects the nature of the task, though. So
11 there's a matrix that has the temperature, heat index
12 versus nature of the task. And so it's very job
13 specific and -- and very geographic specific, right?

14 I couldn't use that same checklist in Denver that
15 I could in Louisiana. So I'm not suggesting that
16 numbers aren't valid here. I live through numbers.
17 I'm suggesting that I don't think it needs to be
18 federally mandated across the board in a single
19 approach.

20 MS. LASHKARI: And -- and this is Beeta Lashkari.

21 Just to -- to piggyback off -- off of Rich's
22 point, certainly, the -- a -- a JHA approach doesn't

1 mean that the employers can't have the, you know,
2 assigned values, right? But -- but it -- it -- it's
3 just -- it vary -- varies from place to place. It's --
4 it's a -- a reasoned assessment based on location,
5 based on task. All the -- all the factors that we've
6 been mentioning here today.

7 MS. BERKOWITZ: Thank you. And speaking of your
8 comments about flexibility, about requirements, and
9 about -- I'm going to focus on acclimatization because
10 I was at OSHA when we launched our first campaign to
11 prevent heat illness. And it was water, rest, shade,
12 and acclimatization, and training that is part of it.
13 I mean, water, rest, shade, were the posters, but if
14 you read the whole poster, it's acclimatization and
15 training.

16 So you argue in your comments that long-term
17 geographical acclimatization of workers should be taken
18 into account, because while employees in Florida may be
19 accustomed to working in warmer temperatures for the
20 majority of the year, workers performing the exact same
21 work in Minnesota may not be so accustomed. My
22 question to you is, are you aware of paragraph

1 (e)(7)(iii), which exempts employees from
2 acclimatization requirements if the employer can
3 demonstrate the employee consistently worked under the
4 same or similar conditions as the employer's working
5 conditions within the prior 14 days?

6 MS. LASHKARI: Yes, thank you very much for your
7 question, Ms. Berkowitz. This is Beeta Lashkari.
8 Certainly aware of -- of that provision. I think I
9 mentioned it earlier in -- in my -- in my testimony or
10 in response to one of OSHA's questions. We -- and
11 we're very much -- we very much support that exception.
12 The only concern we have is that, in reading the NPRM
13 package, it did seem to be -- I'm not -- I'm not sure
14 how employers are going to be able to use it because it
15 seems -- it really seems to take out the word similar
16 where it has to be -- it's -- it is almost exactly the
17 same conditions in the prior 14 days.

18 And I -- and I think OSHA includes an example in
19 there about, sort of, an analogy of, you know,
20 picking -- I forget what it is. It -- I think it's
21 picking tomatoes and -- and cucumbers might be similar
22 enough, but if it's picking tomatoes, and water -- or

1 cucumbers and watermelons or something like that, that
2 would be substantially different enough. So again,
3 I -- I think it -- it's really -- the devil is in the
4 details there.

5 But certainly, we -- we encourage, we -- we
6 support that exception, and I think the intent of the
7 exception, it -- it just did seem like it -- it got
8 to -- to a much more detailed and -- and -- and
9 tailored and focused prescriptive type of analysis in
10 the -- the background NPRM materials. We -- we think
11 that the -- that -- that exception makes sense from a
12 science perspective, right?

13 If - if someone has been in - in - hasn't been
14 really in conditions that would require them to
15 reacclimate - reacclimatize, why would there be a - a
16 reacclimatization requirement? It sort of comes to
17 this. I know it sounds very circular, but if there's
18 no reason to reacclimatize, why impose a requirement to
19 reacclimatize? So - so no, we're - we're very - we're
20 very supportive of that - of that - the intent of that
21 exception.

22 MS. BERKOWITZ: A quick follow up. Are you also

1 aware that heat deaths occur most often during a
2 worker's first few days on the job, and that this data
3 reflects workers who died from heat stress while
4 working in the South, in Georgia and Florida? And that
5 many of these workers who died are immigrant workers
6 that come -- that came -- and have come from warmer
7 climates?

8 MS. LASHKARI: Thank you very much for your
9 question, Ms. Berkowitz. This is Beeta Lashkari.
10 Certainly, we -- we did read the -- the statistics on
11 fatalities associated with not -- you know, not
12 acclimatizing. And please, by -- by no means are we
13 suggesting that acclimatization is not important.
14 That's not what we are suggesting whatsoever.

15 It's really just defining those fine lines of when
16 it's required. And again, we come back to the science
17 where, if someone has been in substantially similar
18 conditions and they're coming back to work, even if
19 those conditions were outside of work -- I know we had
20 Coalition members say that some of their folks, when
21 they take time off, they go, right, rock climbing, and
22 they're in the heat, and they do these strenuous

1 activities, and -- and things like that.

2 But again, it just -- it -- really, it's -- it's
3 meant to be on a science-based approach where if
4 they're -- if they're in those similar conditions
5 and -- and returning, then, well, is there, you know --
6 is it necessary to -- to reacclimatize? But certainly,
7 we're not suggesting whatsoever that it's not
8 important.

9 MS. BERKOWITZ: Okay. Thank you.

10 JUDGE LESLIE: Thank you, Ms. Berkowitz.

11 Mariam, are there other participants who want to
12 ask a question?

13 MS. CARLON: Yes, Your Honor. We have three more,
14 if time permits?

15 JUDGE LESLIE: Yes.

16 MS. CARLON: The next question is Ms. Shrestha.
17 Please state your name for the record.

18 MS. SHRESTHA: Hello, can people hear me?

19 JUDGE LESLIE: We can.

20 MS. SHRESTHA: Great.

21 Hi, my name is Ayusha Shrestha. I'm with the AFL-
22 CIO. Thank you for this opportunity today to be able

1 to ask you questions. I wanted to ask how many
2 members, or what percentage of your Coalition operates
3 in California? And can you provide examples where a
4 programmatic standard, like the one in California, has
5 failed to predict -- protect your workers due to a lack
6 of flexibility?

7 MS. LASHKARI: Thank you for your question, Ms.
8 Shrestha. This is Beeta Lashkari. We're more than
9 happy to -- I don't have those numbers off the top of
10 my head, but more than happy to consider that for post-
11 hearing comment.

12 MS. SHRESTHA: Okay. Thank you. I also wanted to
13 ask if the -- if the Coalition's health -- if the
14 Coalition's HIIPPs are effective.

15 Oh, sorry. My -- this is Ayusha Shrestha from the
16 AFL-CIO.

17 If the Coalition's HIIPPs are effective, how would
18 periodic review harm the program since you did argue
19 against a frequent review of this program -- of
20 programs? When do you think it would be reasonably
21 necessary for reviews?

22 MS. LASHKARI: Sure. Thank you for your question,

1 Ms. Shrestha. This is Beeta Lashkari. I don't think
2 we're against reviews of our programs, certainly not.
3 We -- we're just -- just think that a -- a one-year
4 arbitrary, sort of, number on it doesn't -- doesn't
5 necessarily make sense. We do think that -- and I
6 believe we did submit this in our -- in our -- in our
7 existing -- in -- in our NPRM comments. But any sort
8 of -- where there's material changes, right? Where --
9 where things could, you know, increase heat exposures,
10 those would certainly trigger a -- we would be, you
11 know -- certainly, take a -- take a -- another look at
12 our programs to make sure we're appropriately
13 addressing those -- those new conditions.

14 MS. SHRESTHA: Okay. I have one final question if
15 that's all right?

16 JUDGE LESLIE: Go ahead.

17 MS. SHRESTHA: Thank you.

18 This is Ayusha Shrestha once again.

19 What measures are your Coalition members currently
20 using that OSHA's proposed rules would outright
21 prohibit, or make infeasible, for preventing heat
22 illness?

1 MS. LASHKARI: I'm -- I'm sorry. This is Beeta
2 Lashkari.

3 Do you mind repeating that, Ms. Shrestha?

4 MS. SHRESTHA: Yes. Since you mentioned in
5 your --

6 This is Ayusha Shrestha.

7 Since you mentioned in your Coalition's how your
8 members are already using measures of your own that is
9 more specific to their workplaces, and you argued that
10 the OSHA's proposed rules would make their current
11 measures infeasible or prohibit them, I wanted to ask
12 what are those measures that your Coalition members are
13 currently using that would be prohibited or infeasible
14 under the proposed rule?

15 MS. WILES: I'm sorry. This is Linda Wiles from
16 the Solicitor's Office.

17 JUDGE LESLIE: Yes, Ms. Wiles?

18 MS. WILES: (Audio interference) an emergency.

19 JUDGE LESLIE: I'm sorry. I cannot hear you.

20 MS. SHRESTHA: Oh.

21 JUDGE LESLIE: Can you repeat that?

22 MR. ORR: Something's going on, so we're going to

1 have to exit the building.

2 JUDGE LESLIE: Okay.

3 DR. SCHAYER: Okay. We'll go --

4 JUDGE LESLIE: Go ahead and exit the building.

5 What we will do is pause this hearing for, I guess,
6 about 15 minutes. If I recall, that is their --

7 MS. CARLON: Okay. We can go off the record, Your
8 Honor, and we can make --

9 JUDGE LESLIE: Yeah, let's go off the record.

10 (Break.)

11 JUDGE LESLIE: All right. Let us go back on the
12 record. And my apologies to everyone for that quick
13 getting off the record. I did contact my colleagues up
14 in Washington, DC. There is a fire alarm happening.
15 Everyone is okay. They are outside of Frances Perkins.
16 Frances Perkins is okay, too. We don't know what is
17 going on, though. And they are not going to be able to
18 get back into the building, but we are going to
19 proceed. It is important that we allow the
20 participants -- I believe Ms. Shrestha has either one
21 more question or is about to conclude her questioning.
22 And then Mariam, correct me if I'm wrong. We have

1 two more participants who want to ask questions. We
2 are going to allow them to ask questions. We are,
3 unfortunately, a little short on time, but we do have
4 one panelist - or one more panel after this, Ms.
5 Christman, who I hope is still with us. We are going
6 to get to her. Even if the OSHA panel does not come
7 back in time, we do have OSHA represented here. Ms.
8 Zoe, and I think Daniel is online. Mr. - there he is.
9 And we will get her presentation and continue from
10 there.

11 So we do -- we will take a break a little around
12 noon Eastern Standard Time and then return for the 1
13 o'clock afternoon session. We might go a little past
14 noon, but it is important to get everyone in. So with
15 that being said, Ms. Shrestha, again, I am so sorry. I
16 don't know where we were in your last question, or if
17 you had another question. You want to go ahead and re-
18 ask and address to whom you are asking? And again, to
19 remind the panel to identify themselves when answering.
20 Thank you.

21 MS. SHRESTHA: Yes. Thank you. This is Ayusha
22 Shrestha from the AFL-CIO again. I will re-ask the

1 question that I finished right before the alarm was
2 pulled. I asked: What measures to prevent heat illness
3 are your coalition members currently using that OSHA's
4 proposed rules would outright prohibit or make
5 infeasible?

6 MS. LASHKARI: Thank you very much for your
7 question, Ms. Shrestha. This is Beeta Lashkari. If
8 I'm understanding correctly, I think our concern is
9 that, with the prescriptive approach, it's setting in
10 stone sort of all of the requirements that would need
11 to be in an employer's program. And it's not so much
12 that each one of those -- that this element doesn't
13 work or that element; it's sort of the combination.
14 And it really depends on the employer, too. Right?
15 There are smaller businesses in our coalition who don't
16 have resources, but maybe Rich has at his finger -- at
17 his disposal. So I think, really, it's -- I'm not sure
18 if there's a best way to answer that question. It
19 really just varies based on the employer.

20 MS. SHRESTHA: Okay. Thank you.

21 JUDGE LESLIE: Ms. Shrestha, does that conclude
22 your questioning?

1 MS. SHRESTHA: Yes. Thank you very much.

2 JUDGE LESLIE: Thank you. Mariam, could you
3 please promote the next participant?

4 MS. CARLON: Yes. The next participant is Mr.
5 Lundegren. Please state your name for the record.

6 MR. LUNDEGREN: Hi, this is Bruce Lundegren from
7 the Office of Advocacy at the U.S. Small Business
8 Administration. Hi, Beeta and Richard. The Office of
9 Advocacy is one of the three government agencies that
10 was part of the SBREFA panel on the proposed rule back
11 in 2023. And we testified yesterday at this hearing.
12 And two questions that we got from OSHA yesterday
13 morning that I wanted to ask you about. It's a little
14 bit redundant. But the first was -- and these were
15 really issues that came up during the SBREFA panel and
16 in the multiple small business roundtables that we've
17 held on this issue.

18 But the first is small businesses were concerned
19 about the heat triggers, and they think that they're
20 too low. And OSHA asked us, what would be an
21 appropriate heat trigger? And some people have said
22 there shouldn't be a heat trigger. I think you have

1 suggested maybe the heat advisories. So I'm wondering
2 if you could address how -- what would be an
3 appropriate heat trigger.

4 And then secondly, nearly all the small businesses
5 we've talked to have said that they're opposed to an
6 inflexible, one-size-fits-all standard and prefer a
7 performance-oriented approach. And I think one of the
8 concerns with OSHA is, how do they enforce a
9 performance standard? Because the rule as proposed is
10 easy to enforce. At 80 degrees, it kicks in. There's
11 acclimatization protocols. There's all these things
12 that make it very easy for OSHA to enforce it. So how
13 would they enforce a performance standard? And thank
14 you for your responses.

15 MS. LASHKARI: Thank you very much, Mr. Lundegren.
16 This is Beeta Lashkari. Excellent questions. More
17 than happy to weigh in on the heat threshold issue.
18 Certainly, we heard the same concern from our coalition
19 members. And I think, sort of first, if there has to
20 be a number, then our coalition does feel like the
21 number -- those numbers have to be higher. So
22 perhaps -- and this is just throwing something out

1 there, but for an initial, maybe something around 90 to
2 100. Again, it just -- I think we did get consensus
3 that the current initial threshold is too low -- that
4 both thresholds are too low.

5 A better approach, that one -- the one that
6 recognizes that number shouldn't necessarily be the
7 same throughout the country. I think we have sort of
8 two options there, which is first, just like you
9 mentioned, Mr. Lundegren, sort of tying it to National
10 Weather Service heat advisories or alerts, which are
11 meant to be local heat advisories. So those are --
12 those take into account those local conditions. And
13 that's what we really want to focus on is that
14 importance of taking into account local conditions.

15 And then the second option is, again, just
16 returning back to that Nevada Heat Rule and relying on
17 a JHA. And that's not to say, again, that there would
18 be no conditions around a potential heat trigger or
19 when the employer knows to implement their program.
20 Nevada OSHA does include a definition for, again,
21 occupational exposure to heat illness. So I think
22 either of those approaches would be -- we would

1 advocate for over this performance -- this
2 prescriptive-based approach.

3 And then in terms of enforcement, I'd say,
4 certainly, we understand that a prescriptive standard
5 is easier for OSHA to enforce. But don't think that
6 that should be the reasoning behind how a standard is
7 oriented or drafted. Right? It needs to be science-
8 based. It needs to be reasonable. And what does that
9 mean? I think it really comes back to that JHA
10 approach. We certainly agree with having written
11 programs, but we think those should be driven by JHA,
12 JSAs, and allowing employers to determine the
13 necessary -- when conditions are warranted to trigger
14 heat mitigation measures and what those measures should
15 be certainly based on existing guidance out there, the
16 hierarchy of controls. Right? It's really just about
17 providing that flexibility that's important. And I
18 think the best way to do that is performance-based.
19 It's about the outcome.

20 And certainly, OSHA is no stranger. This
21 performance-based standards are not novel in any
22 respect. Right? I think of PSM when I think of

1 performance-based as a very sort of -- that sort of
2 stands out to me as one of those that really embraces
3 that approach. So anyway, I think that that is what we
4 are advocating for. And I think it's certainly doable
5 here and would make the most sense, again, both for
6 employers but also for employees. Oh, Rich, are you
7 saying something?

8 MR. STEINBERG: Yes. Sorry. First, I'll tag on
9 to that. This is Rich Steinberg with Kinder Morgan. I
10 mean, I like the idea of using heat advisories but use
11 those in conjunction with a plan that's site specific
12 and task specific. Right? I go back to my comments
13 about the geographic variables and the nature of the
14 work. We follow wind advisories, and they kick in
15 certain plans. We have winter advisories that our
16 local weathermen put out. We follow those, but they
17 trigger a plan we developed that's more specific to
18 what we do in the environment we work in. So yes, I
19 like following those available resources, but the
20 prescriptive nature of the rule is what I have an issue
21 with.

22 MR. LUNDEGREN: Thank you very much.

1 JUDGE LESLIE: Thank you. Thank you, Mr.
2 Lundegren. Mariam, can you promote our last
3 participant?

4 MS. CARLON: Yes. The last participant is Ms.
5 Barbarash. Please state your name for the record.

6 MS. BARBARASH: Hi. Thank you so much. This is
7 Ellie Barbarash from the American Federation of State,
8 County, and Municipal Employees. I have two questions
9 for Mr. Steinberg and Ms. Lashkari. Thank you very
10 much. And you all can hear me, yes?

11 JUDGE LESLIE: Yes.

12 MS. BARBARASH: Thank you. So you're probably
13 aware that California has had an outdoor heat standard
14 with specific triggers and requirements for outdoor
15 workers for more than 15 years. The first rule was
16 '05'06, and it was revised in '15'16. And the
17 construction industry and agricultural industry have
18 had to require - follow these requirements for a long
19 time in California.

20 And also, I want to just -- you're probably aware
21 that Oregon has had an outdoor and indoor heat standard
22 for over three years. And the employers in that state

1 comply with specific triggers and requirements. And I
2 just remember that California is the fourth biggest
3 economy in the world, not just the country. Doesn't
4 the feasibility of complying with the California and
5 the Oregon standard undercut your argument on why there
6 should not be specific triggers and requirements?

7 MS. LASHKARI: Thank you very much, Ms. Barbarash.
8 We're more than happy to -- this is Beeta Lashkari.
9 We're more than happy to supplement -- consider that
10 for post-hearing comment. In terms of -- and we're
11 certainly aware of California's long-standing outdoor
12 rule. We know that more recently -- California more
13 recently passed an indoor rule. Oregon, it seems like,
14 as you mentioned, is only a few years old. So again,
15 as we're seeing these heat standards pop into play --
16 come into existence in the various states, we're
17 noticing that -- I think that it's a little bit too
18 soon to tell how the feasibility plays out.

19 And again, it's not that the entire -- we're
20 saying the entire standard is feasible -- infeasible.
21 We're just saying, as it's currently proposed, it's not
22 workable. And so that is why we're advocating for a

1 performance-based approach where that flexibility would
2 be built in. And again, it would just allow for all
3 sizes of employers, right? To comply and to keep their
4 workers safe.

5 MS. BARBARASH: Thank you, Ms. Lashkari. The next
6 question is for Mr. Steinberg, which is -- so I respect
7 what you're sharing about Kinder Morgan and their
8 relationships and the -- what they're setting up in
9 order to engage and guarantee worker safety, basically.
10 But how would an employee know when a heat trigger
11 exists, in the case of small employers, if there are no
12 triggers, and the employer is not required to have a
13 written plan or even a significant client requirement
14 or relationship, like those required by a company with
15 your resources? Like, how would an employee know, and
16 how would -- if the small employer doesn't have a
17 trigger, and if the employer is not required to have a
18 written plan, how would anybody know that there's a
19 violation of a standard? How would anybody know what
20 it is? Is it just about whether the person feels sick
21 or not? Like how would that work?

22 MR. STEINBERG: So I couldn't speak to how a small

1 business would handle it. So that may be something I
2 may have to have somebody follow up with a written
3 response. But I can tell you, in no case are we
4 suggesting that a number or a trigger isn't involved.
5 I'm just suggesting that there shouldn't be a federally
6 mandated across the board single number. So if that
7 particular small business you're talking about is in
8 Louisiana, I'll bet their plan is going to look
9 different than the one in Portland.

10 So my concern here, and what I'm here to testify
11 to, is the fact that there is no one-size-fits-all, and
12 nor could you apply the one that I follow on our
13 projects to a small business probably wouldn't follow
14 ours, because it's very tailored to the variables in
15 our business and the tasks that we complete each day.
16 I hope that answers your question.

17 MS. BARBARASH: Thank you.

18 JUDGE LESLIE: Thank you, Ms. Barbarash. Mariam,
19 am I correct in stating there are no further
20 participant questions?

21 MS. CARLON: Yes, Your Honor. That is the final
22 question.

1 JUDGE LESLIE: Thank you. Are there any follow-up
2 questions from OSHA?

3 MS. PETROPOULOS: No, Your Honor.

4 JUDGE LESLIE: Any follow-up questions from the
5 Office of the Solicitor?

6 MR. MOCZULA: No, Your Honor.

7 JUDGE LESLIE: Thank you. I would like to thank
8 you, Ms. Lashkari and Mr. Steinberg, for your
9 presentation on behalf of the OSHA panel that is
10 presently making their way back up to their offices.
11 And the Office of the Solicitor and the Department of
12 Labor, I appreciate your time and patience and your
13 presentation today and for being flexible with the
14 break that did happen. And thank you again. You can
15 stay or -- and listen to the next presentation.
16 Mariam, is Ms. Christman --

17 MS. CARLON: Yes. The next speaker is Anastasia
18 Christman. Please state your name and affiliation for
19 the record.

20 MS. CHRISTMAN: Hi. Thank you. My name is
21 Anastasia Christman. I'm a senior policy analyst at
22 the National Employment Law Project. We're a national

1 worker advocacy group that believes workers should be
2 able to thrive in all jobs. And I'm grateful for this
3 opportunity to speak today.

4 MS. WILES: Ms. Christman. I'm sorry. This is
5 the OSHA panel. This is Linda Wiles from the
6 Solicitor's Office. I know --

7 MS. CHRISTMAN: Hi.

8 MS. WILES: Sorry to interrupt you. I know you've
9 just started providing your testimony. We have
10 returned to the building, but we're waiting for Lisa
11 Long to join the panel table. So if you could just
12 hold one minute. I think it would be really beneficial
13 if she could be here and be present to hear your
14 testimony.

15 MS. CHRISTMAN: Of course. Of course. No
16 problem.

17 DR. SCHAYER: Thank you.

18 MS. WILES: Thank you so much. I apologize to
19 everyone online, especially to you, Judge Leslie, for
20 the disruption. We had an emergency event in the
21 Frances Perkins building. We had to evacuate. So we
22 all are -- we are all just returning to the building

1 now.

2 JUDGE LESLIE: That is absolutely okay. I was
3 actually in touch with my fellow colleagues in the
4 national office, so I was very aware of what was going
5 on. And having worked up there for a little bit, I
6 am -- I'm very sympathetic. So I am glad you are back.
7 And we will obviously wait.

8 MS. WILES: Thank you so much.

9 (Pause)

10 MS. WILES: Okay. Ms. Long is here. And Your
11 Honor, whenever you're ready.

12 JUDGE LESLIE: I am ready. And please, Ms.
13 Christman. Thank you, actually, for your patience. I
14 know we were doing very well on time. And please do
15 not feel rushed at all. And please begin.

16 MS. CHRISTMAN: Thank you. I'm actually on the
17 West coast. So the later we are, the more awake I am.
18 So it's fine. Thank you.

19 Again, I'm Anastasia Christman, senior policy
20 analyst with the National Employment Law Project. And
21 I'm grateful to be able to speak today in strong
22 support of the proposed heat protection standard. And

1 we've heard a lot already this morning about
2 recommendations to not have a prescriptive standard and
3 not have specifics in it. And in some ways, we already
4 have a system like that a little bit in that the
5 general duty clause has been used to try to issue
6 citations for heat-related illnesses.

7 And these after-the-fact investigations on the
8 clause are not up to the job of protecting tens of
9 millions of workers from heat-related illnesses and
10 injuries. And in fact, in a 2019 decision, the
11 Occupational Safety and Health Review Commission said
12 that using a general duty clause to address heat left
13 employers confused because they didn't know
14 specifically what was required of them, and it actually
15 commended California for having a specific standard
16 that laid out compliance requirements.

17 So I would like to just walk us through today an
18 example of the many points in just one day when the
19 provisions in this standard could have saved a life in
20 New Jersey, one of the most rapidly warming states in
21 the country. And in a company that's not like Kinder
22 Morgan, but perhaps more representative of most of the

1 kinds of employers that function in the U.S.

2 In July 2020, a 57-year-old man named Robert Clark
3 (phonetic) started his new job working in a bakery. On
4 his third day, he was assigned to load raw dough onto a
5 conveyor belt and then unload the empty boards, and he
6 was given a heavy cloth smock to wear over his street
7 clothes.

8 Now, had this heat protection standard been in
9 place under paragraph (h), Robert would have received
10 training specific to his workplace, not only in the
11 procedures that they had in place, but how to recognize
12 the signs of heat-related illness when he started this
13 job. OSHA inspectors later determined that the
14 employer did not give employees heat training, even
15 though this facility included seven commercial oven
16 lines. It's obviously a hot place.

17 Additionally, because he was a new worker, the
18 heat protection standard's acclimatization provisions
19 under paragraph (e) would require that his employees -
20 his employers ease him into working in this hot
21 atmosphere until his body was prepared to work in the
22 heat. Now, that day, the temperature in Mr. Clark's

1 working area rose to 106 degrees. And because of
2 COVID, his employers had removed the fans from the
3 facility, so they had not been running at all during
4 the day. Proposed paragraph (d) of the standard would
5 have required this employer to proactively identify
6 work areas where they could reasonably expect that
7 employees would be exposed to heat at or above the
8 initial trigger, and to be prepared for heat incidents
9 there.

10 Under paragraph (h), managers would have been
11 trained to monitor the temperature in the bakery so
12 that they knew when that heat was becoming dangerous.
13 And they would also understand administrative controls
14 that could have protected Mr. Clark and his 11 co-
15 workers, like adjusting work schedules, providing
16 cooling garments, or rotating workers in and out of hot
17 working areas.

18 Mr. Clark became dizzy and disoriented, and the
19 line operator noticed he was sweating and acting
20 erratically. The operator sent him to take a break and
21 get some water, but when Mr. Clark returned, he was
22 still showing symptoms of serious heat-related illness.

1 Now, the operator left. He searched for a manager.
2 And in the meantime, Robert stumbled outside seeking
3 relief, but it was 97 degrees in the parking lot. He
4 then fainted, collapsing into a parked car, and when
5 colleagues found him, he was still wearing the heavy
6 smock that his employer required.

7 To comply with paragraph (e) of the standard, Mr.
8 Clark's employer would have provided access to cool
9 drinking water near where he worked. This section
10 would have also guided his employer on how to provide a
11 break area that was sufficiently cool to lower core
12 body temperatures and would clarify that even before
13 the ambient temperature rose to over 90 degrees, Robert
14 could have taken unscheduled rest breaks to remove his
15 smock, reduce heat strain, and prevent overheating.

16 Paragraph (f) would have made these preventive
17 breaks mandatory once the temperature rose to over 90
18 degrees, giving Robert 15 minutes every 2 hours to let
19 his body cool down. Other sections of this paragraph
20 would require the employer to observe him and those
21 colleagues for signs and symptoms of heat-related
22 illness. Under paragraph (e), there would have been an

1 effective communication plan in place once the initial
2 heat trigger was met. So the line operator would not
3 have had to leave Mr. Clark alone to find a manager but
4 would have used established means to reach them and to
5 sound the alarm.

6 And under paragraph (g), the employer would have
7 had a heat emergency response plan that emphasized the
8 immediate cooling of workers experiencing serious
9 symptoms, like dizziness or cognitive degeneration.
10 Robert Clark died that day in the emergency room. His
11 core body temperature was between 105 and 109 degrees.
12 He was a beloved uncle to a nephew and niece. He was
13 mourned by a brother and sister and by his parents.
14 Friends were asked to donate to an animal shelter in
15 his memory.

16 The very next day, another worker at this bakery
17 was taken to the emergency room, also suffering from
18 heat stress. The employer was cited under the general
19 duty clause and paid a small penalty, but that was
20 probably little comfort to Robert Clark's family. Now,
21 and many others are urging you to implement a strong
22 heat protection standard now to protect tens of

1 millions of workers, just like Robert Clark, who only
2 want to go home safe and healthy at the end of the day,
3 even if the day is hot.

4 The standard would help employers to know how to
5 meet their duty to provide a workplace free of heat
6 standards -- heat hazards and would create tools to
7 hold them accountable when they fail to do so. With
8 that, I'll conclude my testimony, and I welcome any
9 questions.

10 JUDGE LESLIE: Thank you. Does OSHA have any
11 questions?

12 MS. LONG: Yes. This is Lisa Long with OSHA.
13 Thank you for your testimony and recounting the tragic
14 story of the worker who lost his life. We do have some
15 questions. The first questions I have are related to
16 multi-employer workplaces, and I'm referring to some of
17 the comments that you submitted to the docket back in
18 January.

19 So in January, you urged clarity that host
20 employers are responsible for confirming that any
21 temporary worker on site is already acclimated. What
22 evidence or documentation would you propose a host

1 employer should require from a staffing agency, or
2 directly from the worker to confirm this prior
3 acclimatization?

4 MS. CHRISTMAN: Yeah. Thank you for that. It's
5 definitely a problem that temporary and staffing
6 workers can be most vulnerable to heat. We've seen
7 that the injuries are higher for those populations of
8 workers. They're not on that work site all the time.
9 They may not have gotten the training. They may not
10 know where the heat illness prevention plan is.
11 They're really walking in day one being put to work.
12 So there does need to be joint responsibility for this.

13 The temporary agency, before they agree to send
14 workers there, they should be made aware of what the
15 heat plans are, and they should share them to workers
16 they're going to send there. And the host employer
17 should make sure that workers that are coming either
18 have already been acclimatized or plan to acclimatize
19 them as part of the work that's there. This could be
20 affidavits between the two parties. It could be
21 sharing materials. I think that we would welcome the
22 chance to think more about that and give you some

1 specific solutions. But OSHA's own data has shown that
2 temporary workers are the ones most often to be hurt at
3 the workplace.

4 MS. LONG: Thank you. And feel free to include
5 any further comments in your post-hearing comments.

6 MS. CHRISTMAN: Thank you.

7 MS. LONG: I'm going to move next to some
8 questions on rest breaks. Dr. Tiffany DeFoe, who is
9 online, has some questions.

10 MS. DEFOE: Hi. For the record, this is Tiffany
11 DeFoe with the Director of Standards and Guidance,
12 OSHA. In your comments for the NPRM, you stated that
13 preventative rest breaks should be mandatory, not only
14 at the high heat trigger, but also at the lower heat
15 trigger of 80 degrees Fahrenheit. And you expressed
16 concern that OSHA proposed requirement for employers to
17 allow and encourage as needed rest breaks would not be
18 sufficient to achieve the goal of preventing
19 overheating.

20 Now, in support of your recommendation, you refer
21 to several tragic cases of worker deaths from
22 overheating, where a lack of adequate breaks may have

1 been a factor. And I'd like to ask if either now or
2 later in your post-hearing comments, if there's more
3 information you could provide that would help OSHA to
4 fully understand the working conditions and the heat
5 conditions in particular that were experienced by those
6 workers.

7 MS. CHRISTMAN: Yeah. Thank you for that. I
8 would be happy to go through and look again at which
9 cases we cited. Sadly, there are many. And so I'm not
10 clear on exactly which ones we cited in the letter. So
11 I'd be happy to go through and do that. I will say
12 that some of the concerns we have with simply
13 encouraging breaks or having the self-managed breaks
14 that we heard about from the last panelists, is that it
15 really puts the responsibility on the worker to make a
16 determination when they need to step away from work to
17 take a break. And in some circumstances, a worker may
18 feel afraid of retaliation for doing that. They may be
19 relatively new on the job and feel like they need to
20 prove something to the employer, and taking a break
21 would make them seem weak. They may not be aware that
22 they can take the break.

1 And in the case of workers who work either on a
2 piece rate pay schedule or subject to quotas and
3 performance quotas, they may be concerned about losing
4 wages if they take an optional break. And so there are
5 any number of reasons why people may be weighing the
6 value of taking a break against other concerns they
7 have in the workplace and will decide that -- to put
8 their safety second.

9 MS. DEFOE: Thank you. And also in the same
10 section, you referred to widespread reports of workers
11 being denied or discouraged from taking breaks by
12 employers.

13 MS. CHRISTMAN: Uh-huh (assent).

14 MS. DEFOE: And that's another case where, if
15 there's further information that you're aware of or can
16 provide about the types of work and conditions
17 experienced by workers who are making reports being
18 denied or discouraged from rest breaks --

19 MS. CHRISTMAN: Uh-huh (assent).

20 MS. DEFOE: -- that would be particularly helpful
21 to help us better understand the issue.

22 MS. CHRISTMAN: Yes. Yes. I would be happy to do

1 so.

2 MS. DEFOE: Thank you. That's all I have.

3 MS. LONG: Thank you, Tiffany. This is Lisa Long.
4 I'm going to now refer to my colleague, Joo-Hyung, who
5 has some questions regarding economics.

6 MS. SHIN: Hi. This is Joo-Hyung Shin from OSHA.
7 You have discussed in length in your submitted
8 comments, as well as your testimony today, about worker
9 experiences in states without heat regulations. But of
10 course, as you will be aware, there are several states
11 right now who do have existing heat regulations. So we
12 are, like now or in post-hearing comments, if you could
13 provide any data, evidence, resources that you are
14 aware of that could speak to changes in worker
15 experiences in these states that have implemented heat
16 regulation. Thank you.

17 MS. CHRISTMAN: Sure. Yeah. I would be happy to
18 follow up on that afterwards. And I can confer with
19 colleagues in those states where they have the
20 standards. I also have observed that later in the
21 testimony, there will be people from those states
22 coming to talk to you as well. So we may find a lot of

1 value in their testimonies too, but I will certainly
2 follow up.

3 MS. LONG: This is Lisa Long again. Thank you.
4 Those are all of the questions we have from OSHA right
5 now.

6 JUDGE LESLIE: Thank you. Does the Office of the
7 Solicitor have any questions?

8 MS. WILES: Thank you, Your Honor. This is Linda
9 Wiles from the Solicitor's Office. I do not have any
10 questions, but I just want to thank you for your time
11 and your testimony and your patience today.

12 JUDGE LESLIE: No problem.

13 MS. WILES: Thank you.

14 JUDGE LESLIE: Mariam, do we have any participants
15 with questions?

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

17 JUDGE LESLIE: Thank you. Thank you, Ms.
18 Christman. Thank you very much, on behalf of the
19 Department of Labor, for your time and your patience
20 today for enduring with us on that unanticipated break.
21 And I thank you for your presentation. It is 11:52
22 Eastern Standard Time. I think we are now at a point

1 for a break, unless OSHA has any comments or questions
2 before we take a lunch break.

3 MS. LONG: Nope. Judge Leslie, we're ready for a
4 lunch break.

5 JUDGE LESLIE: Perfect. We will go ahead and take
6 our lunch break, and we will reconvene at 1 p.m.
7 Eastern Standard Time for the afternoon session. Thank
8 you, everyone.

9 (Break.)

10 MS. CARLON: This is Mariam Carlon from ABT
11 Global, OSHA's contractor. It's 1 o'clock eastern time
12 and we are now rejoining OSHA's informal rulemaking
13 hearing for Heat Injury and Illness Prevention in
14 Outdoor and Indoor Work Settings.

15 Before we begin, we'd like to go over some
16 logistics for today's public hearing. As a reminder,
17 all attendees are muted automatically. All Webex
18 attendees can access closed captioning and translated
19 captioning by clicking on the CC icon in the lower left
20 corner of the application. You can individually select
21 your caption language if translation is required. I
22 will now share the same slide in Spanish. All YouTube

1 viewers will have access to auto translation the day
2 after the hearing.

3 All Webex attendees delivering testimony will have
4 access to a countdown timer to ensure allotted time is
5 adhered to. We will launch the timer for you, and it
6 should be seen on the right-hand side of your screen.
7 If you do not see the app launch in your Webex window,
8 please follow the instructions on the screen to
9 manually launch this app.

10 If you are speaking today, you will receive a
11 notification on your screen that you are being promoted
12 to panelist a few minutes before it is your time to
13 provide testimony. Once promoted to the panelist role,
14 you will be able to unmute and turn on your camera. We
15 ask that you do not unmute or turn on your camera until
16 you have been called and asked to start your testimony.
17 Speakers connected by telephone should unmute their
18 phones when called to testify.

19 Dependent on timing, there may be opportunity to
20 ask questions of other speakers giving testimony. You
21 may press the raise hand button at the bottom of the
22 Webex application to indicate that you have a question.

1 If there is time, you will be called on by name and
2 promoted to the panelist group to unmute and ask your
3 question. If you are having technical difficulties,
4 please send an email with your name and phone number to
5 public_hearing@abtassoc.com.

6 Now, we will continue with our public testimony.
7 The expected speaking order is currently displayed on
8 the screen. I will introduce each speaker in turn. A
9 reminder to please speak slowly and clearly so our
10 court reporter can record these proceedings accurately.
11 The first speaker will be Robin Repass. Please state
12 your name and affiliation for the record.

13 MS. REPASS: Thank you. Yes, this is Robin
14 Repass. I am an attorney with Fisher Phillips in the
15 Washington, D.C. office. And today I'm going to be
16 presenting statements and argument on behalf of my
17 client, The Coalition for Workplace Safety.

18 JUDGE LESLIE: Please continue.

19 MS. REPASS: Thank you. Yeah, thank you for
20 having us here. So as I said, I am here representing
21 The Coalition for Workplace Safety, which has, along
22 with 81 organizations, submitted comments on the

1 proposed heat rule. We've also been involved during
2 the rulemaking -- rulemaking leading up to this
3 hearing, including submitting comments during the
4 SBREFA process. And then also we submitted comments in
5 February '22, just after the advance notice of proposed
6 rulemaking was issued. And we ask that those
7 statements be appended into our -- our comments on the
8 record.

9 A little bit about Coalition Workplace Safety, we
10 are organizations and companies who represent
11 industries with -- millions in every state across the
12 country, who are focused on establishing reasonable and
13 responsible workplace safety standards. Am -- am I
14 freezing up?

15 JUDGE LESLIE: Yes, Ms. Repass. And you actually
16 not only froze up, but if -- Mariam, if you could stop
17 the clock for just one second.

18 MS. CARLON: Yeah, no problem.

19 JUDGE LESLIE: Ms. Repass, you actually froze up
20 and your testimony also stopped just a little bit. If
21 you want to continue and maybe turn off your camera,
22 that might actually help.

1 MS. REPASS: Thank you. Yes, I've done that. I
2 noticed that participants yesterday were having that
3 issue as well. Can you hear me? Am I coming through
4 well, now?

5 JUDGE LESLIE: Yes, you are. So I'm going to have
6 Mariam -- Mariam continue your time, so if you want to
7 continue where you left off. And that should help. So
8 Mariam, can you go ahead and continue her time? And
9 Ms. Repass, continue.

10 MS. REPASS: Thank you. Yes. As I was saying
11 before the video froze on me, I'm here in my capacity
12 as outside counsel for The Coalition for Workplace
13 Safety. And just a little bit about the Coalition,
14 CWS, we represent a number of organizations -- 81 of
15 them have actually signed on to the rule with us -- and
16 we represent employers across all industries, across
17 the entire United States. And one of our key focuses
18 is on establishing reasonable and responsible workplace
19 safety standards across the -- across the country. And
20 we are here today because we believe in improving
21 workplace safety through cooperation, assistance,
22 transparency, clarity, and accountability.

1 And that moves us to the reason that we are here
2 first, and that's talking about clarity and
3 flexibility. We also had an opportunity to submit
4 comments during the SBREFA panel process, and I'd like
5 to turn first to some of the work that was done by OSHA
6 after the SBREFA panel process. There were extensive
7 comments submitted by many stakeholder groups, and
8 you've heard the SBA also talking about the SBREFA
9 panel. You had a number of small entity
10 representatives providing comments, and we were pleased
11 to see that there were some areas that were reworked
12 and removed. For example, the original recordkeeping
13 provisions were removed. We -- we definitely support
14 that and we applaud OSHA for doing so. And we would
15 also urge OSHA not to go back and pull in those
16 original recordkeeping requirements. And the reason is
17 very simple; they significantly and substantially
18 deviate from what is already required to be recorded on
19 OSHA 300 logs.

20 And there's also long standing regulations and
21 interpretations that tell employers what to record on
22 OSHA 300 logs. For example, we are not -- employers

1 are not required to record anything that is first aid.
2 Those definitions are very limited, and it doesn't take
3 long before you get past the first aid category into
4 what's considered medical treatment and when it becomes
5 recordable. So if we were to go back to the original
6 recordkeeping that had been in this rule and pull those
7 original requirements in, that would be requiring
8 employers to begin recordkeeping every time someone
9 needs ice. And, you know, as you can imagine, with a
10 large worksite, that -- that could get to be very, very
11 extensive.

12 And then also the current -- there's no reason to
13 set up recordkeeping and reporting requirements
14 regarding illnesses and injuries tied just to this
15 rule, when that does not exist in other OSHA
16 regulations and OSHA standards. We already have a full
17 framework of what would require, for example, a
18 hospitalization or serious injury to be reported. And
19 as long as that's job related, that would apply equally
20 to heat illness.

21 And while we're very happy to see that changes
22 were made in the recordkeeping section, there is still

1 much work that we would ask to be done. First of all,
2 we -- you know, while we agree that heat can pose a
3 risk to workers in a -- in a wide range of workplaces,
4 that, you know, that's certainly true. The problem
5 that we're hearing from most of our members, and as
6 I've been out speaking on this, on this rule and -- and
7 talking to other types of stakeholder groups, the
8 biggest issue that I hear everyone saying is -- that
9 you've heard people say over and over again during this
10 hearing is that the inflexible, one size fits all
11 approach does not take geographical differences, a
12 company's unique factors, a worker's individual risk
13 factors into account.

14 And so what we would ask is that, first of all,
15 OSHA really look at the rule to begin with and -- and
16 you know, really spend some time looking again at
17 SBREFA comments, et cetera and deciding, do -- do we
18 need the rule? And if we -- if OSHA does elect to go
19 forward and continue with the rule, we would request
20 that it be substantially reworked and -- and given some
21 time to, first of all, consider many comments during
22 the SBREFA process on inflexibility that were not

1 considered.

2 And so I'll hit just a few of those. And - and
3 much of these had - had been discussed by the SBA
4 panelist. But just to recap, the biggest issue that
5 the SBREFA panelists pulled in are these topics that
6 have not been fully addressed in the rule that we have
7 before us. And that's, first of all, the flexibility
8 and scalability. We - we would request a performance-
9 based standard that allows employers to tailor their
10 programs to their particular workplaces.

11 The heat triggers really need to be revisited.
12 Many people are concerned, especially with the 80
13 degree heat trigger; it's too low, it's too confusing.
14 Even the high heat triggers are out of step with what
15 we've seen even some of the state plans doing. The
16 temperature -- temperature measurements are quite
17 rigid. There should be more flexibility with the types
18 of monitoring that's available. And also, clarity is
19 being requested by a lot of stakeholder groups on how
20 to use these in indoor settings and with mobile
21 workforces.

22 Rest breaks, there needs -- needs to be more

1 frequency or more -- or the rest breaks need to have
2 some discussion on, you know, what do the employees
3 actually need? And then some clarification on what
4 activities can employees engage in while on rest
5 breaks. For example, we've heard discussion that
6 walking to and from the rest area may not be included.
7 And this is something that, you know, really cuts out a
8 lot of time, if it's a larger area.

9 You've heard a lot during this hearing about
10 acclimatization. The SBREFA panel had -- had requested
11 that OSHA provide flexible options for acclimatization
12 that would enable workers to determine the best
13 methods -- or enable employers, in consultation with
14 their workers, to determine the best methods for
15 acclimatizing the workers. And instead of doing that,
16 we have this very rigid requirement.

17 And then for solo and mobile workers, the SBREFA
18 panel recommended that OSHA offer employers with those
19 types of workers some flexibility that's unique to
20 them. You know, like how do you supervise them? How
21 do you have monitoring? How do you help them ensure
22 that they're taking a rest break when it's needed?

1 And then finally, the SBREFA panel, as it relates
2 to engineering and administrative controls, had
3 recommended more flexibility and -- and looking at
4 things that can be used in different workplaces. You
5 know, could there be administrative solves? Could
6 there be tech solves? Could there be things like
7 adjusting start times and how to monitor employees,
8 that would be, you know, a bit more feasible to
9 implement for different types of workers? So we would
10 ask that as OSHA looks at these rules, they really take
11 some time and go back again and revisit the excellent
12 data that they received from the small entity
13 representatives during the SBREFA process.

14 And then if OSHA does elect to move forward with
15 the standard, we have some -- some concerns with the
16 revision -- or with the topics here that we would
17 request revision. And the specific area that I'll
18 start with is flexibility. In surveying our members
19 and trying to find out -- and also me, from some of my
20 own clients -- trying to find out what are the biggest
21 concerns, the number one concern that I'm hearing from
22 everyone, and that you've also heard from other

1 panelists here, is the lack of flexibility.

2 And I think we're all going to be in our sleep
3 shouting out performance-based approach because we're -
4 - we're hearing it so much, but there's a reason for
5 that. The reason is performance - for performance-
6 based standards in these types of situations, when you
7 have varying employers, varying geographies, the unique
8 needs of employees, we need to have performance-based
9 approaches that would allow a safety standard to be
10 created that specifies the desired outcome. You know,
11 where do you get from here versus how exactly do you
12 get there?

13 And the reason that that's better is because such
14 an approach can provide more flexibility by telling an
15 organization what to achieve. And then they can
16 develop metrics to measure it, how to implement it. It
17 also promotes more innovation by allowing employers to
18 look really closely at their hierarchy of controls and
19 figure out what works best for their environments,
20 versus just being told something to do that may not
21 work for them.

22 A performance-based approach is more adaptable.

1 It can be tailored better to unique operations and
2 unique job site risks. It also promotes better
3 engagement because it'll - you know, in a lot of states
4 there are requirements for safety committees. And then
5 some employers also have safety committees. And even
6 where they don't, having a performance-based approach
7 would give employers the opportunities to really engage
8 with employees and talk with them about what they need
9 and what can best promote them to have, you know, the
10 best tools and the best procedures they can have at
11 their specific worksite.

12 And -- and there's been a lot of discussion about
13 how would we do this. Well, some ways that we could do
14 this is, you know, we would encourage everyone looking
15 at revising this rule to take a look at what's already
16 been created on water, rest, shade. There is a
17 multitude. I was just looking at it while we were on
18 the lunch break. Looking at the water, rest, shade
19 materials, there is a multitude of material there that
20 employers can use, and they can design education around
21 it, they can design their toolbox talks around it.

22 And then also, in just looking at where we have

1 precedent for other performance-based standards, the
2 Nevada rule that we've all heard a lot about comes
3 closer to a performance-based approach in that it does
4 allow employers to create a job hazard analysis to
5 define what's needed in their in their workplaces and,
6 you know, decide is there a risk to begin with, what is
7 the risk, how do we solve for that risk?

8 And then just looking at other OSHA standards, you
9 know, we don't have - OSHA standards are not just -
10 they're not specifically all prescriptive and they're
11 not specifically all programmatic, just like they're
12 not all just performance-based. For example, the OSHA
13 hazardous communication standard, while it has some
14 prescriptive elements like labeling requirements, it's
15 often treated as a performance standard because it does
16 require employers to develop a hazardous communication
17 program that - that is really tailored to inform the
18 employees about the specific chemicals and - and
19 makeups in their workplaces, and then provide
20 protective measures that are specific to that workplace
21 versus just being told specifically what to do that may
22 not apply.

1 And the reason that a lack of -- of flexibility is
2 so problematic is that when we get into such rigid
3 controls, you know, in some situations it makes it so
4 hard for employees to -- employers to implement that
5 it, you know, it really makes it start to become a
6 compliance issue. It also doesn't consider regional
7 climates, different types of humidity. And then when
8 we look at some of the specific areas where the lack of
9 flexibility is especially problematic -- I'll flag some
10 of the topics we have in our comments -- starting with
11 short duration exposure where you have when you have
12 triggers of 15 minutes in a 60 minute period. If this
13 is -- if employers are mandated to provide exactly that
14 amount -- you know exactly that every -- every 60
15 minutes, you get into some really tough operational
16 issues. Like an example we gave is job functions where
17 taking a break at exactly the wrong time could create
18 huge havoc.

19 Like, imagine a worker pouring concrete and then
20 they have to stop and take a break. The concrete's not
21 going to be well formed and -- and may have to be done
22 again. Also, if you have trucks unloading and

1 reloading and then they have to stop at a specific time
2 and -- and take breaks, this creates a greater safety
3 issue because they're waiting around, it creates
4 traffic disruption, and that has challenges in and of
5 itself. Whereas, if the workers could be allowed to
6 complete their job path and then take a break as
7 needed, while being encouraged, of course, to take a
8 break anytime that it's needed, that would be a much
9 better way to approach things.

10 And so you know, there's been a lot of discussion
11 about, if we do it more performance-based, how would we
12 do it? Well, again, we would have education that's
13 built around these water, rest, heat, shade materials
14 and helping to guide that.

15 And in my remaining time, I'll hit some other
16 specific -- specific concerns. I won't hit all of them
17 because a lot of these we've already heard from other
18 stakeholders about. But one of the biggest concerns is
19 the heat safety coordinator. You know, when we are
20 looking at revising this rule, we really need some more
21 clarity around what can this person do? Can they have
22 other job assignments? This -- this role in particular

1 is going to be very difficult for small businesses
2 because, as written, it could potentially require them
3 to hire more staff, which can create significant
4 financial hurdles for small businesses. And then what
5 other roles can the heat safety coordinator be doing,
6 must it be staffed year round, what type of training do
7 they have, that kind of thing?

8 And then that leads me into another huge concern
9 that the employer community has about the rule, and
10 that you've also heard expressed by the small business
11 community. And that's that we feel that, you know,
12 while OSHA has given very thoughtful consideration to
13 this rule, we do feel that the substantial costs have
14 been overlooked in the proposed rule. You know, one of
15 the hallmarks of creating standards is that they must
16 be economically feasible. And what that means,
17 generally, is that the cost must be relative to the
18 benefits. And OSHA standards should not impose costs
19 that are so severe that they could either destroy or
20 fundamentally alter an industry.

21 And we really haven't looked closely -- you know,
22 industries have -- with what they've been given,

1 there's no indication OSHA has looked closely enough at
2 the real costs of this and how it can really hamper,
3 especially small businesses. The estimated cost is
4 that it would be 3,085 per establishment. That's a
5 gross understatement. Even just hiring one heat safety
6 coordinator could easily cost ten times that amount.
7 And this doesn't even take into -- into consideration
8 the expenses required to create the heat illness
9 prevention plans, come up with administrative controls,
10 and any sort of, you know, other equipment or cooling
11 items that employers may need.

12 Also, conducting heat assessments and monitoring
13 plans is -- is quite unrealistic and -- and very
14 burdensome. And part of that is because some of the
15 rigid requirements are not defined like frequency. You
16 know, what does that mean, how often should it be done?
17 We also have concerns on the continual heat assessments
18 that it could create a greater hazard because, as
19 written, it could require a new risk assessment each
20 time someone ventures into a new work area, which if
21 you have an area involving heights, that could involve
22 climbing ladders and that kind of thing for heat

1 assessments.

2 So we just really need employers to be able to
3 utilize means available, like job hazard assessments,
4 follow a hierarchy of control, and apply them to their
5 own unique measurements. And within the trade
6 associations that are comprised of The Coalition for
7 Workplace Safety, many of our members have, in addition
8 to being able to use the heat, rest, water, shade
9 materials, they have a lot of materials available to
10 members that they can use to inform sound workplace
11 safety practices.

12 And so in conclusion The Coalition for Workplace
13 Safety and our -- our undersigned organizations, oppose
14 the creation of a prescriptive, one size fits all
15 approach to heat illness. Any standard that OSHA
16 pursues should be substantially modified to create a
17 more flexible approach that will allow employers to
18 tailor their heat illness prevention programs based on
19 their unique work environments and their employees'
20 needs. Thank you very much.

21 JUDGE LESLIE: Thank you, Ms. Repass. Does OSHA
22 have a question for this speaker?

1 DR. SCHAYER: Yes, Your Honor, we do have some
2 questions.

3 And thank you, Ms. Repass, very much for your
4 testimony. I have a couple questions, and then we'll
5 pass it to others on the panel here. So you mentioned
6 in your testimony that there should be more flexibility
7 for acclimatization, rest breaks, and some other
8 topics, and I was just wondering if you could describe,
9 either now or in your post-hearing comments, any
10 specific alternatives on these topics, particularly on
11 acclimatization or rest breaks that you'd like the
12 agency to consider?

13 MS. REPASS: Thank you. And yes, we would like to
14 address that in our post-hearing comments. And in so
15 doing, we'd like to take a look at some of the other
16 state heat plans that have been promulgated, because
17 there are a few of those that take -- you know, have
18 some different approaches. And we'd like a chance to
19 pull our members and look more closely at some of those
20 acclimatization standards.

21 DR. SCHAYER: Great, thank you. And the second
22 question I had was just about the performance-based

1 approach. Just curious if you could provide some
2 suggestions or recommendations, again now or in your
3 post-hearing comments, on how OSHA should structure a
4 performance-based standard, and particularly, if you'd
5 envision there being any prescriptive elements. And if
6 so which ones you - you envision to be prescriptive,
7 and then other ones that would be part of the
8 performance-based part.

9 MS. REPASS: Thank you, yes. And we would like to
10 address that in our post-hearing comments. And I can
11 just say briefly now, just, you know, thinking through
12 some -- some other types of standards I mentioned, like
13 the -- the hazard communication standard. One way to
14 get there is to, you know, provide -- you know, provide
15 what you're trying to get to. Like what you're trying
16 to get to is to maintain a certain workplace condition
17 that would prevent the exposure to heat. And then
18 allow employers to use more of the tools available,
19 such as what we've mentioned on the heat, rest, water,
20 shade materials.

21 And I would also mention, for the benefit of other
22 participants listening - and I know OSHA is well aware

1 of this - but there's been a lot of discussion within
2 the Department of Labor about the ability to make
3 enhanced use of interpretive guidance, and the - the
4 business and other communities are being actively
5 requested to submit more opportunities for OSHA to
6 create interpretive guidance. And so on this
7 performance standard, that that's a good way that we as
8 the employer community could also assist OSHA's is
9 perhaps creating opportunities for more interpretive
10 guidance on how an employer can have a truly effective
11 performance-based standard.

12 And on the prescriptive elements, just looking
13 through some of the other types of OSHA standards where
14 we have more of a performance-based approach, I don't
15 think there's such a thing as a fully performance-based
16 standard. We'll address this further in our written
17 comments, but there would need to be some of the how to
18 type elements, especially in order to help employers
19 know the basics of the parameters to use.

20 DR. SCHAYER: Okay. Thank you very much. Yes.
21 And if you could address that in your post-hearing
22 comments, that'd be very helpful to us. So now I'd

1 like to turn it to Lisa Long, who has some questions.

2 MS. LONG: Thanks, Steve. This is Lisa Long from
3 OSHA. My first question is regarding the scope and a
4 comment you made in your comments on the proposal.
5 Regarding the scope of exemption for short duration
6 employee exposures at or above the initial heat trigger
7 of 15 minutes or less in any 60 minute period, can you
8 elaborate on your comment that OSHA should take a more
9 risk-based approach, rather than tying it only to time
10 of exposure?

11 MS. REPASS: Give me just a moment. I'm trying to
12 type these down so we can address these in our
13 comments. And we would like to also address that in
14 our post-hearing comments. And then I would just say
15 you know, just briefly on - on that, this is where
16 we've heard a lot of discussion about the importance of
17 a job hazard assessment. That's where you can - we can
18 tie in the use of an effective job hazard assessment on
19 a risk-based approach, and what type of exposures the
20 employees may have in - in certain unique environments.

21 MS. LONG: Thank you. And you may, I think, want
22 to address that more in your post-hearing comments.

1 We'd certainly appreciate that.

2 MS. REPASS: Thank you. We'll do that.

3 MS. LONG: Just a couple of questions now on
4 the -- the HI IP first. In your opinion, how often
5 should HIIPPs be updated, or the heat injury and
6 illness prevention plan, the HIIPP -- how often should
7 that be updated?

8 MS. REPASS: I'd like to also address that in my
9 post-hearing comments. We can also look at some other
10 OSHA standards and some of the State plans regarding
11 how often different types of assessments are required
12 to be updated. For example, some types require an
13 annual update, some may be when new work processes are
14 introduced. So I'd like to look at that with our
15 industry groups and take a more thoughtful approach to
16 that based on our -- what some of our members needs and
17 their work environments.

18 MS. LONG: Okay. Thank you. My next question is
19 based on alternatives or -- I'm sorry. You mentioned
20 some questions you had about the heat safety
21 coordinator. And I'm wondering if you have any
22 alternatives to a heat safety coordinator that you or

1 your members would suggest.

2 MS. REPASS: And I would like to address that in
3 our post-hearing briefs and collect some data from our
4 members. But just in talking, also with some of my own
5 clients, about what would work for many types of
6 employers for heat safety coordinators, if you have an
7 employer who already has a safety team that's the type
8 of thing where an existing safety team member could
9 fulfill that role. But we also have to be mindful that
10 employers are all sizes, large and small, and there may
11 be smaller employers who do not have site safety. And
12 that's where I'd like to talk with their members about
13 what -- what in those types of environments where there
14 is no site safety, who should best perform the function
15 of the heat safety coordinator?

16 MS. LONG: Thank you. We -- we certainly
17 appreciate any comments you have on that. My last
18 question has to do with identifying heat hazards. In
19 your written comment, you suggested that more
20 flexibility should be provided in monitoring methods.
21 Can you expound more on what you think that should look
22 like and what a monitoring provision would really

1 entail?

2 MS. REPASS: And I'd like to submit comments to
3 provide some specific examples of different types of
4 monitoring methods. There are a -- a number of
5 resources out there discussing different types of
6 alternative metrics, different ways to even test the
7 metabolic load on employees. So I'd like to give you
8 some more specifics.

9 And something I've seen that I -- I found to be
10 particularly instructive, in my -- this is not for
11 Coalition for Workplace Safety, but this is in my --
12 you know, in capacity with my law firm and some other
13 clients. I'm very involved with the Florida Chamber of
14 Commerce, and the Florida Chamber has come up with some
15 excellent materials for their -- for their state and
16 for their heat signature on different ways to monitor
17 heat exposure to employees. So in providing our post-
18 hearing comments, I'd like to pull in some different
19 types of materials from resources such as that.

20 MS. LONG: Thank you.

21 DR. SCHAYER: Great. Thank you very much. Now
22 I'd like to turn to Tiffany DeFoe, who has a few

1 questions.

2 MS. DEFOE: For the record, this is Tiffany Defoe
3 with Directorate of Standards and Guidance, OSHA. Ms.
4 Repass, I appreciated in the rest break section of the
5 coalition's comments, the examples that were given of
6 the circumstances under which certain industries or
7 workplaces could face operational challenges in
8 relation to mandatory rest break schedule as it was
9 written up in the proposed rule. And I also appreciate
10 your recommendation to rereview the comments from the
11 SBREFA process, which we will.

12 I also noticed, in the Coalition's comments,
13 there's a statement in the rest break section that says
14 the overwhelming majority of members we surveyed
15 indicated that providing mandatory rest breaks of 15
16 minutes at least every two hours creates significant
17 operational challenges. And I'd like to follow up on
18 that mention of a survey. It wasn't entirely clear to
19 me whether this was a survey that, you know -- perhaps
20 I'm asking about something that has already been
21 covered or submitted in some form, but I haven't seen
22 it yet.

1 And it seems to me that, if the Coalition is able
2 to provide OSHA with either the results of the survey
3 that this is referencing or a discussion of them that
4 goes into some detail -- it just seems like it's an
5 opportunity to get a more sort of complete and
6 systematic view into the ways that different
7 industries, jobs, and work processes would face
8 operational challenges from the mandatory rest break
9 schedule and what sort of flexibilities might be
10 appropriate, which I realize, you know, will not be the
11 same from industry to industry or -- or process to
12 process.

13 MS. REPASS: Yes. Thank you. And we can
14 certainly address that in our post-hearing comments and
15 provide -- provide some -- some of the questions and
16 some of the specific feedback we received with the
17 number of industries involved with CWS. We received
18 some excellent feedback with different types of
19 employers, different sizes of employers. So we can
20 include a discussion of those and make sure that we're
21 giving you a cross section of -- of different types and
22 sizes of employers. And there was, in the SBREFA

1 materials from the small entity representatives, there
2 are also some really good similar feedback coming from
3 the employer community too.

4 MS. DEFOE: Yes. Thank you very much. And I
5 also -- I was also glad to hear that you're planning to
6 survey your membership about different aspects of state
7 plans. There was one in particular that I was already
8 planning to ask the Coalition's thoughts about. So as
9 I'm sure you're aware, Oregon's rule for outdoor work
10 has provision that allows for the use of cooling
11 technologies such as vests or even things like water
12 dampened cotton clothing or other measures. In
13 circumstances where an employer can demonstrate that
14 providing access to a shaded rest area isn't -- either
15 isn't safe -- some people have mentioned this in
16 reference to tower situations or climbing situations --
17 or because it interferes with the ability of employers
18 and employees to complete the necessary work, which is
19 along the lines of the concrete pouring example that
20 folks have raised and other situations. And I'm hoping
21 that when you provide the comments that -- that
22 provision in particular would be great to have the

1 Coalition's thoughts about.

2 MS. REPASS: Certainly, we can do that.

3 MS. DEFOE: Thank you. Oh, and I also just wanted
4 to mention - so when you're discussing the job hazard
5 assessments. And you've been describing a little bit
6 about the value of those assessments and your
7 membership's use of them and how they use those
8 assessments to feed into a risk-based - a risk-based
9 assessment of how to address the heat conditions that
10 they find in their assessment. If the coalition has
11 examples they think are particularly - you know, that
12 OSHA should be looking at to see examples of this is
13 how this should be done, for both the job hazard
14 assessment and how that connects with and is used in
15 the risk-based assessment for - for - for risk
16 management strategies. Anything that the coalition can
17 provide along those lines would be, I think, really
18 helpful as well.

19 MS. REPASS: Yes, we'll be happy to do so.

20 MS. DEFOE: Thank you. That's all I have.

21 MS. REPASS: Thank you.

22 DR. SCHAYER: Thank you. And we also had some

1 questions from Deana Holmes on the panel in the room.

2 MS. HOLMES: Thank you. Good afternoon. I'm
3 Deana Holmes with OSHA, Directorate of Standards and
4 Guidance. You mentioned that you wanted OSHA to offer
5 flexibility for solo or mobile workers related to
6 supervision, temperature monitoring, and rest breaks.
7 What would flexibility with regard to observing solo or
8 mobile workers for signs and symptoms look like?

9 MS. REPASS: So that would depend on the type of
10 workplace and the size of the employer. And it could
11 take a variety of forms. For example, I have -- I've
12 used this -- this example in speaking to some other
13 groups. So I have a client in one of the western
14 states that has a ranching operation. And this
15 requires actual cowboys and cowgirls to ride on
16 horseback to go from one location to another. And for
17 those -- what may work for those types of workers would
18 not be the same as, say, a tower worker. So I think it
19 needs to be flexible depending on the type of the
20 industry.

21 And there are some employers who, you know, if
22 they're lucky enough to have a large enough health and

1 safety budget, who may be able to take advantage of
2 wearables to stay in contact with their employees and
3 make sure that everything is working. There are
4 technologies available that can provide that type of
5 monitoring. However, we need to be sensitive to the
6 fact that not every employer can afford that.

7 So in terms of what it would look like, I think it
8 depends on the employer type, but certainly having some
9 means in place where the -- the employer -- employer or
10 heat safety coordinator has a way of checking in with
11 those workers and making sure that you know, that
12 they're okay and that they're -- they're not
13 experiencing any signs of stress. So I'd like to -- to
14 think about that and get some different context from
15 different types of industries that CWS represents and
16 give you some specific examples in our written
17 comments.

18 MS. HOLMES: Thank you. I also have a question to
19 read into the record regarding recordkeeping. Can you
20 please further explain how the recordkeeping
21 requirements for indoor work areas will create
22 excessive administrative burden? Thank you.

1 MS. REPASS: Thank you. And I'll address that in
2 our written comments.

3 DR. SCHAYER: Thank you very much, Ms. Repass.
4 And Your Honor, that concludes the questions from OSHA.

5 JUDGE LESLIE: Thank you. Does the Office of the
6 Solicitor have any questions for Ms. Repass?

7 MS. LEVIN: No, Your Honor. My name is Jennifer
8 Levin for the Office of the Solicitor. I do not have
9 any questions for Ms. Repass. Thank you very much for
10 your time, Ms. Repass.

11 MS. REPASS: Thank you.

12 JUDGE LESLIE: Mariam, are there any participants
13 who have questions?

14 MS. CARLON: Yes, we have two. The first is Ms.
15 Sokas. Please state your name for the record.

16 Ms. Sokas, if you're speaking, you're still muted.

17 JUDGE LESLIE: Ms. Sokas, we see you, but we do
18 not hear you yet. Mariam, do you want to go ahead and
19 take the second speaker?

20 And Ms. Sokas, we're going to go ahead and take
21 the second speaker and give you an opportunity to maybe
22 fix your speaker while we listen to the second

1 questioner.

2 MS. CARLON: Ms. Christman, please state your name
3 for the record.

4 JUDGE LESLIE: Ms. Christman, you are also muted.

5 MS. CHRISTMAN: Unmuted. Got it. Okay. I'm
6 Anastasia Christman with the National Employment Law
7 Project. And Ms. Repass, thank you for your testimony.
8 I have two questions for you.

9 The first is that you had mentioned at one point
10 that performance-based standards would allow employers
11 to - themselves to develop metrics and how to implement
12 them. And I'm curious how you think - you've mentioned
13 several times that there's a wide range of capacity;
14 some people have budgets, some people don't, some
15 people have staffing, some people don't - how would you
16 suggest OSHA address a potential for disparities for
17 protections for workers who are working for different
18 employers and who may, consequently, sort of have
19 different levels of safety for heat? And how should
20 OSHA try to bring about some sort of consistency for
21 these workers?

22 And then my second question is that you had said

1 that, similarly, performance-based standards give
2 employers a chance to engage with employees on what
3 they need, which I - NELP would absolutely agree that,
4 you know, bringing in worker expertise is really
5 important. And we were pleased to see that OSHA
6 standard suggested that, to the extent possible,
7 employers engage with employees in developing the plan
8 and the training. And I'm curious if you think there
9 are other points in the process of developing heat
10 safety plans where they should also suggest that
11 employers engage with their employees?

12 MS. REPASS: Thank you. Those are both some
13 really excellent questions and very thoughtful
14 questions. So I would like to take a chance to fully
15 address those for you in my -- my post hearing
16 briefing, because this is -- especially number two, I
17 think really gives us a chance to provide some good
18 input on -- on ways that we can engage with employees.

19 MS. CHRISTMAN: This is Anastasia Christman,
20 again. Thank you for your response. I look forward
21 to -- to seeing your ideas.

22 JUDGE LESLIE: Thank you for your question.

1 Mariam, did we lose Ms. Sokas?

2 MS. CARLON: It still looks like she hasn't been
3 able to connect, unfortunately.

4 JUDGE LESLIE: I see her name, but I do not see
5 nor do I hear her.

6 MS. CARLON: Yeah. And outside of her, there are
7 no other questions at this time.

8 JUDGE LESLIE: Okay. Hopefully Ms. Sokas can ask
9 questions of our other panels, but we will move on and
10 encourage her to continue to participate. And
11 hopefully we hear from her in the future. Let's go
12 ahead and move on to our next panel.

13 MS. CARLON: The next speaker group is the Service
14 Employees International Union, represented by Linda
15 Ressler, Arnice Sykes, and Sharit Cardenas Lopez.
16 Please state your name and your affiliation as you each
17 transition throughout your testimony.

18 S. CARDENAS LOPEZ: Hello, everyone. My name is
19 Sharit Cardenas Lopez. I am a senior policy analyst at
20 SEIU, or Service Employees International Union. Thank
21 you for having us and for hosting this public hearing
22 on heat injury and illness prevention. SEIU is a union

1 representing almost 2 million working people in health
2 care, the public sector, and property services. SEIU
3 members are particularly vulnerable to extreme heat
4 exposure due to living in cities that regularly
5 experience extreme temperatures and in working in the
6 in the vicinity of machinery that produces excessive
7 heat.

8 At SEIU, we represent airport service workers who,
9 too often, work without access to cool water, fast food
10 line cooks, and laundry working -- workers who work in
11 hot rooms with little respite from the heat, and school
12 campus workers who work in environments that can become
13 dangerously overheated. The majority of our members
14 are part of the most vulnerable populations to heat
15 illness. They are older adults, people with
16 preexisting conditions and comorbidities, people with
17 disabilities, emergency responders, and people who
18 live, as I had mentioned, in -- in low income
19 communities. As EPA and -- and FEMA and NOAA are at
20 risk of being eliminated or are greatly underfunded, we
21 know these vulnerabilities will be exacerbated.

22 As many communities will continue to be exposed to

1 even higher levels of threatening pollution, they'll
2 have fewer resources to mitigate the impacts of extreme
3 events, and they'll have fewer tools to anticipate and
4 prepare for weather related disasters. In a few
5 minutes, you will hear the experience of two amazing
6 SEIU members who have suffered from heat illness, and
7 you will hopefully have a better understanding on why a
8 robust heat standard is of major importance. Every
9 worker must be protected from the increasing risk of
10 heat illness at their workplace. Working people
11 deserve a heat standard that gives them the right to
12 life saving measures like access to cool drinking
13 water, shade, paid rest breaks, acclimatization, annual
14 training, and a heat illness and injury prevention
15 plan.

16 Preventing heat illness is doable. We have seen
17 some states implement successful standards, but that's
18 not enough. Heat is an issue across the country, and
19 holding all states to the highest standard is
20 essential, especially to preventing harm in the
21 workplace. From the experience of states and what
22 experts say, we also know how important and impactful

1 things like acclimatization and mandatory rest breaks
2 are for saving lives. A report published in the Center
3 for Disease Control and Prevention's Morbidity and
4 Mortality Weekly Report found that failure to provide
5 acclimatization for new or returning employees was, and
6 I quote, "the most common deficiency and the factor
7 most clearly associated with death", end quote.

8 Similarly, taking mandatory paid breaks will not
9 only save workers lives, but also increase their
10 productivity and save employers money. Not addressing
11 heat stress costs an estimated annual of \$2.1 trillion
12 globally. In the United States alone, it cost around
13 \$98 billion annually. So having a strong and effective
14 OSHA heat standard could prevent 50,000 workers in the
15 U.S. from injuries and illness.

16 Every worker, indoor and outdoor, sedentary and
17 highly active, deserve to be protected from extreme
18 heat while doing jobs that are essential to our
19 communities and our economy. Finalizing a strong
20 standard cannot wait any longer. Workers cannot wait
21 any longer. Lives are truly at stake. We must take
22 action now.

1 Again, thank you all for having me and listening.
2 We appreciate OSHA continuing to -- with the rulemaking
3 process, given how important this is to workers all
4 across the Country. I'm going to go ahead and pass it
5 on and introduce Linda Ressler. She is an airport
6 worker. At -- she's -- she's an Airport Workers United
7 leader and -- and a former cabin cleaner at Sky Harbor.
8 Again, thank you for having us.

9 MS. RESSLER: Good afternoon, everyone. My name
10 is Linda Ressler. I want to thank the Occupational
11 Safety and Health Administration for holding this very
12 important hearing, and for letting me share my
13 experience working in the extreme heat.

14 I used to work at Phoenix Sky Harbor International
15 Airport cleaning airplane cabins overnight. It was a
16 really hard job that was made more difficult during the
17 summer months. Even at night, the planes were
18 unbelievably hot. The temperature inside the cabin
19 would reach triple digits. The air conditioning wasn't
20 always turned on.

21 We also didn't get to take breaks, and we were
22 told to not take water onto the airplanes. Sometimes I

1 would drink water passengers left behind. That's all I
2 had access to. We'd have to work really fast, cleaning
3 the airplane and also doing a security search for TSA
4 to ensure the cabin was safe and secure for passengers,
5 pilots and crew. It would get so stuffy and feel like
6 a sauna. I'd be drenched in sweat within minutes.

7 There was one night in July 2023 when I came to
8 work, even though I had terrible headaches that day. I
9 couldn't afford to miss even one day of work. I was
10 only making 15.76 an hour. It was a constant struggle
11 to afford rent, groceries, and my bills. I couldn't
12 even afford to run the AC at home during the summer.
13 There was no break from the heat when I got home. So I
14 went to work; I had no choice. I ended up going in and
15 out of consciousness trying to wipe the monitors down.
16 Then I noticed my supervisor filming me with her phone.
17 I was suffering from a heat stroke and my supervisor
18 was just filming me.

19 After she filmed me, I was given the option to go
20 home or call an ambulance -- if you really feel that
21 bad. I couldn't afford an ambulance, so I went home.
22 I don't remember how I went home, but the next day I

1 went to the hospital and I stayed overnight. I had a
2 heat stroke and there -- that was when I knew I needed
3 to speak up. I could have died.

4 I joined with my coworkers to demand heat
5 protections for all workers and in early 2024, the City
6 of Phoenix heard our demands. They passed the heat
7 ordinance. It was a really good first step to protect
8 workers in our city, but it didn't protect everyone --
9 that included myself and my fellow cabin cleaners.
10 That is why we need a national standard so everyone is
11 protected, no exceptions.

12 I'm also hearing from my former coworkers that
13 they are still not getting what they fought for and
14 won, like access to cold water, and the inaction is
15 putting workers' lives at risk. That's why it is
16 urgent that we have federal protections in place to
17 ensure everyone is safe from the heat.

18 And the preventative measures are so simple. It
19 just takes cold water, a cool place to rest to prevent
20 heat illness, and the proper training to identify it
21 when workers are experiencing it. We can't hope
22 airlines or major corporations will start caring about

1 us. We need them to do the right thing.

2 Clear federal heat protections where there is one
3 set of rules for everyone, that will go a long way to
4 making sure working people aren't killed or permanently
5 injured by the heat. Here in Phoenix, it's already
6 over a hundred degrees every day with no break in
7 sight. Heat isn't only a summer thing for us. Our
8 heat season runs from April to November. Working
9 people aren't being -- working people are being put
10 into dangerous situations because of the heat. That's
11 only going to get worse as the summer continues and the
12 heat rises. A sip of water and a place to cool off can
13 be the difference between life and death in the heat.

14 OSHA needs to pass a strong heat standard that
15 protects indoor and outdoor workers from heat illness.
16 Every worker deserves to be protected from the heat --
17 increasing heat illness -- risk of heat illness at
18 their workplace. Thank you for letting me share my
19 story and giving me space to -- and giving space to all
20 the working people who are speaking. Thank you.

21 S. CARDENAS LOPEZ: Our second speaker is Ms.
22 Arnice Sykes. She is a member and a leader with Union

1 of Southern Service Workers and a former worker at
2 Burger King.

3 MS. SYKES: Good afternoon, everyone. My name is
4 Arnice Sykes. I'm a service worker from Atlanta,
5 Georgia, and I'm a member of the Union Service -- Union
6 of Southern Service Workers, USSW. Also, USSW is a
7 campaign of the service employees of -- excuse me,
8 Service Employees International Union, SEIU.

9 I'd like to tell you about what I've done with --
10 what I've done with the USSW to fight the deadly heat
11 at work. I've been in fast food for four years. At
12 these jobs, health and safety should be the main
13 priority, but these bosses, they don't care. They just
14 want profits and that's it.

15 I've dealt with -- I've dealt with deadly heat
16 while working at Burger King during the hot Georgia
17 summer. The air conditioning was broken. It was
18 hotter in the store than it was outside. The bosses
19 would fix the heat --well pre-fix the air, but then it
20 would break, right -- it would just break right then
21 and there. They gave us fans that was blowing out hot
22 air.

1 That's why I spoke -- that's why I spoke out in
2 front of my store with other workers experiencing heat.
3 And that's what forced Burger King to finally fix their
4 air conditioning, not just in my store, but in stores
5 across the metro Atlanta.

6 A safe workplace means that we can do our jobs
7 better. In order for us to be productive, we have to
8 be healthy. We have -- we have to be comfortable in
9 order to produce anything for these companies. You
10 know, who can work in heat? You know, we get dizzy,
11 nauseated, exhausted, dehydrated. I would -- you know,
12 I would find any excuse in the book not to go to work
13 because of -- you know, because of extreme -- excuse
14 me, because of extreme heat that I had faced at work,
15 walking through those doors. We shouldn't get
16 penalized for not wanting to suffer, especially if we
17 have health conditions as I do.

18 But at the end of the day, I got to go to work. I
19 need the money. We deserve health and safety because
20 we're human beings, point blank. You know, we
21 should -- we shouldn't have to go to work -- we
22 shouldn't have to go -- going to -- we do -- we

1 shouldn't have to go to work and wonder if we're going
2 to die there or not. This is ridiculous, you know.
3 OSHA need to be -- OSHA needs to force accountability
4 on these bosses to maintain the welfare of the
5 employees. We need effective air conditioning, cool
6 drinking water, health and safety plans in our stores,
7 and regular breaks, you know, when we're working in
8 heat. And if the air conditioning needs fixing, close
9 the store, pay us until it's fixed.

10 That's what we're fighting for at the USSW. USSW
11 is also making workers into leaders, leaders in the
12 fight for justice and dignity. Worker leaders are more
13 important to this economy than any other bosses.
14 That's why we're asking OSHA to stand with us for our
15 fight for dignity, safety, and respect. I believe we
16 need a strong, a very strong heat standard to hold
17 these companies accountable. As workers -- as workers,
18 when we stand together, we have a better fight. When
19 we stand together, you -- you guys see us. Thank you.

20 JUDGE LESLIE: Thank you. Does that conclude your
21 presentation, Ms. Lopez?

22 S. CARDENAS LOPEZ: Yes, it does. Thank you, Your

1 Honor.

2 JUDGE LESLIE: Thank you. Does OSHA have any
3 questions for this panel?

4 DR. SCHAYER: Yes, we do, Your Honor. And thank
5 you so much to the panel for your testimony and for
6 sharing your stories.

7 So I have a question about something from your
8 written comments, probably for Ms. Lopez. So you
9 recommended that OSHA include a provision requiring
10 employers to document their employees' feedback on the
11 development and implementation of a heat injury and
12 illness prevention plan, and then to provide a
13 reasonable explanation for accepting or rejecting their
14 employees' feedback. So I just wondered if you could
15 share a little bit more about how you think that might
16 work and if you know of this currently being done in
17 any workplaces right now for heat or other hazards.

18 S. CARDENAS LOPEZ: Yeah. Thank you for the
19 question. I want to be able to provide the most
20 helpful response. So we're going to go ahead and
21 submit a better response for the record.

22 DR. SCHAYER: Sure, sure. If you could put that

1 in your post hearing comments we'd appreciate it. And
2 one last question I had was just about hierarchy of
3 controls, which you recommended in your written
4 comment, and just wondering if you were also advocating
5 through that for the inclusion of cooling PPE. And if
6 so, if you had any information on how feasible it is to
7 maintain the cooling properties of PPE, or if any of
8 your members have information on that. You know, so
9 the PPE doesn't heat up and no longer is making -- is
10 cooling properly.

11 S. CARDENAS LOPEZ: Yeah, we're actually in the
12 midst of assessing and gathering member stories on that
13 very issue. We know that cooling PPE is very important
14 for the work that many of our members do, especially in
15 the healthcare area. So again, I want to give you the
16 best answer once we have those - those responses, and
17 we'll follow up with the information in the post
18 hearing comments.

19 DR. SCHAYER: Great. Thank you, Ms. Lopez. And
20 now I'd like to turn it over to Patti Downs from OSHA
21 who has some questions.

22 MS. DOWNS: Hello everyone. Can you hear me and

1 see me, okay? All right. OSHA -- oh, Patti Downs with
2 the Directorate of Standards and Guidance. OSHA is
3 really interested in learning about -- more about
4 controls that are used in these workplaces. You had
5 mentioned in your written comments and in your
6 testimony today, workers who are exposed to heat
7 generating equipment and processes such as laundry
8 workers, line cooks, fast food workers, et cetera.
9 OSHA is curious to know what controls have you seen
10 implemented to reduce exposures to these radiant heat
11 sources?

12 S. CARDENAS LOPEZ: Yeah, that's a good question.
13 I -- I can also add that information to the post
14 hearing comments to make sure we can include as much as
15 we can and story - members of stories as well.

16 MS. DOWNS: Okay. And then we're also curious to
17 know, are there areas in any of the workplaces you
18 cover where, like, isolation of heat producing
19 equipment would not be feasible, or are there any
20 alternatives you have seen to reduce employee exposures
21 in these areas?

22 S. CARDENAS LOPEZ: Yeah, I mean, I'm sure -- I

1 think especially airport workers is a very unique group
2 as they many times they work on the tarmac and in those
3 cases, it would be hard to prevent heat when they're
4 outside. Yeah. So I'll definitely look into that as
5 well. And again, we'll provide information - the
6 answer post hearing.

7 MS. DOWNS: Great. Thank you so much. That's it
8 for me, Steve.

9 DR. SCHAYER: Thank you Patti. And now I'd like
10 to turn to Zoe Petropoulos.

11 MS. PETROPOULOS: Hi. Zoe Petropoulos with
12 Directorate of Standards and Guidance. So we received
13 a few comments on situations when fans are not safe or
14 appropriate for use but AC is also not available. And
15 we're wondering if you're able to provide some examples
16 of alternative control measures that you believe would
17 be appropriate for employers to implement when fans are
18 not appropriate, but also AC is not available. And
19 this can be in the form of examples you've seen
20 implemented successfully in workplaces or that you --
21 you would prefer to see implemented

22 S. CARDENAS LOPEZ: Um --

1 MS. PETROPOULOS: Oh, sorry. Go ahead.

2 S. CARDENAS LOPEZ: No, go ahead. Finish your
3 question.

4 MS. PETROPOULOS: No, that was the end. I was
5 going to go on to my next one, so go ahead.

6 S. CARDENAS LOPEZ: Yeah, I was -- I was going to
7 say that we -- I mean, as you heard from Ms. Arnice,
8 there has been examples when the AC breaks, so it's
9 definitely an issue. And again, we'll -- we'll submit
10 that to the -- to the comments after.

11 MS. PETROPOULOS: Thank you. And then my next
12 question is on a different topic. I'm wondering if you
13 are aware of instances of workers not reporting heat-
14 related injuries and illnesses to their supervisors?

15 S. CARDENAS LOPEZ: Will submit that to the
16 comment as well. We'll make sure to get good stories.
17 We've heard of a few, but I don't want to misinterpret
18 them.

19 MS. PETROPOULOS: That's fair. And in your post
20 hearing your comment, if you do share those, we'd be
21 interested to know the circumstances surrounding that
22 and reasons why -- why workers aren't reporting those.

1 S. CARDENAS LOPEZ: Most definitely.

2 DR. SCHAYER: Thank you. And now I'd like to turn
3 to Joo-Hyung on the panel here.

4 MS. SHIN: Hi. This is Joo-Hyung Shin from OSHA.
5 I have two questions. The first question is about
6 sedentary workers. So in your written comments, you
7 recommend that OSHA should omit the currently proposed
8 exemption for sedentary workers, reasons cited being
9 that these workers often work in areas with poor
10 ventilation or inadequate cooling. We were curious of
11 specific industries in which your members that -- who
12 perform sedentary work have reported experiencing heat
13 illnesses because of poor ventilation or inadequate
14 cooling.

15 S. CARDENAS LOPEZ: Yeah. So as -- as we said in
16 the -- in the comments, some of our members do work in
17 old buildings with poor ventilation. And we don't --
18 we don't think it's fair for them to suffer from
19 extreme heat when there's no good ventilation or -- or
20 cooling systems. So yeah, we'll -- we'll provide a
21 better response to -- to your question and provide some
22 examples in the record.

1 MS. SHIN: My last question is sort of a follow up
2 question that Stephen asked earlier about employee
3 feedback. So in your submitted comment, you
4 recommended that OSHA should require employers to get
5 employee -- get input from all employees, not just some
6 employees. So OSHA would really appreciate if you
7 could provide examples of effective ways that employers
8 could get input from all employees that are also
9 economically feasible. Thank you.

10 S. CARDENAS LOPEZ: Most definitely. We'll put
11 them in the post-hearing comments. Thank you.

12 DR. SCHAYER: Thank you again, Ms. Lopez. And
13 Your Honor, that concludes the questions from OSHA.

14 JUDGE LESLIE: Thank you. Does the Office of the
15 Solicitor have any questions for Ms. Lopez?

16 MS. LEVIN: This is Jennifer Levin from Office of
17 the Solicitor. I do not have questions for the panel
18 but I'd like to thank all three panel members for
19 their -- for their testimony and their time.

20 JUDGE LESLIE: Thank you. Mariam, do we have any
21 participants wanting to ask questions of this panel?

22 MS. CARLON: Yes, Your Honor, we have one from Ms.

1 Arberry. Please state your name for the record.

2 MS. ARBERRY: Hi. My name is Chenay Arberry, and
3 I'm with the AFL-CIO.

4 JUDGE LESLIE: Thank you, Ms. Arberry. And if you
5 could keep your voice up -- I barely hear you. And
6 also, before you ask your question, for the record, I
7 just want the record to note. Ms. Lopez, you are the
8 only one answering questions for the panel. Usually
9 when participants ask questions, I have the panel
10 identify themselves, but as you are the only one
11 answering questions, there's no need at this point.
12 Thank you. Go ahead, Ms. Arberry.

13 MS. ARBERRY: I wanted to ask Sharit or Arnice if
14 they could tell us more about what happens when
15 coworkers have spoken up about hot working conditions
16 to employers. And then my second question was also
17 going to be directed at Linda. I was going to ask,
18 when you're not cleaning the cabins, do you have access
19 to cool drinking water and a cooling space to take a
20 break?

21 JUDGE LESLIE: And I do apologize. I spoke too
22 soon. If you could identify yourselves for the record

1 before you answer the question. Thank you.

2 MS. SYKES: Hi, I'm Arnice Sykes. You asked what
3 do we do? We speak up, we stand out, we get into our
4 unions, and we try to, you know, make a voice for
5 ourselves through our union. That's the best way we
6 can go. Because speaking by ourself, nothing gets
7 done. With our union, this is what gets -- this is
8 what happens. We get to see you guys.

9 MS. RESSLER: Hello. We didn't get -- we didn't
10 have time to take breaks. And most days we were
11 under -- we were understaffed and pushed to the next
12 airplane. It was hard to even take a break to go to
13 the bathroom. We were worried about getting write ups
14 for asking for a break. We were constantly pressured
15 to keeping working and -- to keep working and going on
16 to the next airplane. We weren't allowed to have water
17 on the airplane, so we have to go all the way back to
18 the break room to get some, if we had time -- like for
19 lunch break six hours into our shift. But even if we
20 had time, there wasn't always water in the cooler or
21 cups. We didn't have cups. It was such a pain to
22 simply get a break or go to the bathroom or -- or get

1 water. They simply didn't make it easy on us.

2 JUDGE LESLIE: Do you have any other questions,
3 Ms. Arberry?

4 MS. ARBERRY: Oh, yes, I was just -- thank you for
5 answering, Linda. I was just hoping if Arnice could
6 more so explain what happens, when they've spoken up
7 specifically about heat in the working environment, how
8 do their employers react? Do they face retaliation?
9 Are they afraid to speak up? Just hoping to expand
10 more on that.

11 MS. SYKES: Okay. Well, why -- you do have some
12 workers that are scared, you know. But if you -- and
13 once you implement the stronger workers, that's, you
14 know, that wants to see change, then -- excuse me --
15 then -- then the employer becomes scared. Okay. Oh,
16 guys. I'm sorry. It's --- it's more so just standing
17 together. When we stand together, we're stronger.

18 MS. ARBERRY: Great. Thank you, Arnice.

19 JUDGE LESLIE: Thank you. Are there any other
20 participants, Mariam?

21 MS. CARLON: There are not, Your Honor.

22 JUDGE LESLIE: Thank you. Any follow up questions

1 from OSHA?

2 DR. SCHAYER: No, Your Honor.

3 JUDGE LESLIE: From the Office of the Solicitor?

4 MS. LEVIN: No further questions, Your Honor.

5 JUDGE LESLIE: Thank you. And to members of the
6 panel, I want to thank you so much for your testimony
7 and for your participation today. And I appreciate all
8 of your time. Thank you so much.

9 Mariam, do you want to call the next panel,
10 please?

11 MS. CARLON: Yes. The next speaker is Ellie
12 Barbarash. Please state your name and affiliation for
13 the record.

14 MS. BARBARASH: Hello, my name is Ellie Barbarash.
15 I'm from the American Federation of State, County and
16 Municipal Employees. I'm just checking that folks can
17 hear me.

18 JUDGE LESLIE: We can, thank you.

19 MS. BARBARASH: Awesome. Thank you so much. I'm
20 sorry. I'm having difficulty coming on camera. I
21 really am here.

22 My name is Ellie Barbarash. I'm a senior health

1 and safety advocate at AFSCME, the American Federation
2 of State, County, and Municipal Employees, representing
3 1.4 million public and private workers, members who
4 provide all of the vital services that make America
5 happen. AFSCME strongly supports OSHA's heat illness
6 and injury prevention proposal, and we urge OSHA to
7 issue a final standard, which as many have said is long
8 overdue.

9 Our comments are specifically dedicated to the
10 memory of AFSCME, Maryland Council 3, Local 44 member,
11 Ronald Silver, II, a Baltimore Department of Public
12 Works, DPW employee who died because of heat -- or work
13 related heat exposure on August 2nd, 2024.

14 His crew had been reporting unsafe heat conditions
15 since June, working numerous 105 degree, extreme heat
16 trigger days in a row throughout July. These were
17 noted in the Conn Maciel report I mentioned earlier.
18 Baltimore DPW was not required to develop a plan, a
19 HIIPP. Neither Silver, his coworkers, or his
20 supervisors had ever been trained to recognize or
21 respond to heat stress or emergency.

22 The day that Silver died, working a standard 10

1 hour shift in a municipal garbage truck, the heat index
2 in Baltimore neared 108. While collecting garbage, the
3 exhaust fumes behind the truck made the temperature
4 even hotter. The heat had already gotten Silver and
5 his coworkers sick that week of July 29th. On August
6 2nd, after a delayed 7:00 a.m. start, Silver finished
7 all of his water by early afternoon. There was no
8 additional hydration or first aid on his truck.

9 By 3:50 that afternoon, he collapsed in an
10 alleyway while collecting trash. He was disoriented,
11 he needed help getting back into the truck, and he
12 complained of cramps and blurry vision. A coworker,
13 also suffering from the heat, drove him to his car a
14 little after 4:00 p.m. Silver stopped and requested
15 water from a random homeowner. When she went inside to
16 get it, he collapsed again by her front door. She
17 returned with water to find him seizing with
18 convulsions on her porch. She called 911 and
19 administered chest compressions herself, but he did not
20 revive. Paramedics pronounced Silver dead at 5:05 p.m.

21 Our AFSCME brother, 36 years old, suffered an
22 unnecessary, preventable, agonizing death, leaving

1 behind traumatized homeowners in Baltimore, coworkers
2 and his family, a grieving fiancée and five young,
3 fatherless children. Silver's coworkers and colleagues
4 could not respond appropriately to his heat stress, as
5 it occurred in real time because they didn't know how.

6 At DPW, the supervisors well knew how hot it was
7 on the streets of Baltimore that week, but it didn't
8 matter. Even with his life at risk, Silver lacked the
9 right to exercise stop work authority without risking
10 his job. The heat killed him. The State of Maryland
11 had proposed an occupational heat illness prevention
12 standard in 2020. They knew it was a problem and they
13 knew what to do about it. But the rule was not
14 formalized or enforceable until September 24 -- 2024, a
15 month after Silver's death.

16 I want to also discuss -- that's the background.
17 I want to discuss a report that I mentioned in my
18 comments by the Center for Labor and a Just Economy at
19 Harvard Law School, which examined the effectiveness of
20 workplace heat regulations in saving lives. "The
21 Effect of Heat Standards Related to Outdoor Work", by
22 Adam Dean and Jamie McCallan examines two decades of

1 data from California, Arizona, Oregon, and Nevada to
2 explore whether heat illness prevention regulations are
3 effective or not.

4 Authors researched climate and heat death rates in
5 California, connected to outside work, before and after
6 implementation of the Cal/OSHA heat illness prevention
7 rules. They compared the fatality rates in California
8 to rates in the neighboring states over the same
9 period. While the weather extremes were comparable,
10 there were no heat illness prevention rules in place at
11 the time in Arizona, Nevada, or Oregon.

12 So here are some highlights from that report. A
13 brutal heat wave in 2005 led to multiple farm worker
14 deaths in California, spurring the first US heat
15 regulation by Cal/OSHA in '06. But the '06 standard
16 lacked enforcement and implementation detail, leading
17 to loopholes that prevented effective implementation.
18 Heat conditions got so bad that the United Farm Workers
19 Union sued Cal/OSHA in 2012, alleging that the '06
20 standard was not being enforced. UFW members faced
21 unrelenting harm from heat illness in the fields and
22 packing houses of California.

1 So then in 2015, 2016, Cal/OSHA revised their heat
2 standard to be specific. They strengthened worker heat
3 protections by mandating requirements, specific
4 requirements from employers; worker rest breaks in
5 shaded areas without risk of retaliation; free, clean,
6 accessible, cool drinking water; effective training for
7 workers and supervisors alike to recognize and respond
8 to signs of heat illness; monitoring of environmental
9 conditions and personal health; reliable communication
10 for first aid and emergency response; and formal
11 written heat illness protection plans.

12 The 2015, 2016 Cal/OSHA rule included enforcement
13 capacity in addition to specific employer requirements,
14 and that led to improved outcomes and specific
15 decreased worker fatalities in California. Dean and
16 McCallum measured outdoor work deaths connected to heat
17 exposure by analyzing publicly available information
18 available from the National Center for Health
19 Statistics mortality data on the CDC wonder database.

20 They compared the mortality trends in California
21 before and after the heat standards were enforced, and
22 they compared the trends from data gathered over the

1 same period from Oregon, Nevada, and Arizona. And
2 those -- those states were chosen to reflect comparable
3 geographic and climatic conditions. Their trend
4 focused on county level deaths caused by exposure to
5 heat and sunlight, as well as vehicle accidents
6 connected to agriculture, construction, and
7 transportation.

8 As the weather got hotter every year, all four
9 states saw increased workplace heat deaths. No denying
10 all four states had increased deaths, but the fatality
11 rate in California averaged 43 percent, lower than the
12 fatality rates in Nevada, Arizona, and Oregon at the
13 same period. Authors concluded that the revised
14 standard, with enforcement and specific details, was
15 responsible for the decreased deaths in counties in
16 California compared to counties and other three states
17 without a standard. Data indicated that roughly 52
18 California lives were saved each year due to standard
19 implementation. Given the chronic underreporting of
20 workplace heat injuries, illness, and death, 52 lives
21 saved a year, I believe, is most likely a great
22 undercount.

1 So why -- why did the 2015, 16 California heat
2 standard lower fatality rates when the 2006 California
3 standard did not? The 2016 standard established
4 specific employer requirements for implementation of
5 worker heat protections. It included enforcement
6 capacity and penalties to ensure implementation was
7 carried out. It worked. We strongly support OSHA's
8 heat illness and injury prevention proposal. I want to
9 stress five recommendations to strengthen it further.

10 One, guarantee workers the right to exercise stop
11 work authority when they experience symptoms of heat
12 stress.

13 Two, widen OSHA's definition of impacted workers.
14 We, AFSCME represents the most cultural workers in the
15 nation, and our members work jobs considered inside and
16 sedentary, and they suffer from unrelenting heat
17 illness and heat stress. Remove the sedentary worker
18 exclusion so our sedentary inside members are equally
19 protected from heat illness when temperatures rise
20 above thresholds set in the standard.

21 Four, strengthen protections for workers to
22 initiate rest breaks when the heat index rises above

1 80. The current proposal only requires mandatory rest
2 breaks at 90. Workers experience pressure to push
3 through their jobs, and they will not rest unless
4 breaks are actually required. Enforce the right of
5 workers to take a break when the heat index rises above
6 80.

7 Whoops -- 1,2,3 --that's -- this is four. Require
8 employers to document all worker adverse heat effects
9 in any heat illness and injury log. Keep logs for
10 three years, this way you'll document jobs, times, and
11 locations with known hazardous exposures and employers
12 can better prevent planning -- can better support
13 planning to prevent future injury. Make the log
14 available upon request to workers and representatives.

15 Lastly, and five, OSHA must require employers to
16 prioritize a hierarchy of controls, prioritize
17 engineering controls and administrative controls like
18 alternate scheduling and stop work authority.

19 If Ronald Silver and his coworkers had received
20 training on heat stress or recognizing dangerous signs
21 of heat illness, if his employer had been required to
22 provide enough water for the day or to allow workers to

1 rest when they felt sick, if Silver had received any
2 health monitoring during a clear heat emergency, if
3 first aid had been timely and available, Silver might
4 still be here today supporting his coworkers and caring
5 for his beloved family. Thank you for the opportunity
6 to offer comments to the record.

7 JUDGE LESLIE: Thank you very much. Does OSHA
8 have any questions for Ms. Barbarash?

9 DR. SCHAYER: Yes, Your Honor, we do. And thank
10 you, Ms. Barbarash, for your testimony. And again,
11 this is Stephen Schayer from Directorate of Standards
12 and Guidance.

13 The first question, I just wanted to follow up on
14 something you just mentioned, Ms. Barbarash, about the
15 hierarchy of controls. And I was just wondering if you
16 could say a bit more about that and how you would
17 envision the hierarchy to work, particularly for
18 outdoor workplaces and engineering controls?

19 MS. BARBARASH: I think, as other people here, I'd
20 love to consider your question with time and answer you
21 in post comments. I appreciate the question.

22 DR. SCHAYER: Sure, that would be great. Thank

1 you. And just another question related to hierarchy,
2 also similar to what I asked earlier today, is about
3 cooling PPE. So if you're advocating for the inclusion
4 of cooling PPE and, if so, if you have any information
5 from the experience of your members on the feasibility
6 of maintaining the cooling properties of PPE.

7 MS. BARBARASH: So I'd have to get back to you on
8 that. But I do have one story and it comes from our
9 cultural sector, and it comes from our workers in
10 Missouri, which is, through a union process and through
11 complaints and contract negotiation, our folks
12 negotiated for a bunch of improvements on trucks -- on
13 trucks when they were delivering books. So this is in
14 the cultural sector. And so these are people who
15 deliver books to nursing homes and load and unload
16 libraries and make sure patrons have things and handle
17 deliveries. So what they negotiated for, number one,
18 was coolers and cooling facilities actually attached to
19 the vans and the trucks, more maintenance on air
20 conditioning, breaks if the back of the truck wasn't
21 cooled, cooling neckties -- like access to cooling
22 neckties -- and ice, a lot more supervision to

1 implement this as it was going. I could get more
2 detail in the after comment process, but we -- in
3 prepping this, we had direct feedback that this made a
4 difference for our cultural workers. And I will follow
5 up as I can afterwards as well.

6 DR. SCHAYER: Great. That that would be really
7 helpful. Thank you, Ms. Barbarash. I'd like to turn
8 it over now to Zoe Petropoulos, who has, I think, a
9 question on the paper that you mentioned.

10 MS. PETROPOULOS: I actually have two questions,
11 if that's all right. This is Zoe Petropoulos from the
12 Directorate of Standards and Guidance. My first
13 question is about the paper you mentioned by Adam Dean
14 and Jamie McCallum. I believe it was unpublished, at
15 least at the time of your comment. And so if you could
16 share a copy in your post hearing comments, we'd really
17 appreciate that.

18 MS. BARBARASH: This is Ellie Barbarash. I would
19 love to. I believe it is still unpublished, but we
20 have the white paper. I would love to share that.
21 Thank you.

22 MS. PETROPOULOS: Thank you. And then my second

1 question, in AFSCME's comment, you urged OSHA to
2 require the use of onsite wet bulb globe thermometers.
3 My question is whether you think conducting onsite
4 measurements of wet bulb globe temperature is feasible
5 for most work sites and employers. If you have any
6 examples of employers already doing that, we'd also
7 appreciate that too.

8 MS. BARBARASH: I appreciate the question, and I
9 think I need to get back to you, so I have concrete
10 examples. Thank you.

11 MS. PETROPOULOS: Thank you.

12 DR. SCHAYER: Great, thank you. Now I'd like to
13 turn it to Deana Holmes.

14 MS. HOLMES: Deana Holmes with OSHA Directorate of
15 Standards and Guidance. I have a few questions for
16 you, Ms. Barbarash. Your comments highlight a need for
17 worker access to bathrooms and employer authorization
18 for regular bathroom breaks. You've advocated for the
19 provision of safe toilet facilities, such as porta
20 potties for remote workers without access to nearby
21 facilities as part of the employer's heat injury and
22 illness prevention plan. When your members report that

1 essential work often takes place in settings where they
2 are not able to access a bathroom, can you give
3 examples of these types of settings or jobs and the
4 specific duration workers are typically without access.

5 MS. BARBARASH: Yes, I could probably -- thank you
6 so much. This is Ellie Barbarash. I really appreciate
7 that question, I really do. Because it's --it's
8 something close to my heart. So I'm trying to remember
9 the state. I believe it -- I actually believe we're
10 talking Washington state. We -- we had -- and so
11 there's a male situation and a female situation. So
12 the male situation is where public workers, and even
13 under a public plan, public -- public AFSCME members
14 were not -- because they were in a government vehicle,
15 were dissuaded from parking it and using it at -- using
16 it at a -- at a gas station and there just was no porta
17 potty available.

18 So the -- I -- you know, got -- it's one issue
19 when you have gentlemen, but when you have women who
20 don't have the access of easy relief in the woods, in a
21 wooded area, without being in trouble, it really
22 impacts the capacity to drink water and not be able to

1 relieve yourself. We received stories of workers who
2 were having a very hard time accessing a bathroom,
3 either because they were dissuaded from accessing a
4 bathroom, or if there were females on crew, there was
5 just nowhere for them to go, short of squatting in the
6 woods.

7 I also received stories of women who, because they
8 didn't have safe access to a bathroom and did not feel
9 physically safe from assault to use a bathroom and --
10 in -- in more public areas, this was a complaint when
11 we were trying to collect testimony on this. Does that
12 answer your question, or is there another focus that
13 you'd like me to have to that?

14 MS. HOLMES: No, that is fine. I do have another
15 question, though. What specific language or criteria
16 would you propose for the HIIPP requirements to ensure
17 on site provision of safe toilet facilities for remote
18 workers?

19 MS. BARBARASH: I -- it's a great question. I
20 think I really want to think about it, to come up with
21 language that's specific. Thank you for the question.

22 MS. HOLMES: Okay. Also, are there specific

1 methods of ensuring water remains at cool temperatures
2 at remote or outdoor work sites throughout a shift that
3 you've seen successfully implemented by employers?

4 MS. BARBARASH: what I've seen is -- what I have
5 seen is it -- combined with monitoring where, when
6 supervisors or foremen will come by to check on folks,
7 or when they will use a walkie talkie to check in and
8 like do a buddy system, it will be -- do you need
9 anything? So they'll be -- you know, there'll be a
10 cooler, there'll be -- it -- a cooler requires
11 maintenance. It requires someone checking it; is it
12 still cold?

13 I know just as a camper, there are a variety of
14 items, if I go camping, that can keep my -- I could
15 just plug it into my car and keep things cold. There
16 are, you know, plenty of inexpensive items I can think
17 of, but that's not a formal answer. I know that, for
18 my workers who've complained to us about it, it's been
19 about can they communicate and say -- at so much time,
20 you're going to come deliver another run of cold
21 beverages and ice or whatever -- whatever it is. It's
22 also guaranteeing -- you know, I guess the question is,

1 what is the technology in a cooling area, if there's a
2 mandated cooling area, that you will have cool
3 beverages. I'd have to get back to you on what that is
4 in the field. But I've shared what people have shared
5 with me so far.

6 MS. HOLMES: Thank you. And lastly, can you
7 expand on the examples from Washington state that you
8 provided, specifically the equipping each vehicle with
9 water -- clean water containers and providing ample
10 free access to ice and water at the work site? And
11 what are the best practices for managing these
12 logistics effectively for large mobile workforces?

13 MS. BARBARASH: I think I need to speak to our
14 members and get more information. I know they
15 talked -- they even talked about, you know, having a --
16 you know, having a break room. I don't think these are
17 people who are on the road all the time. I think that
18 they're on the road for a few hours and they come back.
19 So there's actually access to both indoor and outdoor
20 sites for relief. And they talked about, not just the
21 PPE, but electrolyte popsicles, you know, that it was
22 actually written into their contract. And I also want

1 to say that the -- what I had heard was that the
2 increase in productivity and less absenteeism was well
3 worth it for the employer. But I need to get more
4 specifics for you, so I'm accurate.

5 MS. HOLMES: Thank you.

6 DR. SCHAYER: Okay. This is Stephen Schayer again
7 from OSHA. Now, I'd like to turn it to Lisa from OSHA
8 on the panel here.

9 MS. LONG: Hi, this is Lisa Long from OSHA. I
10 first have a question about the -- the heat injury and
11 illness prevention plan. You mentioned in some of your
12 previous comments that employers, employees, and their
13 duly authorized representatives should be invited to
14 review and give feedback on the HIIPP. Should OSHA be
15 more specific about what type of employee involvement
16 is required, and, if so, what do you suggest?

17 MS. BARBARASH: Thank you for that question. This
18 is Ellie Barbarash. I'm trying to think offhand of
19 where that already exists in OSHA standards. From a
20 union standpoint, and from a health and safety
21 management standpoint -- I've been doing health and
22 safety as both management and union for close to 40

1 years. I will say that integrating with a safety
2 committee, integrating with safety activities and risk
3 management activities to literally do a lessons learned
4 in an accident investigation, to find out what the
5 feedback is from workers where my policy works and does
6 not work -- all of that lowers risk.

7 In any -- in any topic, whether it's heat, whether
8 it's bloodborne, pathogen and safe needles, whether
9 it's confined space rescue, it -- whether it's scaffold
10 safety, whether it's health care and respiratory
11 protection, anything where there is an analysis of
12 where my incidents and accidents are, that goes a
13 little deeper and finds out what works and doesn't work
14 from the people who are getting hurt as well as from
15 their supervision, is what builds a robust program.

16 So you know, I think about your question from that
17 context. This is just one example of applying that
18 wisdom to the issue of heat exposure. Maybe you could
19 ask -- and I hope I'm answering you specifically. If I
20 was depending on the facility, I would want to reach
21 out to the safety committee. I would want to look at
22 the OSHA 300 log to see, preemptively, have there been

1 issues? Have I investigated them appropriately? Are
2 there near misses? What are my foremen telling me
3 about what conditions are in the field? How do I
4 inquire what those conditions are and what the workers
5 say they need?

6 And you know that -- all of that -- in the best
7 case of risk management, it's a living document that is
8 increased so that -- so that management is more
9 effective in running their operation without
10 productivity and human injury loss. You know, it just
11 seems part of the program.

12 MS. LONG: Yeah. Thank you. That's -- that's
13 very helpful. I have one more question for you
14 involving effective communication. Are there protocols
15 that you could suggest for reaching employees who are
16 in hard to reach areas or areas with poor broadband
17 connection?

18 MS. BARBARASH: I might need to get back to you on
19 that, but I know that -- I don't know that -- I don't
20 know the technical word, maybe one of my colleagues
21 will. But I know that even if you don't have cell
22 phone access, there are ways to set up networks of low

1 frequency communication -- you know, what we used to
2 call walkie talkies -- that can, with hubs set up in
3 advance, cover areas of many miles. They're not
4 recorded. It's not on the internet, but it's -- if
5 anyone's old enough to remember the old point to
6 point -- hey, Joe, are you there? We used them at the
7 airport. You know those -- that technology still
8 exists.

9 I would need to investigate that further, but I
10 don't think it's impossible and I don't think it would
11 break the bank. But again, this isn't my particular
12 expertise. I would have to get back to you.

13 MS. LONG: Thank you.

14 DR. SCHAYER: Thank you. This is Stephen Schayer
15 again from OSHA. And turning to our final person with
16 questions, Joo-Hyung, who's on the panel here.

17 MS. SHIN: Hi, this is Joo-Hyung Shin from OSHA.
18 This is a data question. So we were wondering if you
19 are aware of any data on the number of your members who
20 worked in a vehicle or buildings without adequate
21 climate control? It would be helpful for our economic
22 analysis. Thank you.

1 MS. BARBARASH: That's a wonderful question. I
2 don't know, off the top of my head. I'm going to say
3 hundreds of thousands, because we represent cultural
4 workers, we represent school workers, we represent
5 corrections -- corrections officers and corrections
6 workers, we represent municipal buildings, we represent
7 warehouses, bridges, and tunnels. You know, any --
8 like if there's an old building, there's probably an
9 AFSCME member who's been taking care of it, and there's
10 been a legacy of taking care of it for, you know, a
11 long -- many, you know, decades and decades. And those
12 are not up to par with HVAC and -- and environmental
13 controls.

14 So I would say that -- I would -- I would -- truly
15 to give you an accurate information, I would need to go
16 to our folks and ask. But we have 1.4 million members.
17 We're the largest cultural worker union in the country.
18 It's a lot. It's a lot of us. And I know that, I know
19 that what is -- what you folks consider sedentary, our
20 folks are suffering. And I collected a lot of
21 testimony about that.

22 Specifically, with people -- even beyond that 15

1 minutes, if you're having to go outside and deliver
2 books, if you're going -- going outside and serving
3 patrons. You know, maybe it's 14 minutes, maybe it's
4 10 minutes. But you're -- the very act of going in and
5 out from 105 degrees, even if it's, you know, a happy
6 71 in your office, you're getting wiped out and you
7 don't necessarily have the HVAC in place.

8 DR. SCHAYER: Again, Mr. Stephen Schayer. Thank
9 you, Ms. Barbarash, for your testimony and answering
10 our questions. And Your Honor, that concludes the OSHA
11 questions.

12 JUDGE LESLIE: Thank you. Does the Office of the
13 Solicitor have any questions for Ms. Barbarash?

14 MS. LEVIN: I'm Jennifer Levin for the Office of
15 the Solicitor. No questions for Ms. Barbarash. Thank
16 you very much.

17 JUDGE LESLIE: Thank you. Mariam, are there any
18 participants who have questions?

19 MS. CARLON: Yes. Ms. Shrestha does have a
20 question. Please state your name for the record.

21 MS. SHRESTHA: Hello, my name is Ayusha Shrestha
22 from the AFL-CIO. First off, thank you, Ellie, for

1 your very powerful testimony. I think we all learned a
2 lot from that. I was -- I wanted to ask, since you
3 mentioned the inclusion of sedentary workers, I wanted
4 to ask, do you have any specific examples where
5 employers adopted heat protections for indoor
6 workers -- or indoor sedentary workers? And I have
7 another question after that.

8 MS. BARBARASH: Yes. But it's not coming to my
9 brain at this moment, which is awful. We have several
10 situations where, again, in using union and contract
11 language, we negotiated for more breaks. We negotiated
12 for more maintenance of the HVAC system so that --
13 especially because maybe an HVAC system is there, but
14 it's not working. And then while it's not working,
15 it's business as usual, without having another backup
16 plan.

17 I've seen situations where employers literally
18 brought in a trailer and put it in a warehouse and then
19 air conditioned that trailer as a way to have a break
20 room in a large space. We have members who have fought
21 for -- fought for more breaks, you know, and -- and we
22 also have negotiated that people could go home in some

1 situations, in schools and in some city buildings, at a
2 certain threshold, people have -- they've just closed
3 the building and sent people home with an understanding
4 that working your folks to the point of passing out is
5 not going to help business. I think that's all I can
6 answer at the moment without checking further.

7 MS. SHRESTHA: Okay. Thank you. My second
8 question. Oh, this Ayusha Shrestha from the AFL-CIO.
9 My second question was going to be without a specific
10 OSHA standard, why is it difficult or almost impossible
11 for workers to stop working in dangerous heat
12 conditions?

13 MS. BARBARASH: That's a wonderful question. This
14 is Ellie Barbarash, and I'm going to talk about Ron
15 Silver. So for the Department of Public Works in
16 Baltimore, they had a point system for people's time
17 off. And no matter what you're going off, no matter
18 what reason you're ill, whether it's illness or
19 anything else, you have points. And at a certain
20 point, your job is at risk and you are going to be
21 written up or reprimanded, you know, or -- or
22 retaliated -- you know, really punished in some way,

1 but very formal way because you've taken too much time
2 off.

3 And that was exactly what was going on with Ron
4 Silver. And that's what came out in all of the reports
5 that were done by the Office of Inspector General after
6 his passing. And I don't think that's an isolated
7 incident. I think many of our workers have expressed,
8 many of them, both working outside in public works,
9 working inside in libraries, have expressed the
10 pressure on them to not call out when they feel sick.

11 And also in healthcare, we're so understaffed.
12 We're so understaffed that people really feel great
13 guilt calling out because they're just burdening their
14 coworkers in a situation where there's already so -- so
15 little staffing and few resources. People have huge
16 moral injury about not being there, and they just push
17 through. If there's not a requirement, people will
18 push through. Especially when you're in a low wage job
19 and you have not that many choices, you're just going
20 to push through. You need -- you need a requirement.
21 I don't think we'd have as many fatalities as we did
22 about heat death if we didn't need a requirement. It

1 is needed.

2 MS. SHRESTHA: Thank you, Ellie. That concludes
3 my questioning. This is Ayusha Shrestha.

4 JUDGE LESLIE: Thank you. Mariam, any other
5 participants having questions?

6 MS. CARLON: Not at this time, Your Honor.

7 JUDGE LESLIE: Thank you. Any follow up from
8 OSHA?

9 DR. SCHAYER: No, we have no follow up, Your
10 Honor.

11 JUDGE LESLIE: Thank you.
12 From the Office of the Solicitor?

13 MS. LEVIN: No, I do not.

14 JUDGE LESLIE: Thank you. Thank you very much,
15 Ms. Barbarash, for your questions and for your
16 participation all day today.

17 MS. BARBARASH: Thank you so much. Appreciate all
18 of your work.

19 JUDGE LESLIE: Thank you. You are excused.
20 Mariam, our next -- can you call up our next panel?

21 MS. CARLON: The next speaker group is the
22 American Federation of Government Employees, National

1 Veterans Affairs Council, represented by Kevin Burke,
2 Irving Hernandez, Gabriel Lopez and Milly Rodriguez.
3 Please state your name and affiliation for the record
4 as you transition throughout your testimony.

5 MR. BURKE: Hi, my name is Kevin Burke. I'm a
6 caretaker at Florida National Cemetery and union rep
7 for American AFGE, Local 547. Thank you for the
8 opportunity to participate in this today. So I'll jump
9 right in. Heat exposure on the job is a significant
10 occupational hazard that affects workers in many
11 industries, particularly those working outdoors or in
12 environments with high temperatures.

13 Here at Florida National Cemetery, we conduct
14 excavations, site preparations, maintain the sacred
15 grounds of 526 acres. This includes weed trimming,
16 pruning, mowing. On a daily basis, we inter -- lay to
17 rest approximately 30 to 60 caskets, cremations on an
18 eight hour shift. We also have facility maintenance on
19 the property that tends to 11 buildings on site.

20 Prolonged or intense heat exposure can lead to a
21 range of health problems, from mild heat exhaustion to
22 life threatening heat stroke. Understanding the risks,

1 environmental causes, and preventive measures is
2 essential to ensure the safety and well-being of all
3 workers that OSHA must demand for all employers.
4 Primary health risks associated with heat exposure are
5 heat exhaustion and heat stroke.

6 Heat exhaustion occurs when the body loses
7 excessive salt water through sweating, leading to
8 symptoms like heavy sweating, weakness, dizziness, and
9 nausea. A lot of our employees here were outdoors -- I
10 want to say about seven, about seven hours a day, maybe
11 seven and a quarter -- outside in this heat and the
12 humidity in Florida.

13 Preventing heat-related illness requires a
14 combination of organizational policies and individual
15 precautions to be implemented by OSHA. Training and
16 awareness programs are vital to educate both workers
17 and employers about recognizing early signs of heat
18 stress and the importance of a quick response. Yet the
19 federal government can spend \$75 million on a parade
20 last weekend, yet they cannot forfeit funding to
21 protect the employed veterans and civilian staff that
22 continue to complete our mission for caring for the

1 veterans while conducting their duties and the
2 increasing - increasing heat index globally.

3 Heat exposure on the job poses a serious health
4 risk that demands proactive measures from both OSHA and
5 employers. As global temperatures rise and more
6 industries operate in hot environments, understanding
7 and implementing effective prevention strategies is
8 critical for the protection of one's personal life, in
9 order to perform their job duties. Thank you for your
10 time.

11 MR. HERNANDEZ: Hi, good afternoon. Can you hear
12 me?

13 JUDGE LESLIE: Yes, sir.

14 MR. HERNANDEZ: Hi. My name is Irving Hernandez.
15 I am also part of AFGE, Local 547. I'm the safety
16 representative for all the bargaining union employees
17 that we represent in this area. We represent also the
18 National Cemetery. Thank you, Kevin, for the -- for
19 your testimony.

20 I would like to make a presentation and add to
21 what Kevin has said, that there -- in addition to what
22 he mentioned, there are other issues that we are

1 presently having when it comes to heat prevention in
2 the workplace.

3 Currently, one major issue that we're having is
4 employees not being informed or being told if there is
5 a situation where they -- they -- if there is a heat
6 illness or situation, they don't know where to go when
7 they're sick. And when they go to the process of
8 filing their paperwork through ECOMP, which is the
9 program that is being used, they don't understand the
10 process. There's delay of care for the employees, and
11 they ended up having months of confusion on how the
12 process is being handled by the agency.

13 Specifically the VA, we're having serious issues
14 when it comes to employees filing the proper
15 documentation under the processes that are in place and
16 employees understanding how to file. There is no
17 follow up from management in some cases and employees
18 ended up coming to us in the union to find -- for some
19 sort of a relief to help them with the process. Right
20 now we know that in some cases, management is also
21 misinformed and give the wrong information to
22 employees. They ended up filing for reasonable

1 accommodations rather than workman compensation claims
2 in some -- or many of the cases related to heat.

3 I also, by trade, am an HVAC tech, so I deal with
4 temperatures that are extreme. In many cases, Florida
5 is one of those states where we don't have a -- we have
6 very little months where we don't have temperatures in
7 excess of wet bulb temperatures above 80 degrees.
8 Maybe a relief -- maybe in January or February, but
9 after that, throughout the year, we have over 11 -- or
10 almost 11 months of heat -- of continuous heat, and we
11 are expected to provide a relief to others under these
12 conditions.

13 Specifically to my trade, I can say that when we
14 had to repair air conditioning, we are expected to work
15 on roof, on the roof, on confined spaces, and outside.
16 Usually the air conditioning itself, when the air
17 conditioning have issues, the temperature of the air
18 conditioner outside can range between 125 or 120
19 degrees on top of the outside temperature, the sensible
20 heat that you feel when you're working outside. And we
21 are expected to work in those conditions.

22 I also wanted to say that for -- for -- on a very

1 strange reason, the Department of Veterans Affairs, in
2 some cases -- especially, I'm talking about the
3 facility that I'm attached to, which is Tampa -- they
4 don't have bubblers or water coolers outside anymore.
5 And there's not an offer from the management to supply
6 or provide water to the employees. However, the VA
7 does offer water to the veterans and the families and
8 others. But for the employees, that's not the case
9 unless, there is a major disaster or something like
10 that.

11 I want to bring, for example -- an example of the
12 police officers. Police officers here at the VA are
13 required to wear all the gear, all the -- all the stuff
14 that they have to wear on them. And in some cases,
15 they have to stand -- stay outside for long periods of
16 time, if there's a situation. Like it could be an
17 accident, it could be a veteran that had an episode or
18 something. And while they're wearing, all of that,
19 there's not bubblers or anywhere where they can go.
20 And if they drink a lot of water, there is no outside
21 bathroom facilities that they can use. So they're
22 limited as far as how they can relieve themselves in

1 cases of that nature when -- when they have to use the
2 bathroom somewhere.

3 I also want to emphasize, for example, as well as
4 the uniforms that is being imposed into the employees.
5 For example, we have for the cemetery, they have
6 created this situation that employees have to -- the
7 employees that do all this outside work have to wear
8 specific type of uniforms that are really hot to wear,
9 like a specific color, like red or -- or blue or a
10 black even. And they're supposed to be working under
11 those conditions. We have been advocating for these
12 employees to be able to be able to talk, to have some
13 sort of a better material to use when they're working
14 outside, due to the extreme temperatures that they've
15 been exposed continuously, especially at the cemetery.

16 And at the main facility when they had to work on
17 the roof, and when you go to the roof of the hospital,
18 especially in the penthouse, or the biggest --or the --
19 or the seventh floor, the heat reflects off the roof
20 and then hit the employees. And it's extremely hot in
21 those conditions, sometimes to be able to repair -- or
22 to do repairs in some other cases.

1 I don't think that I have left anything out other
2 than the - that the situation that there's very little
3 mandate or standard operating procedures when it comes
4 to heat - to heat-related issues. And these - I thank
5 OSHA for having this forum for us to be able to present
6 all these different discrepancies that we have found
7 that are still - that is affecting everybody working
8 from the cemetery employees like Kevin or the police
9 officers or the employees that work inside.

10 For example, the boiler plant operators, the
11 regular temperature inside that plant, it ranges, on an
12 average day when the temperature is about 80 degrees
13 outside, about 103 degrees. That was a normal day and
14 that is throughout the day, throughout the night,
15 because of the boilers working and operating. And the
16 operators are supposed to work sometime in those
17 conditions.

18 So again those are the main -- main issues that we
19 found, as well as the problem with the employees trying
20 to find relief when they get -- when they're sick or
21 they're trying to file the proper documentation and
22 that is not available.

1 And one last thing I want to say. I'm a
2 Floridian. I live in Florida and Florida just passed a
3 law this year. I think that it's going to start --
4 takes effect in a couple of weeks in July, the 1st
5 where adult workers are prevented from -- there's a --
6 a ban from the State of Florida that ban local
7 governments for implementing any heat standards. So
8 this heat standard from OSHA is paramount to be able to
9 save lives and -- and to have that into account. Thank
10 you for your time. And once again, my name is Irving
11 Hernandez and I'm here for any questions.

12 MR. LOPEZ: Hi. Good afternoon, everybody. My
13 name is Gabriel Lopez with the National VA Council.
14 I'm a national representative. I'm also with the
15 National VA Council Health and Safety Committee. And
16 I'm speaking on behalf today -- because I do live in
17 the western side of the United States -- so I'll
18 talk -- I'll talk about this, but relating to
19 California, Nevada, and Arizona, where the temperatures
20 during the summer, basically from 111 to 122 during the
21 summer. So it gets pretty hot. So we know heat, okay.
22 So I'm representing counties like Kern County, San

1 Bernardino, Clark, Lincoln counties, Yuma, Maricopa,
2 all those really, really hot areas.

3 So good morning. Today's topic is heat stress.
4 It's a critical concern for every worker, particularly
5 as temperatures increase. OSHA, the Occupational
6 Safety and Health Administration, plays a key role in
7 ensuring safe working conditions, including protecting
8 workers from heat dangers. While water, rest, and
9 shade are important, they do not offer a complete
10 solution. Stronger, clearer standards from OSHA are
11 necessary to keep our workers safe. I represent the VA
12 and many federal workers.

13 Acclimation is a key aspect of heat safety.
14 Acclimation is a physiological process where bodies
15 adjust to working in hot environments. A lot of us are
16 used to that, here in California.

17 OSHA stresses the importance of gradual
18 acclimation process, particularly new and returning
19 workers using the 20 percent rule. And this rule means
20 that exposure on the first day and then it decreases
21 more 20 percent each subsequent day, potentially taking
22 up to 14 days or longer for full acclimation. Skipping

1 or rushing these processes can lead to dangerous heat,
2 stress and illness. And I stress that because
3 sometimes, they know that's the standard, they know
4 they have to go through those 14 days of acclimation
5 and stuff. But sometimes, oh yeah, we'll do it four or
6 five days. You're fine. You're acclimated. We need
7 to keep a strong standard.

8 The next we consider clear heat triggers. Clear,
9 defined standards are needed to mandate action based on
10 specific heat index levels or -- or environmental
11 factors. Relying on subjective assessments or waiting
12 for symptoms is insufficient -- symptoms, I'm sorry.
13 OSHA recommends providing adequate cold water, rest
14 breaks, and shade, a cool rest area. Explicit
15 thresholds for action are needed to ensure consistent
16 and effective protection, helping employers and
17 employees understand exactly when and how to implement
18 heat prevention measures.

19 So my focus to that is to educate, to -- to -- to
20 push forward these standards, let them know when they
21 can speak up. Because of a lot of our employees don't
22 know when to speak up. Some of them are -- are told

1 not to speak up. Some of them are afraid to speak up.
2 So if we can implement these standards to both
3 leadership and employees, it might save lives.

4 Mandatory rest breaks are also critical. OSHA
5 states that employers should require workers to take
6 breaks when heat stress is high. These breaks must be
7 long enough for recovery and should increase in length
8 and frequency as heat stress rises. Factors like
9 environmental heat, physical activity levels,
10 individual risk factors, and rest location influence
11 break durations. These are essential to prevent heat-
12 related illnesses and ensure worker safety.

13 Why water, rest, and shade alone are -- are
14 sometimes not sufficient. Providing water rest and
15 shade alone is not enough. While these are essential,
16 they are just a starting point. Without clear
17 guidelines from OSHA on acclimation, heat triggers, and
18 mandatory rest breaks based on objective criteria and
19 responsibility for safety can fall disproportionately
20 on workers. This can lead to dangerous situations,
21 especially for new workers. Heat stress can lead to
22 decreased performance, loss of productivity,

1 hospitalization, and in some cases, even death. That's
2 why strong, enforceable standards are crucial here for
3 us.

4 OSHA's focus on heat and illness prevention is
5 vital, but comprehensive standards must be advocated
6 for. These standards should include specific
7 requirements for acclimation, clear heat triggers,
8 mandatory rest breaks, and implementing these measures
9 can truly protect workers from the potentially
10 devastating effects of heat stress.

11 We need to clarify employer obligations and clear
12 the steps to effectively protect federal workers from
13 hazardous heat and hold them accountable. Safety first
14 before productivity. We need to enforce this standard
15 ASAP. It is crucial to the safety of all federal
16 employees. I represent clinics out in the middle of
17 Mojave, in the middle of Death Valley. These are
18 deserts. The heat is unbelievable, whether you're
19 working inside or out. Just getting acclimated to that
20 heat is -- is a stressor itself.

21 We ask you, OSHA, to please pass strong heat
22 standards and issue a final standard for heat and

1 illness. And that'll be it for me.

2 MS. RODRIGUEZ: Good afternoon, everyone. This is
3 Milly Rodriguez and I work at the American Federation
4 of Government Employees at the national office. I will
5 not be presenting testimony this afternoon, but we have
6 submitted comments written for the record, and I'm here
7 to thank and to support our representatives from the
8 National VA Council for sharing their experiences. And
9 we know that that is really where things lie in terms
10 of the -- the protections that are needed. You have
11 heard from them about how much -- how much they -- how
12 much really they -- needed they are. And I will just
13 turn it back. And I will also try to help them with --
14 field any questions and anything that we might fill in
15 afterwards for the record. Thank you.

16 JUDGE LESLIE: Thank you, Ms. Rodriguez. And
17 before I turn it over to OSHA for any questions you may
18 have, I would just remind the panel before answering a
19 question to identify themselves for completeness of the
20 record. Thank you. Does OSHA have any questions for
21 any member of this panel?

22 DR. SCHAYER: Yes, we do, Your Honor. I think my

1 question is for Mr. Lopez. Again, I'm Stephen Schayer,
2 from OSHA Standards and Guidance. You mentioned
3 acclimatization, Mr. Lopez, and I was just wondering if
4 you could talk about how your members are currently
5 doing acclimatization, if at all.

6 MR. LOPEZ: I would probably have to do that in
7 the post hearing comments so I can get all the
8 information exactly. I -- I -- I don't like to guess.
9 I like -- I like to have -- you know -- response.

10 DR. SCHAYER: Sure. Sure. That would be great.
11 Thank you very much.

12 MR. LOPEZ: You're welcome.

13 DR. SCHAYER: I'd now like to turn it to Zoe
14 Petropoulos.

15 MS. PETROPOULOS: Hello, Zoe Petropoulos with the
16 Directorate of Standards and Guidance. In the AFGE
17 comment, there was a recommendation that OSHA clearly
18 define, quote, "sufficient frequency" in the context of
19 monitoring under paragraph (d). What does the panel
20 suggest as an appropriate frequency of monitoring heat
21 index or wet bulb globe temperature at work sites?

22 MS. RODRIGUEZ: Sorry, trying to get to the

1 unmute. I think we'd like to formulate a more
2 definitive --

3 JUDGE LESLIE: Ms. Rodriguez, I know it's you.
4 I'm sorry for interrupting you. I know it's you
5 because you just -- I can see online you lit up. But
6 for the record, can you please identify yourself?

7 MS. RODRIGUEZ: Yes.

8 JUDGE LESLIE: Before you answer. And again, just
9 a reminder to everyone else to please identify
10 themselves before you answer.

11 MS. RODRIGUEZ: Yes. Thank you for the reminder.
12 This is Milly Rodriguez, AFGE national office, and I
13 was saying that I would like to formulate a response to
14 that and submit that in our post hearing comments.
15 Thank you. In terms of the frequency that that you
16 asked about.

17 MS. PETROPOULOS: Thank you.

18 DR. SCHAYER: Okay. This is Stephen Schayer again
19 with OSHA. And I'd now like to pass it to Joo-Hyung on
20 the panel here.

21 MS. SHIN: Hi, this is Joo-Hyung Shin from OSHA.
22 I have two questions. One is -- so as a union,

1 covering workers literally across the country, we were
2 wondering if you have conducted analysis or if there is
3 any observations that you have had about the impact of
4 existing heat regulations and workers across the --
5 different states across the country? We're curious if
6 you have any information on that issue.

7 MS. RODRIGUEZ: I'm sorry, this is Milly
8 Rodriguez. I didn't get the first part of your
9 question, so I'm not clear if the question is we have
10 surveyed our members? So yeah, if you could repeat the
11 question, that would be great. Thank you.

12 MS. SHIN: So presumably your members, some of
13 your members are in states with existing heat
14 standards, some are not. So we were wondering, like if
15 you have conducted any internal analysis or even any
16 observations that you have regarding the effectiveness
17 of these existing state standards on worker outcomes.

18 MS. RODRIGUEZ: So for federal employees -- this
19 is Milly Rodriguez -- for federal employees, the only
20 standards that would apply are federal standards. And
21 so we are very much in support of the OSHA standard
22 that has been proposed. None of our members are

1 covered by any of the state regulations that might be
2 passed or that are in place already within any state.
3 And so jurisdiction only really falls to federal OSHA
4 for any of our members. And so that's sort of the
5 general response that I will give you.

6 In terms of just generalities with -- you know, I
7 think it falls to the things that both Mr. Lopez and
8 Mr. Hernandez mentioned about the differences in
9 climates, but anything else doesn't really apply to our
10 members at this point. I hope that answers your
11 question.

12 MS. SHIN: Thank you. Okay. Thank you for --
13 that was very helpful. Just I'm just out of curiosity.
14 I have a follow up question. So like, if you're like
15 in a state that has a state heat standard, but you are
16 a federal employee in that state, like -- I mean could
17 there be -- like, what in reality do you think that
18 kind of difference in coverage would affect the federal
19 employees, like turnover -- like their job choices
20 or -- I guess I'm trying -- I guess what I'm trying to
21 get at is that -- like how your members -- I guess --
22 I'm sorry.

1 I guess I'm trying to get to the -- more curious
2 about your members experiences in -- who are in
3 states -- as federal employees are not covered by the
4 state standard that applies to other private sectors in
5 that state, but are not covered by the federal -- any
6 worker testimony to that effect, that would be very
7 helpful for us. Thank you.

8 MS. RODRIGUEZ: Okay. So Milly Rodriguez, again.
9 I would just say that, where we have seen good
10 protections in place, we know that those are the ones
11 that we're trying to support and acknowledge that
12 the -- on OSHA side for -- for federal employees,
13 because they would be the only ones that would cover
14 them.

15 So however good a standard might be at the -- at
16 the State level, or even at municipal level, federal
17 agencies are not required to follow those. And so all
18 that our members can see is that there's something good
19 that we should have on the federal level. And so
20 we're -- we might be using some of that language to
21 say, these are the good components of a state program,
22 and that we would like to see in a federal OSHA plan --

1 OSHA program. But that is as far as that will go.

2 All agencies, because they are national, have
3 national policies that govern health and safety like
4 they govern everything else. And so there are some
5 general policies that federal agencies have that are
6 nationwide, and they can be -- and they're implemented
7 no matter where the agency is across the nation and
8 abroad, sometimes.

9 The differences would be where sometimes there
10 might be some local policies that are implemented that
11 are put into -- into place because they are -- because
12 they have to be different, they have they have
13 differences in -- in the state. Some of that we are
14 able to facilitate because of collective bargaining.
15 When we have collective bargaining agreements, you
16 might be able to push for something that's stronger
17 than what the national policy is. But that is all sort
18 of internal within the agency. And that depends on the
19 relationship of the agency that we -- that -- that our
20 union has with the agency or any other union.

21 And so that would -- that would make the
22 difference in terms of where protection would come

1 from. So national policies, because federal agencies
2 are nationwide. And so sort of back to the point that
3 only federal OSHA has jurisdiction over federal
4 employees. And so they are the only ones that
5 cannot -- OSHA would be the only one to offer that
6 protection. I hope that addresses it.

7 MS. SHIN: Well, thank you very much. My final
8 question is - this is a data question, too, for
9 economic analysis. So we were we are curious if you
10 have - again because you have - you cover workers
11 across the nation - if you have information on worker
12 types who are exposed to indoor as well as outdoor heat
13 in states with climates similar to Alaska.

14 MS. RODRIGUEZ: I don't --

15 MS. SHIN: Sorry. A little more context on our
16 analysis -- so in our analysis, like we weren't able to
17 precisely measure -- like presumably there are workers
18 in states like Alaska with exposure to indoor heat.
19 But we were -- we didn't have any information or data
20 that could inform worker exposure to indoor heat in
21 places like Alaska. So we were wondering if, based on
22 your member's experience, if you have any insight to

1 those kinds of scenarios?

2 MS. RODRIGUEZ: I don't have any -- this is Milly
3 Rodriguez. I don't have anything specific to that, but
4 you raised a really good question. And I'd like to do
5 a little bit more digging into that information and
6 present -- and present that in our post-hearing
7 remarks, if that's okay. And I'm not sure whether
8 maybe Mr. Lopez or Mr. Hernandez might have --maybe Mr.
9 Lopez might have some other -- anything else to add to
10 that? No? Okay.

11 MR. LOPEZ: Sorry, this is Gabriel Lopez. I was
12 looking into those -- I was looking into that, but
13 again, I will -- I will let you know in the post-
14 hearing comments, as soon as I get information and I
15 will share it with all of you. And this will be coming
16 from areas like Alaska, North Dakota, Oregon and stuff
17 like that.

18 MS. RODRIGUEZ: Yeah. The only thing that I mean,
19 situations come to mind with -- with military
20 installations and aircraft hangars where aircraft
21 mechanics might be working. These tend to be
22 facilities that are very hot, just typically, whatever

1 the weather happens to be. But we will look into a
2 little -- into that a little bit more. Thank you for
3 the question.

4 MS. SHIN: Yes.

5 DR. SCHAYER: Thank you very much. This is
6 Stephen Schayer again from OSHA. And I'd like to turn
7 it to Tiffany DeFoe.

8 MS. DEFOE: Hi. For the record, this is Tiffany
9 DeFoe with the Directorate of Standards and Guidance,
10 OSHA. In your testimony, you expressed support for the
11 inclusion of -- of mandatory rest breaks. I'm assuming
12 you meant mandatory scheduled rest breaks, in the event
13 that OSHA moves forward with the final standard for
14 heat. And as I'm sure you're aware, in the proposal,
15 for the high heat trigger, there's a requirement for 15
16 minutes every two hours.

17 I'm wondering -- and this is -- feel free to
18 answer now, but I suspect this might be more of a -- a
19 post hearing comments kind of -- kind of response. I'm
20 wondering if folks in your membership can comment on
21 whether there are cases where, when the -- when the
22 proposed version of the mandatory schedule breaks would

1 be logistically difficult to do in their jobs or might
2 be unsafe in their jobs, which we've received some
3 feedback may be the case in certain industries.

4 So it'd be interesting to know if -- if in your
5 membership, in their experience, they've experienced
6 problems with that -- or types of work that our rest
7 break -- our proposed rest break schedule would not be
8 conducive to. And if so, if there are any specific
9 revisions that your organizations might suggest to
10 the -- the version of the scheduled mandatory rest
11 breaks that we proposed.

12 MS. RODRIGUEZ: This is Milly Rodrigues, I --
13 okay. Gabriel or Irving?

14 MR. LOPEZ: This is Gabriel Lopez. I believe that
15 the mandatory 15 breaks -- or -- or standard 15 are
16 fine. But -- but I -- I think it would be situational
17 for -- for -- for sometimes -- because we've ran into
18 those kind of issues before where, you know, they only
19 give them the 15, but this guy's hyperventilating and
20 stuff. We need to extend it to about 20 to 30, make
21 sure he's okay.

22 So -- so those are the kind of things that we're

1 looking at, especially from our membership, to see if
2 any situations that have happened. But -- but if we
3 look at them individually, situational, it would be
4 maybe a revised, you know, standard 15 minutes. But if
5 the situation accounts for it, can we extend it until
6 the -- you know, if there's a situation where they're
7 having issues?

8 MS. DEFOE: Thank you. Yes. We're certainly
9 interested in that kind of feedback. But I wanted to
10 clarify that I was also asking about -- are there cases
11 in your members experience where the type of job
12 they're doing -- where having to take a 15 minute break
13 every two hours as opposed to some different
14 schedule -- are there instances where that might be
15 difficult for them to do because of the nature of their
16 job, or it might be unsafe? And if so if there are any
17 revisions that your membership would suggest.

18 MS. RODRIGUEZ: This Milly Rodriguez. And I will
19 say that, yes, that's probably something that we will
20 be able to better address in our post-hearing comments.
21 But I imagine there might be some of those situations,
22 and we'll check in with some of our membership to see

1 what might be some alternatives, or -- or there are
2 some things that they already are doing that are a
3 little bit different from sort of scheduled things,
4 where they may not be able to stop the work, because
5 it's -- they're working on an emergency, another -- a
6 different kind of emergency. But we will check into
7 that. Thank you.

8 MS. DEFOE: Thank you. Yes. Appreciate it.

9 DR. SCHAYER: Okay. Thank you. This is Stephen
10 Schayer again, at OSHA, and I'd like to turn it to our
11 last questioner, Lisa.

12 MS. LONG: Thank you, Steve. This is Lisa Long
13 from OSHA, Directorate of Standards and Guidance. And
14 given the number of employees you have across the
15 country, I have a geography-based question. That, as
16 we heard today from others, yesterday and today, that
17 employers wanted geography-based triggers. Do you
18 agree with this and why or why not? If you do, can you
19 help us understand what that might look like?

20 MR. LOPEZ: This is Gabriel Lopez. I -- I -- we
21 will answer that in the -- in the post hearing comments
22 and briefs. It's one that we need to look into.

1 MS. LONG: Okay, thank you for that. And one
2 final question on training. What types of materials do
3 you find the most effective for training?

4 MS. RODRIGUEZ: I'm sorry. This is Milly
5 Rodriguez. I was writing down the last question.
6 Could you repeat that one, please?

7 MS. LONG: My final question -- this is Lisa Long
8 again -- what types of training materials do you find
9 most effective?

10 MS. RODRIGUEZ: I think there are several
11 different things, and -- and I think everything comes
12 to how comprehensive it is. And so having certainly
13 materials that are that are written in plain language
14 with illustrations. Many of the things that we've seen
15 out of OSHA in recent years fall under that sort of
16 very general rubric.

17 But materials that you hand out are not enough. I
18 think training needs to be comprehensive in terms of
19 having time with -- with an instructor, where people
20 are sharing information and -- and have the ability to
21 and the opportunity to ask questions to be clear on the
22 information that is being shared and then have a way to

1 be able to follow up. So I think there's a variety of
2 things that can be done. And you know, we can put in
3 some -- some general thoughts on that in our post
4 hearing comments as -- as suggestions.

5 But I think there's a variety of ways that can be
6 done. But I -- but with the main issue being, the main
7 concerns being, information shared with employees in an
8 understandable way, with some graphics and
9 illustrations and simple language and the opportunity
10 to ask questions and have -- and have discussion around
11 the information, so that people can understand,
12 especially something as important as their health.

13 MS. LONG: Thank you.

14 DR. SCHAYER: Okay. And this is Stephen Schayer
15 again from OSHA. I just wanted to thank the panel for
16 your testimony. And Your Honor, that concludes OSHA's
17 questions.

18 JUDGE LESLIE: Thank you. Does the Office of the
19 Solicitor have any questions for this panel?

20 MS. LEVIN: Yes, this is Jennifer Levin for the
21 Office of the Solicitor. I wanted to ask Mr. Burke and
22 Mr. Hernandez about their experience with the

1 opportunity for cemetery workers to take breaks,
2 whether that is breaks like on -- as needed or breaks
3 that are scheduled or mandatory?

4 MR. BURKE: This is Kevin Burke. As of now, our
5 schedule is so heavy that we only have very limited
6 available time between services and burials --
7 scheduled burials. So we don't have a set time. If we
8 have a 15 minute increment between services, we'll take
9 a break. So with the limited staffing we have right
10 now, it's -- yeah, it's pretty much whenever the time
11 is available. That's when we're available to take a
12 break. So same thing with lunch as well. Some people
13 will take lunch at noon, others, you know, after
14 finishing a burial. But you know, 1:00 if they have
15 like even 15, 20 minutes, that's considered a 30 minute
16 lunch.

17 MS. LEVIN: Thank you.

18 MR. BURKE: You're welcome. Thank you for your
19 time.

20 JUDGE LESLIE: Any other questions from the
21 Solicitor?

22 MS. LEVIN: No, that's all for me. Thank you very

1 much, to -- to everyone on the panel.

2 JUDGE LESLIE: Thank you. Mariam, any questions
3 from the participants?

4 MS. CARLON: Yes, we have two. The first is from
5 Mr. Schneider. Please state your name for the record.

6 MR. SCHNEIDER: Hi. Thank you very much for your
7 testimony. My name is Scott Schneider, and I had a
8 question for you, Milly. Is what -- I wanted to find
9 out, you know, about the importance of -- of worker and
10 or employee involvement in the development of health
11 and safety plans for heat stress and their
12 implementation. How much -- how important is it and
13 what can workers add to this process?

14 MS. RODRIGUEZ: Thank you for your question. I
15 think it's critically important to have worker
16 participation and involvement in developing and
17 implementing any program in the workplace, and
18 especially something like we're talking about here with
19 heat. As you have heard from representatives in
20 different kinds -- different kinds of work that AFGE
21 represents, their experiences are critical. They're
22 very important. They know what the work is, they know

1 what they're doing, they know what -- what they need.
2 And for a very informed program to be developed, we
3 need the voices of working people, the folks who are
4 doing that work, in addition to the professionals, in
5 addition to the folks -- to the management folks who
6 know how to run those operations. But they know the
7 work. They know how to run those operations as well.

8 And so I think it's critically important to have
9 them involved in the development and the -- and then of
10 course, evaluation. Because, you know, programs can --
11 can get developed and implemented and then sort of fall
12 by the wayside. So it's important to have working --
13 working people involved at all different levels of
14 those programs. And I think we try to put that into --
15 into the work that we represent within AFGE, within the
16 health and safety committees that these folks typically
17 work on and collaborate with management when we have
18 that opportunity.

19 But yes, thank you for that question. I think
20 it's critically important to have worker involvement in
21 those developments and promoting those programs.

22 MR. SCHNEIDER: Thank you very much.

1 JUDGE LESLIE: Any other questions, Mr. Schneider?

2 MR. SCHNEIDER: No, that's it. Thanks.

3 JUDGE LESLIE: Thank you. Mariam, our next
4 participant, please.

5 MS. CARLON: And then, Jordan, please state your
6 name for the record.

7 MR. BARAB: Yeah. Hi, this is Jordan Barab. I
8 just wanted to ask any of the testifiers if -- are
9 AFSCME members all allowed, at any time in the day,
10 when they're feeling hot or thirsty to take a 15 minute
11 break, go find a shady area and some water? Or do they
12 need employer's permission to do that?

13 MR. HERNANDEZ: Hi this is Irving Hernandez. I
14 don't know if they can hear me?

15 JUDGE LESLIE: We can hear you, Mr. Hernandez.

16 MR. HERNANDEZ: Thank you. Thank you for the
17 question, Mr. Jordan. They have to -- right now, the
18 policy is that the employees have to ask for
19 permission. In many cases, management is not
20 available. And it's -- it's just kind of convoluted
21 how they have it done. You know but it -- it is a
22 requirement that you ask for permission to -- to go and

1 get water somewhere. As I mentioned before, water is
2 not provided by management and many of the bubblers --
3 I don't know, I'm -- I'm a child of the 70s. I used to
4 find the -- the water hose and drink for the water hose
5 back in the day. That is not available anymore. In
6 the campus that I am in, in Tampa, you have to probably
7 go inside and find a place where you can relieve -- get
8 some water or something to drink, but you have to ask
9 for permission. And in -- in some cases, we have had
10 issues with some very stern management that want to --
11 if the employee, they don't see him, in some cases they
12 want to charge him with AWOL, absent without leave or
13 something like that. And you know, the union have to
14 get involved. And we had to file the grievance and all
15 of that. But yes, it's -- it's part of how they have
16 it set up or the experience that we have currently.

17 MR. BARAB: Okay. So just to clarify, you
18 mentioned this, but so your members are sometimes
19 subject to discipline if they feel the need to leave
20 the job to go get water or to go rest in some shade?

21 MR. HERNANDEZ: That is correct. Many of the
22 cases, many of the members, as I mentioned -- and I

1 wanted to mention this, feel scared to go to the
2 managers. In some cases, they come to us first so that
3 we can act in their behalf, because they feel
4 threatened that they're going to lose their job or
5 things of that nature. Yes.

6 MR. BARAB: Thank you.

7 JUDGE LESLIE: Any further questions?

8 MS. CARLON: We actually have one more question,
9 Your Honor.

10 JUDGE LESLIE: Thank you.

11 MS. CARLON: Ms. Shrestha. Excuse me. Please
12 state your name for the record.

13 MS. SHRESTHA: Hi. Sorry, I -- it didn't come up
14 for me for a second. Sorry about that. Hi. My name
15 is Ayusha Shrestha from the AFL-CIO. I wanted to
16 ask -- this is for a question for anyone, but I
17 specifically wanted to ask Gabriel a question about why
18 enforceable heat protections matter for union members.

19 MR. LOPEZ: They matter because it can be
20 enforced. You know, right now, like as you've heard,
21 they -- they -- they're having questions -- should I
22 even ask to -- to go out and take a break. You know, I

1 mean, we -- we advocate to train supervisors and -- and
2 workers on -- on heat stress, you know, and the
3 triggers of them and provide adequate amounts of cool
4 and water in work areas.

5 As you can see with the - with the National
6 Cemetery employees, they don't even provide water. So
7 we need to stress these standards. I mean, to
8 recognize the signs and symptoms. You know, the cause
9 of heat-related - you know, proper care, use of heat
10 protectiveness, and effects of - of - of heat. You
11 know, to train these supervisors to recognize, but also
12 train the employees to not feel bad or not feel scared
13 Of asking their supervisor - hey, I'm almost passing
14 out here.

15 And believe it or not, Nevada -- a couple summers
16 ago, the whole day was 122 degrees at the VA hospital.
17 That -- that's a lot of heat and then to be afraid of
18 asking for help. So -- so we advocate for these
19 standards to be pushed so they could be enforced. If
20 that answers your question a little bit, Ms. Ayusha?

21 MS. SHRESTHA: Yes. Thank you, Gabriel.

22 MR. LOPEZ: You're welcome.

1 JUDGE LESLIE: Any other questions, Ms. Shrestha?

2 MS. SHRESTHA: No. That's it. Thank you, Your
3 Honor.

4 JUDGE LESLIE: Thank you. Any other participants,
5 Mariam?

6 MS. CARLON: There are not, Your Honor.

7 JUDGE LESLIE: Any follow up questions from OSHA?

8 DR. SCHAYER: No, we have no follow ups, Your
9 Honor.

10 JUDGE LESLIE: Thank you. From the Office of the
11 Solicitor?

12 MS. LEVIN: No, I do not. Thank you.

13 JUDGE LESLIE: Thank you. I would like to thank
14 all members of the panel for their testimony and for
15 their time and participation today. It is very much
16 appreciated. And you are --

17 MS. RODRIGUEZ: Thank you, Your Honor. Oh, sorry.
18 Your Honor, if I -- if I may, we have focused today on
19 our members within the National VA Council, so
20 employees of the national of the VA, the Department of
21 Veterans Affairs. But just as a reminder that AFGE
22 also represents federal employees across the country

1 who work in various different agencies and who have
2 pretty much all the same types of heat exposures that
3 other colleagues from other unions have talked about.
4 So I just wanted to put that into the record. But
5 thank you for that opportunity.

6 JUDGE LESLIE: Thank you. Your reminder is noted
7 for the record. And again, thank you for your time.

8 Thank you. That is the last panel for the day.
9 And with that being said, we are now at the end of all
10 scheduled witnesses for today. I would like to remind
11 the hearing participants that they may submit
12 additional evidence or statements relevant to the
13 proceeding within 90 days of the end of the hearing,
14 which will be September 30th, 2025. At that point, the
15 record for this rulemaking will close.

16 On behalf of the Department of Labor, I wish to
17 publicly thank all those people who gave of their time
18 and testimony to contribute to this hearing today. To
19 all participants, thank you for your interest in this
20 important matter. This hearing is hereby adjourned for
21 today. We will reconvene at 9:30 a.m. tomorrow. Thank
22 you.

1 (Whereupon, at 3:30 p.m., the hearing was
2 adjourned.)

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