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## **Transcript of Day 7**

Wednesday, June 25, 2025

***OSHA Heat Injury and Illness Prevention Hearing***

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Reference Number: 155612

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5 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

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9 OSHA'S INFORMAL RULEMAKING HEARING

10 FOR HEAT INJURY AND ILLNESS PREVENTION IN OUTDOOR AND

11 INDOOR WORK SETTINGS

12

13 Day 7 of 12

14 Wednesday, June 25, 2025

15 9:30 a.m.

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1 PARTICIPANTS

2 PRESIDING:

3 STEVEN BELL, Administrative Law Judge, Office  
4 of Administrative Law Judges, United States  
5 Department of Labor

6

7 OSHA PANEL:

8 ADRIANA LOPEZ-MENENDEZ

9 STEPHEN SCHAYER

10 TIFFANY DEFOE

11 BRENDA FINTER

12 JONATHAN BEARR

13 VARUN PATEL

14 YASMINE DANIELS

15 JASON HAMMER

16 ZOE PETROPOULOS

17 RYAN TREMAIN

18 RACHEL CARSE

19 EDUARDO HERNANDEZ

20 PATRICIA DOWNS

21 OFFICE OF THE SOLICITOR OF LABOR:

22 DANIEL MOCZULA

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3	Francis Palasieki	10
4	UNITED FOR RESPECT	
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18 ALSO PRESENT:

19 MARIAM CARLON, ABT Global

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21

22

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

JUDGE BELL: 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 settings. The Notice of Proposed Rulemaking was published in the Federal Register on August 30th, 2024, in volume 89 of the Federal Register, beginning at 70698.

I'm Steven Bell, an Administrative Law Judge for the US Department of Labor and I'll be presiding over the hearing today. The purpose of the hearing today 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 today will be limited to conducting the hearing to assure that a complete and accurate record is made, and that all interested parties receive a fair hearing and have had an opportunity to submit their information. The hearing

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

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

17 Any written comments you have submitted to the  
18 docket are already part of the record of this  
19 rulemaking. In the rare case where witnesses wish to  
20 provide other documents that have not already been  
21 entered into the docket, they should provide those  
22 comments by email to [OSHAevents\\_dsg@dol.gov](mailto:OSHAevents_dsg@dol.gov) before the

1 witness begins their testimony, so that they can be  
2 entered as exhibits in the record.

3 Because all pre-submitted documents are already  
4 part of the record, your oral testimony here today  
5 should concentrate on presenting the highlights of your  
6 written comments or clarifying your written submission.  
7 Hearing participants may also submit additional  
8 evidence or statements for a period of 90 days from the  
9 close of this hearing, which will be September 20th --  
10 September 30th, 2025. September 30, 2025. At that  
11 point, the record for this rulemaking will close.

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

22 That's the process I intend to follow today.

1 After OSHA has finished asking questions of a witness  
2 or panel, I will ask participants who wish to ask  
3 questions of the witness to identify themselves by  
4 pressing the raise hand button in Webex, or by pressing  
5 star three on their phones, for those who have called  
6 in by telephone.

7 Based on the hearing schedule and the number of  
8 participants who wish to ask questions, I will  
9 determine the order in which participants will question  
10 the particular witness or panel and any time  
11 restrictions on that questioning. If there are more  
12 questions than we have time for today, it may be  
13 possible to ask additional questions at the conclusion  
14 of the testimony of today's final witness. Further, if  
15 witnesses are able -- or unable to answer a question  
16 during today's hearing or would like to expand the  
17 answers provided, they are welcome to use the post-  
18 hearing comment period to submit such information.

19 I would also like to remind you that the  
20 proceeding today is being recorded and transcribed by a  
21 court reporter. To ensure that the reporter is able to  
22 provide an accurate record of all the testimony and of

1 all the questions and responses, please try to remember  
2 to provide verbal responses to all questions. The  
3 court reporter will have a difficult time seeing you if  
4 you only nod or shake your head in response to a  
5 question.

6 In addition, please try to remember to identify  
7 yourself before beginning your testimony or before  
8 asking or answering a question. I know many  
9 participants are not accustomed to doing these things,  
10 and I'll try to help by reminding you as we move along.  
11 The transcript of the hearing will be uploaded to the  
12 hearing docket on regulations.gov, approximately two  
13 weeks following the hearing.

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

1           that, let's proceed.

2           MS. CARLON: The first speaker group is the  
3           American Building Materials Alliance, represented by  
4           Rod Wiles and Francis Palasieski. Please state your  
5           name and affiliation for the record.

6           MR. PALASIESKI: Francis Palasieski, Director of  
7           Government Affairs for the American Building Materials  
8           Alliance.

9           JUDGE BELL: You're welcome to go ahead, please.

10          MR. PALASIESKI: I'm sorry. Were you able to hear  
11          me?

12          JUDGE BELL: Yeah, we can hear you fine.  
13          You're -- we're ready for you to begin your testimony.

14          MR. PALASIESKI: Oh, great. Thank you. Thank you  
15          for having us this morning. Like I said, my name is  
16          Francis Palasieski. I'm the Director of Government  
17          Affairs for the American Building Materials Alliance.  
18          We are a trade association that represents retailers in  
19          the lumber and building materials industry. Our  
20          members are local, family-owned businesses, many of  
21          them multi-generational, that have been part of their  
22          community for a long time. Some of them hundreds of

1 years, like Bethel Mills in Vermont. Their employees  
2 are their family, friends ,and -- and neighbors. The  
3 businesses are well known and recognized and they  
4 supply homeowners, builders, and contractors with  
5 everyday materials like house loads of lumber, kitchen  
6 packages, doors, windows, hardware, et cetera, et  
7 cetera.

8 We take injury prevention seriously and safety  
9 overall. Our trade association has a safety committee  
10 that meets regularly, that brings together industry  
11 leaders, safety experts, and the insurance industry to  
12 review and go over safety plans, incidents, and make  
13 suggestions for improvements. We have a proven track  
14 record of safety, particularly for heat illness  
15 prevention. And our chair, Rod Wiles, who's joining  
16 me, will go through that in more detail later on.

17 But our core message is we hope that the proposed  
18 rule could consider rule -- plans that have proven  
19 effectiveness regarding heat illness and injury  
20 prevention and are industry specific. And with that,  
21 I'll turn it over to Rod Wiles, our chair, to go into  
22 more detail about our concerns and, in particular,

1           how the plans are proven effective.

2           MS. CARLON: Mr. Palasieski, unfortunately, we do  
3           not see Mr. Wiles online. Mr. Wiles, if you have  
4           joined under a different name, please use the raise  
5           hand feature to alert us of your presence.

6           MR. PALASIESKI: Well, I suppose in his absence, I  
7           can continue the testimony. So regarding proven and  
8           effective plans, we hope that OSHA's final rule on this  
9           could create an avenue where they could be considered  
10          compliant. We have strong concerns that the existing  
11          plans would no longer be compliant, even if they're  
12          proven effective. We checked with our endorsed  
13          insurer. Our membership covers 1,100 retail store  
14          locations with over 100,000 employees across various  
15          businesses. And about 50 percent of them are enrolled  
16          in this risk group and there were zero reported heat  
17          injury claims in the risk group in the last four years.

18          Additionally, we checked in New York. We have  
19          Group 531, they're a local affiliate, the Northeastern  
20          Retail Lumber Association; it's the New York Workers'  
21          Compensation Insurance Safety Group program exclusively  
22          for our members. They also reported zero heat injury

1 claims in the last four years in our industry. And we  
2 also checked in Massachusetts with the Silva program,  
3 same results.

4 And we believe that this proves that the current  
5 safety plans are effective. And they are industry  
6 specific. And like I said, our safety groups do meet  
7 regularly to go over these plans with industry experts,  
8 safety leaders, and the insurance industry to ensure  
9 that they remain effective.

10 We're also concerned that, while the rule does not  
11 explicitly mandate extensive recordkeeping for things  
12 like temperature, breaks, et cetera, all that, we  
13 believe that just, in effect, to prove compliance, we  
14 will need to keep extensive daily logs on all of these  
15 items that are covered by the rule to prove compliance.  
16 And we believe that that could actually detract from  
17 overall safety by shifting the focus from prevention to  
18 recordkeeping. And that would be the core of our  
19 testimony and our concerns.

20 JUDGE BELL: Thank you very much, sir. Are there  
21 questions from the OSHA room?

22 MR. SCHAYER: Yes, Your Honor. This is Stephen

1 Schayer from OSHA Directorate of Standards and  
2 Guidance. We do have some questions. First, thank  
3 you, Mr. Palasieski for your testimony today. My  
4 question is about if you could please describe, in more  
5 detail, the existing industry protocols in place in  
6 your industry. And what's different between what  
7 you're currently doing and what was proposed in the  
8 proposed rule?

9 MR. PALASIESKI: We believe that the proposed rule  
10 is -- is more rigid and would focus more on  
11 recordkeeping for compliance rather than active action  
12 in the workplace. Our -- our industry employs a large  
13 range of -- of people and job roles from intensive  
14 laboring roles like working in the in the lumber yard,  
15 moving material, to customer service, sales, marketing,  
16 finance, and everything in between. And we believe  
17 that there's a large difference between working in the  
18 yard on a hot day and servicing a customer on a hot day  
19 in the yard. But the rule would apply all the same,  
20 regardless of the physical exertion an employee is  
21 required to do. So our current plans do take that into  
22 account. We don't see anything in the rule that says

1 we -- we cannot continue to take that into account, but  
2 we do have concerns that the blanket rules would apply  
3 all the same regardless.

4 MR. SCHAYER: Okay. Thank you. And one second  
5 question I had. In your written comments, you had  
6 recommended that the standard allow employers with  
7 proven safety records and effective plans in place to  
8 certify compliance under existing protocols. And just  
9 wondering if you could provide some additional details  
10 on how you would envision that working and what you  
11 think OSHA should consider as effective heat management  
12 practices under such an approach of certification?

13 MR. PALASIESKI: Thank you. I appreciate that  
14 question. Like I said, that is our -- our core message  
15 we're hoping to get across. We hope that effective  
16 plans with a proven safety record could be considered  
17 compliant, even if the rule is adopted as is. We hope  
18 that it would consider some of the things that we  
19 looked at, like number of incidents, if there were any.  
20 Like we said, we found zero in many instances in the  
21 last four years across hundreds of retail store  
22 locations. And -- and we would also hope that it would

1 consider the robustness of the heat illness injury  
2 prevention plan that's in the emergency plan that's  
3 already in effect by the individual business. Our  
4 members do already include that. And we believe it  
5 should be robust, but we don't feel it should be as  
6 rigid as the proposed rule is. I believe there should  
7 be some flexibility, and OSHA should be able to approve  
8 them on a case by case basis, based on effectiveness.

9 MR. SCHAYER: Okay. Thank you, sir. Now I'd like  
10 to turn to Jonathan Berr in the room here.

11 MR. BEARR: Thank you. Jonathan Berr,  
12 Directorate of Standards and Guidance. Building off of  
13 what Steve said, if possible, do you think your  
14 alliance could provide us with examples of heat safety  
15 plans that your members are currently using?

16 MR. PALASIESKI: Yes, I think we can follow-up  
17 with that. We did review several examples from  
18 members, including rk MILES in Vermont that operates 18  
19 retail store locations. We could collect a few more  
20 for examples if you'd like.

21 MR. BEARR: Excellent. thank you. And I do have  
22 one more question, and it's with regard to

1 recordkeeping. The proposed rule provides the  
2 flexibility of maintaining temperature records for  
3 indoor work areas in either a written form or  
4 electronically. It was found that electronic  
5 monitoring devices are readily available, they're easy  
6 to use, and they often have a storage capacity for six  
7 months or more. And the -- the proposed rule  
8 establishes keeping those records for six months. Do  
9 you think using electronic monitoring devices would  
10 make it easier for your members to comply with the  
11 proposed recordkeeping requirements?

12 MR. PALASIESKI: Yes, we appreciate that provision  
13 of the rule.

14 MR. BEARR: Thank you.

15 MR. SCHAYER: Thank you. This is Stephen Schayer  
16 again. Finally, we have some questions from Varun  
17 Patel on the panel here.

18 MR. PATEL: Hi. I'm Varun Patel from OSHA. Thank  
19 you for being here today. My question is regarding --  
20 you just mentioned about insurance claims, that you  
21 said you had zero incidents. So I was wondering that  
22 what are the current mechanism your members have where

1 employees can report incidents or heat-related hazards,  
2 and if they can report without any fear of retaliation  
3 or anything like that. If you can provide any  
4 information at your best knowledge right now, or in  
5 your comment -- written comment.

6 MR. PALASIESKI: In the plans we reviewed, there  
7 were specific ways to report and establish procedures.  
8 I think it would be best if I shared those plans rather  
9 than getting into the exact details of that.

10 MR. PATEL: Okay, thank you. And my second  
11 question is -- although you have not discussed rest  
12 breaks in your written comments or in your testimony.  
13 So I was just wondering if you can provide a little bit  
14 more information that, as you mentioned, that your  
15 membership has very robust plans. So I was wondering  
16 that if you can share any information about rest breaks  
17 and how they are determined that when it is needed and  
18 what are the determining factors that it is allowed for  
19 employees to take a break as needed?

20 MR. PALASIESKI: Yes. We'll share that. And like  
21 I said, I believe that's included in the safety plans.  
22 We did review quite a number of them. They all

1 included provisions for that.

2 MR. PATEL: Okay. Thank you. That's it.

3 MR. SCHAYER: Okay. Stephen Schayer, again.

4 Thank you, Mr. Palasieski. And Your Honor, that  
5 concludes the questions from the OSHA panel.

6 JUDGE BELL: Thank you. Any questions from the  
7 Solicitor?

8 MR. MOCZULA: Daniel Moczula for the Solicitor's  
9 Office. No questions from us.

10 JUDGE BELL: Are there any questions for the  
11 witness from others?

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

13 JUDGE BELL: All right, sir. Thank you very much  
14 for your participation today. We very much appreciate  
15 it.

16 MR. PALASIESKI: Thank you for having me.

17 MS. CARLON: The next speaker group is the United  
18 for Respect, represented by Mona Abhari, Nicole Samii,  
19 Nancy Regimbal, Darryl Prewitt. Please state your name  
20 and affiliation for the record.

21 JUDGE BELL: Good morning. You're welcome to  
22 begin, state your name and your affiliation, please.

1 Ms. Abhari, you've muted your camera and we can't hear  
2 you if you're speaking. Hello? Good morning. How are  
3 you?

4 MS. SAMII: Good morning. My name is Nicole  
5 Samii, I am the Senior Research Coordinator at United  
6 for Respect.

7 JUDGE BELL: Go ahead please.

8 MS. SAMII: Before I begin, I wish to inform you  
9 that Mr. Darryl Prewitt, who was listed on the agenda,  
10 will not be testifying today.

11 I'm submitting this testimony today on behalf of  
12 my organization in strong support of OSHA's proposed  
13 rule on heat injury and illness prevention in outdoor  
14 and indoor work settings. United for Respect is a  
15 nonprofit organization that trains, educates, and  
16 supports workers in the retail sector to improve their  
17 working conditions. United for Respect believes it is  
18 critical that OSHA consider the impact of extreme heat  
19 on retail workers and retail warehouse workers. After  
20 all, the two largest employers in the United States are  
21 retail businesses. Walmart, the largest private  
22 employer in the United States, employs 1.6 million

1 workers. Amazon, the next largest employer, employs  
2 1.1 million workers.

3 My testimony today will focus on the experiences  
4 of Amazon warehouse workers, who know the toll that  
5 extreme heat can take on their bodies. As they are  
6 expected to twist, bend, and lift packages in an  
7 unfeasible pace, they must often work in sweltering  
8 conditions with limited access to clean, cold drinking  
9 water or cool rest areas.

10 I would like to share the experience of an Amazon  
11 associate at McO2 in Deltona, Florida, who just last  
12 week worked unloading heavy freight like bed frames and  
13 desks inside a trailer that was 112 degrees for almost  
14 three hours. The water stations nearest to the  
15 trailers have not had water since October. Water is a  
16 luxury at McO2. Under these conditions, associates  
17 took it upon themselves to rotate working in the  
18 trailers so they could stay safe.

19 And while we're on the topic of drinking water,  
20 Amazon associates at ATL6 were informed last summer  
21 that they would need to purchase their own drinking  
22 water. They could refill their water bottles at the

1 drinking fountain, but those were dirty and moldy.

2 After workers reported the dirty drinking fountains to  
3 management, Amazon cleaned them. Now workers can get  
4 cold, clean water from the drinking fountains.

5 However, they are only permitted to drink it out of  
6 little Dixie cups or risk being disciplined if they  
7 refill their water bottles.

8 We also recently learned that Amazon associates --  
9 from Amazon associates that Amazon headquarters in  
10 Seattle, Washington, controls the air-conditioning at  
11 warehouses across the country. This limits facility  
12 managers' ability to respond in real time to local heat  
13 conditions and keep workers safe. Amazon workers and  
14 warehouses from the Inland Empire in California to McO2  
15 in Deltona, Florida, to JFK in New York City and DIA4  
16 in Iowa City are at the mercy of the controls in  
17 Seattle, Washington.

18 On behalf of United for Respect and the nearly 16  
19 million people across our country who work in the  
20 retail industry, I would like to thank you for the  
21 opportunity to provide this testimony. We strongly  
22 urge OSHA to promptly finalize the proposed rule. This

1 concludes my testimony, and I would like to turn it  
2 over to Ms. Nancy Regimbal.

3 JUDGE BELL: Ms. Regimbal, go ahead please.

4 MS. REGIMBAL: Hello, everyone. Can you hear me,  
5 okay?

6 JUDGE BELL: I'm sorry miss -- yes. I -- the top  
7 of -- the bottom of your head is kind of cut off for  
8 us, but go ahead.

9 MS. REGIMBAL: Hang on one second.

10 JUDGE BELL: There you go.

11 MS. REGIMBAL: Sorry about that.

12 JUDGE BELL: Go ahead please.

13 MS. REGIMBAL: Hello, everyone. My name is Nancy.  
14 I started to work for a billion dollar company seven  
15 years ago. My first two years, I worked inside the  
16 Amazon warehouse by applying the Amazon principles of  
17 be curious. And I learned many different positions.  
18 Then, over the next five years, I went outside, where  
19 you quickly adapt to another Amazon principle of  
20 applying the highest standard, because the cameras are  
21 always on you. No one else but you. During this time,  
22 I found my voice again, speaking out on safety issues,

1 helping my coworkers inside with safety issues such as  
2 clean water, and heat issues -- especially when you are  
3 a truck driver and you're in a tractor moving around a  
4 53 foot trailer and you lose AC while the temperatures  
5 are near 100 plus the humidity down here in Atlanta,  
6 Georgia.

7 Over the years, my voice had gotten louder to the  
8 point where I received my very first write-up. But not  
9 just any coaching write-up; this was a final write-up.  
10 Meaning if I do any simple wrong move, I will get  
11 fired. After a while, I used my voice to where I learn  
12 and lean on United for Respect as guidance. I then  
13 took my case to the National Labor Retaliation Board --  
14 Relation Board. Excuse me. I stood my ground; my  
15 voice got louder. I pushed and pushed to where Amazon  
16 settled on interrogation, surveillance, and  
17 retaliation.

18 This is a huge win for us, but we're not done. My  
19 voice is getting louder because I have coworkers who  
20 have fear of retaliation of losing their job. Amazon  
21 will give one version of what happens in the warehouses  
22 and outside, but the workers will give another version

1 of their issues. I will challenge Amazon. How can we  
2 apply the Amazon principle of earning trust when so  
3 many safety issues are not being treated with respect?  
4 The great Maya Angelou once said, when you know better,  
5 you do better. Amazon just needs to do better. Thank  
6 you all for letting me speak today.

7 JUDGE BELL: Thank you. Ms. Abhari, do you want  
8 to speak?

9 MS. ABHARI: Yes. Good morning, everyone.  
10 Apologies for the delay in the beginning. My name is  
11 Mona Abhari and I am a lead field organizer for United  
12 for Respect. I am submitting this testimony today on  
13 behalf of my organization and the Amazon workers, like  
14 Ms. Nancy, that I work alongside with, in strong  
15 support of OSHA's proposed rule on heat injury and  
16 illness prevention in outdoor and indoor work settings.

17 The members of our current worker organizing  
18 committee in Atlanta, of which we have quite a handful  
19 I've worked closely with for about three years now, are  
20 currently stretched thin or working today, so I'll be  
21 sharing some of their experiences with you on their  
22 behalf. It's important to note that all year round,

1 Amazon is not a safe place to work, as Ms. Nancy has --  
2 has spoken to. And summertime heat in Atlanta only  
3 exacerbates the current safety crisis at Amazon. One  
4 worker on our committee, Ron Sewell, also known to his  
5 colleagues as Mr. Ron, is a learning ambassador at ATL6  
6 in East Point, Atlanta. And I'm going to share some of  
7 his reflections with you.

8 I'm a learning -- quote:

9 "I'm a learning ambassador at ATL6. We train and  
10 teach safety measures, and we go around the floor  
11 making sure that the associates are following safety  
12 rules. However, this isn't a supervisory role. So if  
13 management doesn't uphold the safety rules, my  
14 coworkers don't either. I see it -- it being the  
15 safety rules not being followed -- happening a lot  
16 because management is more concerned with speed and  
17 getting the packages out than safety. Making rate is  
18 the number one priority in the warehouse, which leads  
19 management and workers to bypass safety rules and work  
20 in the danger zone." End quote.

21 Mr. Ron has also worked with associates in  
22 previous summers who have passed out from extreme heat

1           and hit their head so hard against the concrete floor  
2           that they had to be sent to the hospital. It's  
3           Amazon's responsibility to prevent these heat-related  
4           injuries and to keep workers safe on the job. We need  
5           OSHA to set a heat standard across the industry to keep  
6           workers like Mr. Ron safe.

7           Every passing summer, with increasing intensity,  
8           workers find themselves passing out from heat  
9           exhaustion, working with no AC and poor ventilation,  
10          working in humid 100 - above 100 degree weather in the  
11          trailers, having little time to rest and cool down, and  
12          having limited access to water - clean drinking water  
13          at that, which my colleague Nicole spoke to a little  
14          bit. Amazon facilities in Atlanta are notorious for  
15          having mold and mildew in their drinking fountains and  
16          ice machines.

17          And when workers have tried to speak up against  
18          the lack of heat protections, as Ms. Nancy was speaking  
19          to, they are retaliated against. Instead of listening  
20          to workers' concerns and solutions, local management  
21          has consistently responded with anti-union rhetoric and  
22          still has not provided viable solutions to the workers'

1 safety concerns over the years.

2 In October of last year, Amazon was forced to  
3 settle unfair labor practice complaints, known as ULPs,  
4 filed on behalf of two associates at the ATL6 East  
5 Point warehouse in Georgia. Following the company's  
6 violation of federal labor law by disciplining workers  
7 for engaging in protected concerted activity, of which  
8 heat protections was a central demand.

9 Workers and drivers alike desperately need a  
10 federal OSHA standard to keep them safe on the job, as  
11 the grueling summer heat will only intensify in the  
12 coming months and years, putting more workers in  
13 danger. We are strongly urging OSHA to protect workers  
14 from deadly heat by setting an OSHA heat standard now.  
15 On behalf of United for Respect and the nearly 16  
16 million people across our country who work in the  
17 retail industry, thank you for the opportunity to  
18 provide this testimony. And that concludes our  
19 testimony.

20 JUDGE BELL: Thank you very much. Questions from  
21 the OSHA room?

22 MR. SCHAYER: Yes, Your Honor, we do have some

1 questions. I'm Stephen Schayer from OSHA Directorate  
2 of Standards and Guidance. And thank you, Ms. Samii,  
3 Ms. Abhari, and Ms. Regimbal for your testimony today.  
4 My question is about performance-oriented standards.

5 During the course of the hearing, we've heard from  
6 several groups who've testified that the proposed  
7 standard is too prescriptive and that OSHA should adopt  
8 a more flexible, performance-oriented standard. So  
9 just wondering if you had any recommendations, either  
10 now or in your post-hearing comments, on how OSHA could  
11 structure a performance-oriented standard to ensure  
12 that it's both sufficiently protective for employees,  
13 and provides -- and also provides enough clarity for  
14 employers to be able to ensure that they're in  
15 compliance.

16 And specifically, if you could speak to which  
17 elements of a performance-oriented standard,  
18 specifically the heat injury and illness prevention  
19 plan that you think would need to be prescriptive in  
20 nature and which could be more flexible and a more  
21 performance-oriented approach? That would be very  
22 helpful for us as well.

1 MS. SAMII: Yes. Thank you for that detailed  
2 question. We would like to address that in our post-  
3 hearing comments.

4 MR. SCHAYER: Okay, great. Thank you. Now I'd  
5 like to turn to Zoe Petropoulos, who is on the line  
6 with us.

7 MS. PETROPOULOS: Hi, Zoe Petropoulos with the  
8 Directorate of Standards and Guidance. OSHA has  
9 received comments suggesting that workers may not  
10 always report heat-related injuries and illnesses that  
11 they experience. Does your panel agree with this  
12 statement?

13 MS. SAMII: I see Ms. Nancy shaking her head.

14 MS. REGIMBAL: Yes.

15 MS. SAMII: Do you have anything to contribute,  
16 Ms. Nancy?

17 MS. REGIMBAL: No, I -- I mean, I was just going  
18 to say there's -- there's hundreds of workers from the  
19 warehouse I worked at in ATL6 East Point, Georgia, that  
20 have experienced many heat-related illnesses.

21 MS. PETROPOULOS: And either now or in post-  
22 hearing comments, if you would like to share specific

1 reasons that you might be aware of, that workers don't  
2 report all of the heat-related injuries and illnesses  
3 and any evidence to support your stance, we would  
4 appreciate that.

5 MS. SAMII: Yes. In my comments that -- or in the  
6 comments previously submitted, Ms. Joan Morris, who is  
7 an Amazon associate at ATL6, she fainted in the summer  
8 of 2023. She quickly, almost immediately, returned to  
9 work after fainting because she feared losing her job.  
10 Then again, last summer, she was -- needed -- needed to  
11 rest from heat exhaustion and decided to take to -- to  
12 leave during her shift so she could recover. Amazon  
13 refused to bring her back for several days and did not  
14 pay her for that time off. So workers really fear  
15 losing their job or losing shifts. And -- and in that  
16 case, you know, their way of life.

17 MS. PETROPOULOS: Thank you so much.

18 MS. ABHARI: Just a quick lastly, and we can add  
19 more details to this in our post-hearing comments. A  
20 big problem is lack of safety training or heat training  
21 protocols. So many workers that may not even be able  
22 to identify heat-related injury stress, therefore not

1 knowing how to report it, or that that's even something  
2 their employer should be taking care of.

3 MS. PETROPOULOS: Thank you so much. That's it  
4 for me, Steve.

5 MR. SCHAYER: Okay, thank you. Stephen Schayer,  
6 again. Now we'd like to turn to Tiffany DeFoe, who's  
7 also on the line.

8 MS. DEFOE: Hi, this is Tiffany DeFoe with the  
9 Directorate of Standards and Guidance. Thank you very  
10 much for your testimony. I heard you say - heard you  
11 discussed the - the fact that there's little time to  
12 rest or cool down in some of the situations you're  
13 familiar with. And I'd like to note that - sorry, I  
14 understood your testimony to mean that the reason that  
15 you're having little time to rest and cool down is due  
16 to the pressure to kind of keep up the pace of work.  
17 Did I understand that correctly? Okay. Thank you.

18 JUDGE BELL: And the record should reflect that  
19 the -- one of the witnesses gave a thumbs up in  
20 response to that question.

21 MS. DEFOE: Thank you.

22 MS. REGIMBAL: Sorry about that.

1 MS. DEFOE: Okay. Now, we've also received a  
2 variety of comments from folks who are concerned that  
3 the proposed requirements for mandatory, scheduled rest  
4 breaks in some workplaces would not be feasible to  
5 achieve for reasons having to do with the work process,  
6 the nature of the work, time sensitive operations, that  
7 kind of issue. So I'd like to ask whether, in your  
8 awareness, there are types of work in the retail world  
9 where taking breaks can be difficult to do for sort of  
10 feasibility reasons or ways that the process is  
11 structured when workers need a break from the heat? If  
12 so, can you describe some of the difficulties and  
13 whether there are changes to the workplace, such as,  
14 for example, to the work process or the way that  
15 staffing is done, that would make it easier for workers  
16 to take rest breaks to prevent overheating. I know  
17 that's a very long and complex question, and we are --  
18 we certainly welcome post-hearing comments on it, if  
19 that's something you'd like to do.

20 MS. SAMII: Yes, we'd like to address that in our  
21 post-hearing comments.

22 MS. DEFOE: Thank you. And the suggestions that

1 we've received from people who are concerned about the  
2 mandatory proposed rest breaks being insufficiently  
3 flexible are mostly either that any requirement that  
4 OSHA may move forward with for rest breaks should  
5 either provide more flexibility in terms of how the  
6 mandatory rest breaks are scheduled, or that the final  
7 rule should require employers to allow workers rest  
8 breaks as needed to prevent overheating, but should not  
9 include any mandatory scheduled rest breaks. And I'd  
10 like to ask if you could provide any thoughts that  
11 you'd like to share about the suggestions to the  
12 record. Also fine to do in post-hearing comments if  
13 you'd like.

14 MS. SAMII: Yes, we'll address that in post-  
15 hearing comments. Thank you.

16 MS. DEFOE: Thank you so much. That's all I have.

17 MR. SCHAYER: Okay. Stephen Schayer, again. Your  
18 Honor, that concludes the questions from OSHA. Thank  
19 you to this panel for your testimony.

20 JUDGE BELL: Any questions from the Solicitor?

21 MR. MOCZULA: Yes, Your Honor, Daniel Moczula from  
22 the Solicitor's Office. Ms. Abhari, in her testimony,

1 mentioned the importance of training. In post-hearing  
2 comments, the Solicitor's Office welcomes further  
3 comment on OSHA's proposed training requirements. And  
4 furthermore, if you have -- if your members have any  
5 experience with acclimatization, we welcome that in  
6 post-hearing comments. Thank you.

7 JUDGE BELL: All right. Are there other questions  
8 for this panel?

9 MS. CARLON: Yes, Your Honor, we have one from Ms.  
10 Shrestha. Please state your name for the record.

11 MS. SHRESTHA: Hello. My name is Ayusha Shrestha  
12 from the AFL-CIO. I was -- thank you for your  
13 thoughtful testimony. I was going to ask the panel how  
14 have employers incorporated feedback from workers into  
15 their heat stress policies, if they have at all?

16 MS. SAMII: Mona, would you like to answer that  
17 question?

18 MS. ABHARI: Yeah, we can definitely follow-up  
19 with more details in our post-hearing comments. Just I  
20 can name an overall pattern at the ATL6 facility is  
21 these issues being brought up to management, through  
22 either direct communication with management, posting on

1        what's called the VOA board. It's a worker board that  
2        they can kind of submit comments to or issues to.  
3        There's also another application called Dragonfly that  
4        workers can submit health and safety issues.

5                But time and time again, the issues are actually  
6        ignored or told -- workers are told it will be taken  
7        into consideration and no substantial change is  
8        actually made around the heat issues or any of the  
9        other plethora of health and safety issues that workers  
10       bring -- bring to management's attention. And then  
11       workers also name that it is very -- especially in the  
12       moment -- it is sometimes very difficult to track down  
13       a manager on the floor when they need help with a heat  
14       illness or any other health and safety issue. But we  
15       can definitely follow-up with a few more details and  
16       examples in our post-hearing comments.

17               MS. SHRESTHA: Thank you so much.

18               JUDGE BELL: All right. Thank you all. We  
19       appreciate your testimony.

20               MS. SAMII: Thank you.

21               MS. CARLON: The next speaker is Jordan Heiliczer.  
22       Please state your name and affiliation for the record.

1 MS. HEILICZER: Jordan Heiliczer with the National  
2 Restaurant Association.

3 JUDGE BELL: Welcome. You may begin.

4 MS. HEILICZER: Thank you. Good morning, and  
5 thank you for the opportunity to share our perspective  
6 on OSHA's proposed heat illness and injury prevention  
7 standard. Restaurant operators are deeply committed to  
8 worker safety. Preventing injury and illness,  
9 including from heat exposure, is a top priority. A  
10 safe and healthy workforce is essential to every  
11 restaurant's success.

12 That said, we have serious concerns with the  
13 proposed rule and do not believe it is the right  
14 approach. Heat is not new to restaurants. It is and  
15 always has been, a part of daily kitchen life,  
16 regardless of season or region. Operators take steps  
17 to manage heat based on what works in their restaurant.  
18 That includes using air-conditioning or fans, making  
19 water readily available, offering cooling tools like  
20 neck fans or ice vests, and encouraging employees to  
21 take breaks as needed.

22 For employers who don't take appropriate action,

1 OSHA already has strong enforcement tools. The General  
2 Duty Clause and the Heat National Emphasis Program,  
3 recently extended, give the agency clear authority to  
4 inspect and cite businesses where risk exists. And  
5 those tools are being used. Between April 2022 and  
6 December 2024, OSHA conducted 7,000 heat-related  
7 inspections, issued 60 General Duty Clause citations,  
8 and nearly 1,400 hazard alert letters. Unlike the  
9 proposed rule, these tools allow for a more targeted  
10 approach, addressing serious risk without applying  
11 sweeping prescriptive mandates to every workplace.

12 The lack of flexibility in the proposed rule is  
13 especially tough for restaurants. For example, it  
14 would require 15-minute rest breaks every two hours  
15 once the heat index hits 90. In a small kitchen during  
16 a dinner rush, even one person stepping away can halt  
17 operations. Many kitchen roles are specialized.  
18 Pulling one cook off the line can throw off the whole  
19 team. Complying would require hiring more staff, which  
20 may not be feasible for restaurants facing continued  
21 labor shortages.

22 The acclimatization requirements raise similar

1 concerns. Restaurants often hire on short notice to  
2 meet fluctuating demand. In high turnover  
3 environments, onboarding multiple new workers in a  
4 given week is not unusual. Mandating a phased ramp up  
5 without operational flexibility can slow service,  
6 disrupt schedules, and burden coworkers.

7 The administrative burden is another serious  
8 challenge. The rule would require written plans,  
9 emergency protocols, training, and other materials in  
10 multiple languages, acclimatization tracking and  
11 detailed recordkeeping. That's a lot for any business.  
12 For the tens of thousands of single unit restaurants  
13 without legal or HR departments, it could be  
14 unmanageable.

15 And the cost? OSHA projects under 2,000 per  
16 location annually, but that doesn't reflect reality.  
17 Facility and equipment upgrades alone can be a  
18 significant investment and when you add labor  
19 adjustments and service disruptions, the cost rises  
20 quickly. This comes as restaurants are already facing  
21 historic cost pressures. In the last five years, food  
22 and labor costs have increased by 35 percent. Other

1 expenses, including rent, utilities, and credit card  
2 processing fees, continue to climb. With only three to  
3 five percent average profit margins, there's little  
4 room to absorb additional costs.

5 The burden of this rule will fall especially hard  
6 on small business restaurants. Nine in ten restaurants  
7 have fewer than 50 employees, and most are single unit  
8 establishments. They're the heart of our communities,  
9 and they lack the flexibility -- they lack the  
10 infrastructure to manage a rule this complex.

11 The Regulatory Flexibility Act requires agencies  
12 to consider less burdensome options for small  
13 businesses. Unfortunately, this rule doesn't do that.  
14 We agree with the SBA Office of Advocacy, which urged  
15 OSHA to rethink this approach and pursue simpler  
16 alternatives. There's a better path forward. OSHA  
17 already has enforcement tools it's using to address  
18 heat risks. In addition to those tools, the heat  
19 illness prevention campaign offers strong educational  
20 resources that help employers and workers recognize and  
21 reduce risks. We urge OSHA to build on what's working,  
22 expand the campaign's reach, work with industry to

1 develop sector-specific materials and training, and  
2 engage employers, not just through enforcement, but  
3 through partnership.

4 The National Restaurant Association has worked  
5 with DOL before on safety and compliance. We're ready  
6 to do so again. Restaurants are committed to keeping  
7 their employees safe. However, this proposed rule  
8 imposes rigid requirements that don't reflect how  
9 restaurants operate, underestimates the cost and  
10 complexity of compliance, and places a disproportionate  
11 burden on small businesses already under pressure.

12 We respectfully urge OSHA to withdraw the proposed  
13 rule, and instead expand and strengthen the tools  
14 already in place to support practical and flexible heat  
15 safety in every workplace. Thank you.

16 JUDGE BELL: Thank you. Questions from the OSHA  
17 room?

18 MR. SCHAYER: Yes, Your Honor. This is Stephen  
19 Schayer from OSHA. Thank you, Ms. Heilicz, for your  
20 testimony today. Just a quick question. Could you  
21 speak to what your members are currently doing to  
22 manage heat in restaurants? And either, if you want to

1 speak now or in post-hearing comments, I think that  
2 information would be helpful for us.

3 MS. HEILICZER: Yeah, I'm happy to address that  
4 mostly in post-hearing comments. But in talking to  
5 members, I mean, it depends on the -- on the restaurant  
6 and the location. Access to cool drinking water is  
7 readily available across the board, encouraging  
8 employees to take breaks as needed, certainly,  
9 acclimatization for new employees is something that is  
10 universally understood in many restaurants. But happy  
11 to address that more specifically in post-hearing  
12 comments.

13 MR. SCHAYER: Okay. Thank you. Appreciate that.  
14 Now, I'd like to turn to Varun Patel on the panel in  
15 the room.

16 MR. PATEL: Thank you. Varun Patel from OSHA. So  
17 I want to ask a little bit what just Steve asked, but  
18 related to training. So what are the current methods  
19 of, like, educating employees in terms of heat hazard?  
20 You mentioned about education resources, so I was  
21 wondering like what -- how your members are providing  
22 trainings to employees?

1 MS. HEILICZER: Great question. We definitely  
2 share OSHA's materials quite frequently. I've pushed  
3 that out to our members a number of times. But happy  
4 to address that more specifically in post-hearing  
5 comments as well. But I definitely appreciate all the  
6 resources that OSHA has on heat illness and injury  
7 education. And like I said in my comments, we'd love  
8 to work with OSHA on more specific training and signs  
9 to recognize, specific to the -- to restaurants.

10 MR. PATEL: Yeah. And if you can also add the  
11 recommendations, any -- that is how it is aligned or  
12 like what OSHA can do other than what is proposed in  
13 the training section?

14 MS. HEILICZER: Sure. Thank you. Thanks, Mr.  
15 Patel.

16 MR. SCHAYER: Okay, thank you. Stephen Schayer,  
17 again. Now, turning to Tiffany DeFoe on the line.

18 MS. DEFOE: Hi. This is Tiffany DeFoe,  
19 Directorate of Standards and Guidance, OSHA. Ms.  
20 Heiliczzer, you mentioned how the rigidity of the  
21 proposed requirements for mandatory scheduled rest  
22 breaks could disrupt the workflows in restaurant

1 operations, particularly during peak service periods in  
2 your written comments to the record. And I'm wondering  
3 if, either now or in post-hearing comments, you could  
4 give your organization's thoughts on how OSHA could  
5 modify the proposed rest break timing requirements to  
6 allow flexibility sufficient to avoid significant  
7 workflow disruption during rushes or other time  
8 sensitive periods, while still providing workers relief  
9 from high heat environments to avoid overheating.

10 MS. HEILICZER: Sure. Happy to address that in  
11 post-hearing comments. Thanks, Tiffany.

12 MS. DEFOE: Thank you very much. That's all for  
13 me.

14 MR. SCHAYER: Okay. Thank you. This is Stephen  
15 Schayer. We do have just a couple more questions.  
16 First, from Brenda Finter in the room here.

17 MS. FINTER: Hi. Brenda Finter, OSHA Directorate  
18 of Standards and Guidance. I have three questions.  
19 First, where do employees typically take breaks and are  
20 these areas usually cooled?

21 MS. HEILICZER: That's a great question. I'm  
22 happy to address more specifically in post-hearing

1        comments. Every restaurant is different, I mean -- so  
2        happy to address more specifically in post-hearing  
3        comments.

4            MS. FINTER: That would be great, thank you.  
5        Also, could you please discuss your members'  
6        experiences with the feasibility of using air-  
7        conditioning and any alternatives that you use. And a  
8        backup to -- or another part of that question is what  
9        is currently being used to keep employees, in work  
10       areas that are hot and humid, cool?

11           MS. HEILICZER: Yeah. I mean, again, it depends  
12       on the location. A number of restaurants that I've  
13       talked to have, you know, installed air-conditioning,  
14       fans, personal, you know, cooling devices like ice  
15       vests or just those personal fans that you can put  
16       around your neck. Depends on the restaurant, but happy  
17       to address more specifically in post-hearing comments.

18           MS. FINTER: Okay. The next one is probably one  
19       you're going to want to address post-hearing as well,  
20       but I'll ask you anyway here. Do any of your members  
21       use methods to isolate radiant heat from heat  
22       generating processes and equipment? And if so, what

1       have they tried that has been successful and  
2       unsuccessful?

3               MS. HEILICZER: Happy to talk with restaurants  
4       and -- and address that in post-hearing comments.

5               MS. FINTER: Thank you. That's all I have, Steve.

6               MR. SCHAYER: Okay, thank you. Stephen Schayer,  
7       again. Our final question from the panel this morning  
8       is from Yasmine Daniels.

9               MS. DANIELS: Hi, good morning. Thank you for  
10       your testimony, Ms. Heiliczzer. Dr. Yasmine Daniels  
11       from the Directorate of Enforcement Programs with OSHA.  
12       In your written comments, you stated that the proposed  
13       rule mandated extensive recordkeeping and that these  
14       requirements present a substantial logistical challenge  
15       for operators, particularly those managing multiple  
16       locations. You touched a little bit on the burden that  
17       it placed on small businesses in your testimony today.  
18       And I was wondering if you could explain any of the  
19       logistical challenges that operators that manage  
20       multiple locations would have in your industry due to  
21       the proposed rulemaking requirements for indoor work  
22       areas?

1 MS. HEILICZER: Happy to address that in post-  
2 hearing comments.

3 MS. DANIELS: Thank you. And I do have a follow-  
4 up to that. Do you think that using electronic  
5 monitoring devices with logging capabilities would make  
6 the proposed recordkeeping requirements less  
7 challenging -- challenging in your industry?

8 MS. HEILICZER: I'm happy to take that question  
9 back to restaurants and address it in post-hearing  
10 comments.

11 MS. DANIELS: Thank you so much. That's all.

12 MR. SCHAYER: Okay. Stephen Schayer, again, thank  
13 you, Ms. Heiliczer, for your testimony. Your Honor,  
14 that concludes the questions from OSHA.

15 JUDGE BELL: Thank you. Any questions from the  
16 Solicitor?

17 MR. MOCZULA: No questions from the Solicitor's  
18 Office. This is Daniel Moczula. Thank you very much  
19 for your time and testimony.

20 JUDGE BELL: Any other questions for this witness?

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

22 JUDGE BELL: Thank you so much for your testimony,

1 and we'll look forward to getting your post-hearing  
2 comments.

3 MS. HEILICZER: Thank you.

4 MS. CARLON: The next speaker is Felicia Watson.  
5 Please state your name and affiliation for the record.  
6 And Ms. Watson, if you do have your camera on, you may  
7 still have your camera cover over your camera as well.

8 JUDGE BELL: Ms. Watson, if you're speaking, we're  
9 not able to hear you.

10 MS. WATSON: Thank you. My name is Felicia  
11 Watson. I'm with the law firm, Littler Mendelson, and  
12 I'm appearing today on behalf of the International  
13 Foodservice Distributors Association.

14 JUDGE BELL: Go ahead, please.

15 MS. WATSON: Thank you. IFDA appreciates the  
16 opportunity to participate in today's informal public  
17 hearing on OSHA's heat injury and illness prevention in  
18 outdoor and indoor work settings. IFDA is a leading  
19 trade association representing food service  
20 distributors throughout the United States. Their  
21 members play an essential role in the food service  
22 supply chain, delivering 12 billion cases of food and

1 related products annually to professional kitchens,  
2 including restaurants, K through 12 schools, hospitals  
3 and care facilities, hotels and resorts, US military  
4 bases and government facilities, and other operations  
5 that make meals away from home possible.

6 IFDA and its members are fully committed to  
7 workplace safety and health, and support common sense  
8 policies that reduce workplace injuries and illnesses.  
9 While IFDA shares OSHA's goal of protecting employees  
10 from exposure to excess heat and preventing heat  
11 illness, the rigid, one-size-fits-all rule that OSHA  
12 has proposed is too prescriptive and unworkable.  
13 Unfortunately, OSHA rejected the more flexible  
14 approaches encouraged by numerous stakeholders,  
15 including IFDA, during this process.

16 The proposed rule fails to account for the diverse  
17 industries falling within the proposed rule's scope.  
18 OSHA already has existing heat guidance, as we heard  
19 from the previous speaker, for employers, focusing on  
20 water, rest, shade, along with training, that are  
21 foundational principles, which should be simple,  
22 straightforward, and easy for employers and employees

1 to understand and implement.

2 OSHA's National Emphasis Program on Heat further  
3 reinforces these principles by focusing on these  
4 concepts of water, rest, shade, training. Rather than  
5 focusing on these key principles, OSHA has developed a  
6 regulation that's focused on burdensome paperwork,  
7 requiring employers to have written plans, update those  
8 plans, keep records of indoor temperatures, provide two  
9 separate levels of training depending on the employee  
10 trained -- employee versus supervisor and heat safety  
11 coordinator -- identify a heat safety coordinator, and  
12 update the plans and training when that person changes.  
13 It leaves employers with much less time to focus on  
14 actual workplace safety.

15 Accordingly, IFDA requests that the agency  
16 withdraw the rule as currently proposed. And if OSHA  
17 decides to move forward with another proposed rule, the  
18 agency should develop a proposal that allows greater  
19 flexibility and is performance-based, allowing  
20 employers to identify what is needed in their  
21 workplaces, tailor their heat production procedures  
22 based on the hazards in their particular workplace, the

1 job functions performed, and the specific needs of  
2 their own employees. The one-size-fits-all approach in  
3 the current proposal does not adequately address the  
4 variety of industry sectors, and geographic regions  
5 impacted by this proposed rule.

6 Any re-proposal must be more streamlined,  
7 flexible, and feasible for employers to implement  
8 successfully. It should not be so focused on paperwork  
9 obligations that it devolves into a paperwork rule,  
10 which is essentially how the current proposal is  
11 written.

12 Another thing that IFDA has concerns about are the  
13 heat triggers. OSHA treats the heat triggers as  
14 universal measurement regardless of geographic  
15 location, which fails to account for regional weather  
16 conditions, variability among different climates in the  
17 US, including humid and arid locales. Such a broad  
18 approach creates inefficiencies for food service  
19 distributors, who will likely have to reimagine their  
20 distribution schedules and work practices.

21 During the comment period, IFDA expressed concerns  
22 with the heat triggers for several reasons. Many

1 times, IFDA member employees may regularly work in  
2 climate-controlled environments, such as air-  
3 conditioned vehicles, with no reasonable expectation of  
4 reaching the heat trigger. But should the heat trigger  
5 be reached when delivering products to customer  
6 warehouses, the short duration exposure exception,  
7 which is limited to 15 minutes in any -- or less in any  
8 60 minute period, may create some compliance  
9 challenges. That's because deliveries may take longer  
10 than 15 minutes to unload due to the setup in a  
11 delivery location or the amount of product being  
12 delivered at a particular site.

13 As a result, these employees would be covered in  
14 full under the current proposed rule, even if the  
15 number of exposures of 15 minutes or more is occasional  
16 or intermittent during that 60 minutes. Therefore,  
17 having a mandatory, duration-specific rest break in the  
18 middle of unloading a delivery, when possibly  
19 unnecessary for the employee, could create challenges  
20 such as causing a degradation to product quality,  
21 adding additional time to subsequent deliveries  
22 scheduled for the day, and risking scheduling delays

1 with those deliveries.

2 It's the unpredictability of these circumstances  
3 that create compliance challenges. In essence, IFDA  
4 members would have to approach compliance as if there's  
5 no exception for short duration exposure. Such  
6 inflexibility creates additional burdens on these food  
7 service distributors.

8 Another concern is with the provision of drinking  
9 water for several reasons. The proposed rule requires  
10 employers to provide a prescriptive amount of drinking  
11 water to employees each hour -- one quart per employee  
12 per hour -- that's readily accessible and suitably  
13 cool. OSHA never defines what readily accessible  
14 means. This is problematic, particularly for those  
15 IFDA members' employees who are making a delivery to  
16 another employer's worksite. Drivers likely have  
17 access to water hydration at customer locations, but  
18 since IFDA member employers do not control those  
19 delivery locations, it's hard to determine whether that  
20 water is readily accessible.

21 IFDA members already provide employees with access  
22 to water coolers, water bottles, and/or electrolyte

1 containing fluids, or otherwise provide unlimited water  
2 depending on each of their worksites. Given that IFDA  
3 members already remind their employees to -- of the  
4 need to stay hydrated, especially during warmer  
5 temperatures, the amount required by the rule is too  
6 prescriptive.

7 Another concern IFDA has is the acclimatization  
8 procedures. They need to be more flexible and  
9 simplified. While IFDA recognizes acclimatization may  
10 help to combat the effects of extreme heat, any  
11 acclimatization requirements must be more flexible.  
12 They must be revised to be more straightforward for  
13 IFDA members and their employees to follow and  
14 implement based on their particular circumstance, work  
15 sites, and job tasks. For example, even if IFDA  
16 members employees are subject to the initial and high  
17 heat triggers, it may not be continuous and the rule  
18 should account for such situations. Moreover, IFDA  
19 members may not always know in advance or be able to  
20 predict and or control the length of employee exposure,  
21 as more often than not it's dependent on delivery  
22 circumstances and/or work sites that are not within the

1 employer's control.

2 Relatedly, the mandatory rest breaks and the  
3 proposed rule may create these compliance challenges.  
4 I've already addressed how this could affect IFDA  
5 member employees when they're delivering food products  
6 to customers. But using a buddy system, as OSHA  
7 suggests, is usually not an option for field employees  
8 working solo and not under the direct observation of  
9 their supervisor or the heat safety coordinator.

10 Further, to require contact every two hours with  
11 employees working solo would create extensive resource  
12 challenges. As just mentioned, IFDA members do not  
13 always control delivery locations, so requiring a 50-  
14 minute -- 15-minute paid rest break at least every two  
15 hours when temperatures reach 90 degrees or more is  
16 unworkable. The point here is they don't know exactly  
17 how a delivery is set up for the recipient, and  
18 requiring a break could throw off the delivery schedule  
19 for the remaining customers on the delivery route.  
20 Delivery circumstances can and do change, although not  
21 always with the ability to predict when. Having  
22 flexibility to adapt to changing circumstances are very

1 important for IFDA members.

2 Requirements of a written heat injury and illness  
3 prevention plan and training must be revised to be more  
4 straightforward. Requiring a written plan will create  
5 additional compliance burdens. Because many IFDA  
6 member employees are in the field making deliveries to  
7 other employer work sites, this is an issue. While  
8 IFDA members can create a written plan for their own  
9 workplaces, they have no control over what occurs at a  
10 delivery site when their employees are making food and  
11 supply deliveries. Any requirement for a written plan  
12 must be simple, concise, and easy to understand.

13 Unfortunately, as currently proposed, the rule is  
14 not as flexible as OSHA presents. IFDA members are  
15 required to identify -- name the heat safety  
16 coordinator in the plan and the training module will be  
17 challenging, as each of these would need to be updated  
18 and re-communicated each time that coordinator changes.

19 Phased in approach should also be considered for  
20 compliance once a final rule is developed. This is a  
21 significant rule that will affect approximately 36  
22 million workers in the United States targeting general

1 industry, construction, maritime, and agricultural  
2 sectors. IFDA recommends that, if OSHA does move  
3 forward with the rule, that it adopt a phased in  
4 approach. There's precedent for this, which can be  
5 found in other standards promulgated by OSHA, including  
6 hazard communications and silica, to name two  
7 significant rules.

8 Food service distributors will have to work  
9 through the standard's requirement and determine how to  
10 apply them across multiple sites, involving multiple  
11 different job functions and different worksite  
12 conditions, which could involve the need to revise  
13 established delivery schedules and work processes.  
14 Because it affects all aspects of IFDA member  
15 businesses, a phased in approach would allow IFDA  
16 members time to revise their procedures, assess  
17 delivery schedules and practices, and conduct training.

18 For all of the foregoing reasons, IFDA requests  
19 that the agency withdraw the rule as currently  
20 proposed. And if they decide to move forward with a  
21 revised proposed rule, the agency should develop a  
22 proposal that allows greater flexibility for employers

1 to develop a performance-based approach, makes the rule  
2 more straightforward to follow, streamlines training so  
3 it's concise and consistent for all employees -- and  
4 that way everyone knows exactly what they're supposed  
5 to do -- and provides phased in compliance deadlines.  
6 Thank you for the opportunity to speak on this  
7 important issue.

8 JUDGE BELL: Thank you. Questions from the OSHA  
9 room?

10 MR. SCHAYER: Yes. Your Honor, this is Stephen  
11 Schayer from OSHA, Directorate of Standards and  
12 Guidance. Thank you, Ms. Watson, for your testimony.  
13 A question on the performance-based approach. So  
14 we've -- we've heard a lot about that, obviously,  
15 during the hearing. And some folks had testified  
16 previously that a performance-based approach may still  
17 need to have at least some prescriptive elements so  
18 employers could ensure that they're in compliance and  
19 also to ensure that a plan is sufficiently protective.  
20 So just wondering, either now or in your post-hearing  
21 comments, if you had any thoughts on which elements of  
22 a heat injury and illness prevention plan might still

1 be prescriptive in some way in a performance-based  
2 approach, and then, as you mentioned, which -- which  
3 should be, you know, actually performance-based or have  
4 more flexibility?

5 MS. WATSON: Thank you, sir, for that question.  
6 We would definitely like to provide additional comments  
7 in our post-hearing response.

8 MR. SCHAYER: Okay, thank you. That would be very  
9 helpful for us.

10 MS. WATSON: Thank you. We -- we have thought  
11 about that.

12 MR. SCHAYER: Perfect. Thank you. Now I'd like  
13 to turn to Jonathan Berr in the room here.

14 MR. BEARR: Jonathan Berr, Directorate of  
15 Standards and Guidance. In your written comments, you  
16 recommended that employers develop acclimatization  
17 protocols that are tailored specific to their work  
18 sites. Can you provide examples of what these tailored  
19 acclimatization protocols might look like for a typical  
20 food service distribution employer?

21 MS. WATSON: Yes, sir. We'll provide that in  
22 post-hearing comments. Something to think about, as I

1 mentioned in my testimony today, is each worksite might  
2 be a little bit different. And so that is something  
3 where that acclimatization needs to adjust for the  
4 different work processes and the different tasks that  
5 are being performed as well. So definitely provide  
6 additional information in post-hearing comments. Thank  
7 you.

8 MR. BEARR: Thank you.

9 MR. SCHAYER: Stephen Schayer. Now I'd like to  
10 turn to Varun Patel in the room.

11 MR. PATEL: Thank you. Varun Patel from OSHA. So  
12 I want to follow-up on what Steve asked about  
13 prescriptive versus flexibility, but other way around.  
14 So you mentioned about water being readily accessible  
15 and readily accessible is more vague. So do you think  
16 if OSHA specify what is readily accessible, then it  
17 would be too restrictive for the standard?

18 MS. WATSON: So we'll provide more information on  
19 that in our post-hearing comments. The concern with  
20 IFDA members is, when you have an employee delivering  
21 to a work site that is not controlled by their  
22 employer, what does that -- what does OSHA consider

1 readily accessible? And I think definitely some  
2 guidance from the agency on that would be helpful in  
3 any final rule. But we'll provide more information in  
4 post-hearing comments. Thank you.

5 MR. PATEL: Okay. Thank you. And my other  
6 question is you mentioned about that a supervisor or  
7 heat safety coordinator -- it is infeasible to have  
8 oversight on employees who are working alone or  
9 delivering food alone. What observation that employers  
10 can have over lone employees that are delivering food  
11 and are there any practices you engage in that you find  
12 effective?

13 MS. WATSON: Yes, sir. For that question, we'll  
14 provide more information in our post-hearing comments.  
15 Thank you.

16 MR. PATEL: Okay, thank you. And I have one more  
17 question about training. So you mentioned that your  
18 members already have many training procedures, and so  
19 would you anticipate many changes from -- as having  
20 existing training program that align with the training  
21 requirements as proposed in the NPRM?

22 MS. WATSON: So in the NPRM, there are 16 points

1       where employees need to be trained, plus additional  
2       training for supervisors, heat safety coordinators.  
3       And so our provision or our response would be taking a  
4       look at that and then going back to IFDA members and  
5       providing more information for you in post-hearing  
6       comments. We'd like to be a -- we'd like to take a  
7       thoughtful approach to that, but everyone agrees that  
8       training is, you know, certainly a part of this.

9               MR. PATEL: Thank you.

10              MR. SCHAYER: Okay, thank you. Stephen Schayer,  
11       again. I'd now like to turn to Tiffany DeFoe on the  
12       line with us.

13              MS. DEFOE: Hi. For the record, this is Tiffany  
14       DeFoe with the Directorate of Standards and Guidance,  
15       OSHA. Ms. Watson, in IFDA's comments to the proposed  
16       rule, they referred to some of your members' concerns  
17       about the proposed requirement for mandatory scheduled  
18       rest breaks. And they specifically referred to a  
19       concern that meeting the proposed break frequency could  
20       result in a hazard, depending on the tasks being  
21       performed. And I'm wondering if, either now or in  
22       post-hearing comments, if you could provide some

1 clarification and further information on what sort of  
2 hazards your members are concerned about and how  
3 meeting the proposed requirement for scheduled breaks  
4 could create those hazards?

5 MS. WATSON: Yes, that's something we'll  
6 definitely address in post-hearing comments, provide  
7 more thoughtful response and detail. Thank you.

8 MS. DEFOE: Thank you. And I'd also like to ask  
9 if IFDA could provide their thoughts on how OSHA could  
10 modify the proposed rest break requirements to allow  
11 the flexibility that would help to address your  
12 members' concerns, while still meeting protection goals  
13 for workers?

14 MS. WATSON: Yes, we'll also address that as part  
15 of that - that first question.

16 MS. DEFOE: Thank you very much. That's what I  
17 have.

18 MR. SCHAYER: Stephen Schayer, again, our final  
19 question for the panel comes from Zoe Petropoulos on  
20 the line.

21 MS. PETROPOULOS: Hi, Zoe Petropoulos with the  
22 Directorate of Standards and Guidance. You mentioned,

1 in your testimony, concerns with the triggers and  
2 concerns that OSHA didn't account for geography in the  
3 triggers. I'm curious if you could share information  
4 on the following question. How are IFDA members  
5 currently accounting for geography and variations in  
6 climate in their health and safety protocols? If you  
7 can share any details, examples, or descriptions of the  
8 data that IFDA members are currently using to make  
9 these determinations, that would be really appreciated.  
10 Thank you.

11 MS. WATSON: Thank you very much. We'll address  
12 that also in post-hearing comments.

13 MS. PETROPOULOS: Thanks so much. That's it for  
14 me.

15 MR. SCHAYER: Stephen Schayer, again. Thank you  
16 again, Ms. Watson, for your testimony. Your Honor,  
17 that concludes OSHA's questions.

18 JUDGE BELL: All right. Questions from the  
19 Solicitor?

20 MR. MOCZULA: No questions from the Solicitor.  
21 This is Daniel Moczula. Thank you very much for your  
22 time and testimony.

1 JUDGE BELL: Other questions for this witness?

2 MS. CARLON: Yes. We have one from Ms. Sokas.

3 Please state your name for the record.

4 JUDGE BELL: Dr. Sokas, go ahead please. If  
5 you're speaking, we are not able to hear you.

6 MS. SOKAS: I'm sorry, I can't --

7 JUDGE BELL: I can hear you now.

8 MS. SOKAS: Oh, great. Thank you. Thank you, Ms.  
9 Watson. I have a question, which is about performance-  
10 based standards. Typically, they require some metrics  
11 to show that, in fact, the performance is occurring.  
12 And usually for, you know, generic illness and injury  
13 prevention standards in some of the state plan states,  
14 that includes a lot of data on illness and injury. We  
15 know, for example, that there's a lot of underreporting  
16 for heat-related illness before you get to the heat  
17 stroke piece.

18 And I was just curious about what kinds of data  
19 collection would your members be able to do in order to  
20 show that a performance standard was actually  
21 performing? Examples could be anonymous surveys that  
22 take place, that it can identify whether or not there's

1 underreported illness and injuries that are declining,  
2 for example, based on the -- on the standard's  
3 performance. But that's the -- the question for  
4 follow-up really is what data would be available that  
5 would allow the -- the performance standard to be  
6 evaluated. Thank you.

7 MS. WATSON: Thank you. That is definitely a  
8 post-hearing comment response; I appreciate that. I'll  
9 go back to the client.

10 MS. SOKAS: Thank you.

11 JUDGE BELL: Any additional questions for Ms.  
12 Watson?

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

14 JUDGE BELL: All right. Ms. Watson, thanks very  
15 much for your testimony.

16 MS. WATSON: Thank you.

17 MS. CARLON: Next speaker group is the United Food  
18 & Commercial Workers Union, represented by Victoria  
19 Valentina and Rigoberto Lopez. Please state your names  
20 and your affiliation for the record.

21 MS. VALENTINA: Victoria Valentina and I am with  
22 the United Food & Commercial Workers Union as an

1 occupational health and safety specialist.

2 JUDGE BELL: Thank you for being here. Go ahead  
3 please.

4 MS. VALENTINA: Thank you, Judge Bell and OSHA  
5 staff, for the opportunity to speak on this critical  
6 matter. My name is Victoria Valentina, as I stated,  
7 and I am an occupational health and safety specialist  
8 at the United Food & Commercial Workers Union, or UFCW.

9 As the largest private sector union in the  
10 country, UFCW represents 1.2 million workers across the  
11 meatpacking, food processing, warehousing, grocery,  
12 nonfood retail, and healthcare industries. Many of our  
13 members experience extreme indoor and outdoor heat  
14 conditions on the job. UFCW strongly supports this  
15 proposed heat standard, and we'd like to reinforce that  
16 this standard is critical to protect the health and  
17 safety of our nation's hardworking people who keep our  
18 food, healthcare, and retail systems afloat.

19 UFCW supports a federal heat standard that  
20 protects indoor and outdoor workers, and we support a  
21 standard that requires employers to develop heat  
22 illness and injury prevention plans tailored to

1 specific worksites with various hazards that require  
2 specific controls. Additionally, we support a standard  
3 that promotes the involvement of employees and employee  
4 representatives in the hazard identification,  
5 development, and implementation stages for the heat  
6 illness injury prevention plans. We believe the  
7 hierarchy of -- we believe the standard shall place  
8 emphasis on the utilization of the hierarchy of  
9 controls in developing a comprehensive and truly  
10 protective heat injury and illness prevention plan.

11 I'd like to invite one of our members, Rigoberto  
12 Lopez, to provide his testimony. I'm honored to have  
13 him here to speak about his experiences as a union  
14 member in an industry that will be highly affected by  
15 OSHA's decision to either pass or not pass this rule.

16 JUDGE BELL: Mr. Lopez, go ahead please. If  
17 you're speaking, we're not able to hear you. We're  
18 still not able to hear you. Yes, yes. There you go.

19 MR. LOPEZ: Hi, my name is Rigoberto Lopez. I'm  
20 a -- I'm a steward in the Local 222. And this is --  
21 this is my experience working in the harvest department  
22 during the hot weather.

1           Working in the harvest department during the  
2           summer is like walking in the -- walking into a  
3           furnace. From the moment you step into the floor, the  
4           heat hits you in the face and it doesn't let up. It's  
5           even worse in areas like de-hair, the gam table, and  
6           hanging hogs. These sections are always hot, but in  
7           the summer it's almost unbearable.

8           The boilers release -- release constant wave of  
9           steam that fills the air, making it feel thick and  
10          heavy. You can't breathe easily and sometimes you  
11          can't even see clearly. The steam mixes with the --  
12          with the body heat, the blood, and sweat. It creates a  
13          foggy, suffocating environment.

14          There aren't enough fans. The few we have don't  
15          do much. You might feel small -- a small breeze if  
16          you -- if you stand direct in front of one, but  
17          otherwise you're just roasting. The air doesn't  
18          circulate, it just sits there, hot and damp.

19          And the worst part? There's no cooling system in  
20          place to deal with any of it. I've seen good workers  
21          pass out from the heat. I felt dizzy myself more than  
22          once. You can be standing in the gam table or guiding

1 carcasses, hanging hogs, and suddenly someone drops.  
2 It's scary sometimes. There's no warning; they just  
3 collapse.

4 The de-hairing area is a pressure cooker. The  
5 heat of the machinery, the moisture in the air, the  
6 nonstop motion -- it's draining, no matter how tough  
7 you are. This kind of environment wears you down. We  
8 need a change. We need proper cooling systems. Not  
9 just fans, but something designed to fight the extreme  
10 heat and heavy steam. Not just for comfort, but for  
11 safety. Because when you're constantly losing workers  
12 to heat stress, you're -- you're not just slowing down  
13 production; you're risking lives.

14 We show up in our -- to -- we show up and do our  
15 jobs. We take pride in our work. But we need support.  
16 We need leadership to recognize the dangers and make --  
17 make this a safer place to work, especially during  
18 those long, hot summer months. Thank you for your  
19 time.

20 JUDGE BELL: Thank you, Mr. Lopez. Questions for  
21 this panel from the OSHA room, please?

22 MR. SCHAYER: Yes. Your Honor, this is Stephen

1 Schayer from OSHA. We do have some questions. First,  
2 thank you to Ms. Valentina and to Mr. Lopez for your  
3 testimony. I'd like to turn to Jonathan Berr on the  
4 panel here for the first question.

5 MR. BEARR: Jonathan Berr, Directorate of  
6 Standards and Guidance. In your submitted comments,  
7 you note that there were -- there are at least seven  
8 prominent languages spoken among your members. And you  
9 did highlight that there was one UFCW-represented  
10 meatpacking facility where there were over 20 languages  
11 spoken. I have two questions. Do you find it  
12 reasonable to require that the health injury and  
13 illness prevention plan is made available in a language  
14 that all employees, the supervisor, and heat and safety  
15 coordinators understand?

16 MS. VALENTINA: Yes. Thank you, Mr. Berr, for  
17 your question. We believe that the heat -- heat  
18 illness and injury prevention plan should at least be  
19 made available in the two most common languages that  
20 our workers -- or our members speak, which is English  
21 and Spanish. If the written HIIPP cannot be made  
22 available in all 20 languages -- because we understand

1       that that is a big ask and that requires, you know,  
2       funding for translators -- we at least require we  
3       require some effort to secure funding and to secure  
4       translators, if not through the written plan, someone  
5       who can come in and talk to the workers and train them  
6       in the language that they speak, in a language that  
7       they can understand.

8               Because I don't think that workers that don't  
9       speak English or Spanish or one of the commonly spoken  
10      languages should just fall through the cracks simply  
11      because, you know, they don't speak that language. I  
12      think they deserve a comprehensive training just as  
13      much as everyone else in the plant or wherever their  
14      workplace is. And I'm happy to further address the  
15      logistics of this in post-hearing comments as well.

16             MR. BEARR: Thank you. And I guess sort of  
17      working off of that. Currently, how are employers  
18      ensuring that your members understand safety and health  
19      information not pertaining to the current hazards that  
20      are being -- that are being discussed, when they speak  
21      a primary language other than English or Spanish?

22             MS. VALENTINA: Yes. I would like to address that

1 further in the post-hearing comments. We represent so  
2 many facilities. And each workplace is so different in  
3 how they address training and how they conduct training  
4 for their workers. So that's something I'm happy to --  
5 to talk to more of our -- our employers about, see how  
6 they -- how they've been doing that and if they've been  
7 successful in doing so.

8 MR. BEARR: Thank you. I have one more question.  
9 This is about definitions. In your written comments,  
10 you noted that OSHA should consider adding a definition  
11 of heat-related -- work-related heat illness to the  
12 regulatory text. You noted that this would better  
13 protect workers. Can you please elaborate on why you  
14 think OSHA should add this definition?

15 MS. VALENTINA: I -- yes. I'm happy to address  
16 that further in post-hearing comments.

17 MR. BEARR: Thank you. Steve?

18 MR. SCHAYER: Okay, thank you. Stephen Schayer,  
19 again. We do have some questions from the panel on  
20 rest breaks as well. So I'd like to turn to Tiffany  
21 DeFoe for those questions.

22 MS. DEFOE: Hi. This is Tiffany DeFoe with the

1 Directorate of Standards and Guidance, OSHA. Ms.  
2 Valentina, Mr. Lopez, thank you for your testimony. I  
3 have two questions, both of which you may want to take  
4 back to your membership for post-hearing comments. But  
5 also feel free to speak here in the hearing if you'd  
6 like.

7 First, OSHA has received a number of comments that  
8 the proposed requirements for mandatory rest breaks  
9 every two hours are too inflexible for some workplaces.  
10 And the suggestions that we've received about how the  
11 commenters believe they should be modified are mostly  
12 either that -- either that any requirement for  
13 mandatory rest breaks should provide more flexibility  
14 for how frequently rest breaks are scheduled, or that  
15 that a final rule should eliminate any requirements for  
16 mandatory scheduled rest breaks and instead rely on  
17 allowing workers rest breaks as needed to prevent  
18 overheating. I'd like to know if members of your  
19 organization would like to give any thoughts on these  
20 suggested changes to the proposed rule.

21 MS. VALENTINA: Yeah. Thank you for your  
22 question, Ms. DeFoe. We would address them -- we

1 will -- we would like to address the majority of this  
2 in the post-hearing comments. But yes, we would like  
3 to address that in the post-hearing comments.

4 MS. DEFOE: Thank you. And a related question.  
5 So in the comments that we've received requesting more  
6 flexibility in rest break requirements, one of the  
7 issues that commonly comes up is that there are some  
8 kinds of jobs or work processes that, even if an  
9 employer is happy to allow workers to take rest breaks  
10 in general, there are processes that -- where taking  
11 rest breaks in the middle of the process can be  
12 infeasible due to the nature of the work process and/or  
13 the -- you know, there might be safety risks involved  
14 just kind of reasons that they're saying are not sort  
15 of at the discretion of the employer.

16 And I'm wondering if -- if your membership cares  
17 to comment, in members' experience, are there types of  
18 work where taking breaks can be difficult to do for  
19 reasons -- for the kind of logistical feasibility or  
20 safety reasons -- when they need a break from the heat?  
21 And if your membership is aware of -- of work processes  
22 like that, if they can describe the difficulties and

1 any suggestions that they could make to how changes to  
2 the work process, staffing process, what could be done  
3 to -- to kind of create a situation where it's easier  
4 logistically to take breaks?

5 MS. VALENTINA: Absolutely. Thank you, Ms. DeFoe,  
6 for your question. And Rigo, feel free to -- to motion  
7 for us to address this in the post-hearing comments.  
8 But I know you work in the plant and harvesting, and if  
9 you have any -- if you have anything you'd like to  
10 share about the breaks or the how management sets up  
11 breaks in your plant and whether you feel it's -- it's  
12 feasible or not or whether you feel it's effective,  
13 you're welcome to. Do you have anything to share,  
14 Rigo?

15 MR. LOPEZ: I'll provide more information in the  
16 post-hearing comments.

17 MS. VALENTINA: Okay.

18 MS. DEFOE: I would appreciate it. That's all I  
19 have.

20 MS. VALENTINA: Thank you.

21 MR. SCHAYER: Thank you. Stephen Schayer, again.  
22 We would like to turn to Brenda Finter in the room

1           here.

2                   MS. FINTER:   Good morning.   Brenda Finter, OSHA  
3           Directorate of Standards and Guidance.   I have two  
4           questions for you.   One, could you tell us more about  
5           any controls that employers in your covered industries  
6           have used to isolate radiant heat from heat generating  
7           processes?

8                   MS. VALENTINA:   From my multiple conversations  
9           with Rigo here, at least in his plant specifically --  
10          mind you we represent a lot of plants -- but in his  
11          plant specifically no, there has been -- there's been  
12          no evidence of employers isolating radiant heat or  
13          machines that produce a lot of radiant heat from the  
14          workers.   Rigo, do you have anything to add?

15                  MR. LOPEZ:   All I can say is it's really hot, and  
16          we just need help.   We need help from you guys, from  
17          OSHA.

18                  MS. FINTER:   If -- if you would like to provide,  
19          in post-hearing comment, if you're aware of anything  
20          other members are doing that has worked, we would love  
21          to get that information.

22                  MS. VALENTINA:   Absolutely.

1 MS. FINTER: Thank you. And my last question is  
2 if the air-conditioning malfunctions, how long should  
3 the system be allowed to be out of order before the  
4 scope exemption no longer applies?

5 MS. VALENTINA: We will address it in the post-  
6 hearing comments.

7 MS. FINTER: Thank you.

8 MS. VALENTINA: Thank you.

9 MR. SCHAYER: Thank you. Stephen Schayer, again.  
10 Just a few more questions, if you don't mind. The  
11 first is from Yasmine Daniels in the room.

12 MS. DANIELS: Thank you. Dr. Yasmine Daniels from  
13 the Directorate of Enforcement Programs, OSHA. Thank  
14 you again for your testimony, Ms. Valentina and Mr.  
15 Lopez. In your written comments, you stated that the  
16 standard should implement a requirement for employer  
17 reporting of heat-related incidents that occur at work.  
18 Either now or in your post-hearing comments, can you  
19 explain why you would like OSHA to require employers to  
20 develop a heat-related incident log, even if the  
21 incidents do not warrant a record on their OSHA injury  
22 and illness reporting forms?

1 MS. VALENTINA: Yes, we'd be happy to talk more  
2 about that in detail in our post-hearing comments.

3 MS. DANIELS: Thank you.

4 MR. SCHAYER: Okay. Stephen Schayer. And we do  
5 have a question from our economist, Rachel Carse on the  
6 line.

7 MS. CARSE: Hi. I just have one question about  
8 whether you have any data or information on the  
9 percentage of your members that are working in  
10 environments that have heat, such as those working  
11 outdoors, those working in facilities with inadequate  
12 climate control, and those working indoor with some  
13 type of radiant heat source either with or without  
14 climate control? So if you could, if you have that  
15 information and can share it in post-hearing comments  
16 we would appreciate it. Thank you.

17 MS. VALENTINA: Thank you. Yes, we will provide  
18 you with -- with that data in the post-hearing  
19 comments.

20 MR. SCHAYER: Thank you. Stephen Schayer. Our  
21 final question from the OSHA panel will be from Zoe  
22 Petropoulos.

1 MS. PETROPOULOS: Hi. Mr. Lopez mentioned in  
2 his -- oh, this is Zoe Petropoulos with the Directorate  
3 of Standards and Guidance. Mr. Lopez mentioned in his  
4 testimony that he's witnessed colleagues passing out or  
5 collapsing on the job. And I was wondering if you can  
6 share, now or in post-hearing comments, the frequency  
7 with which you've observed this and for instance, how  
8 often does it happen in a month, and among how many  
9 coworkers?

10 And I'm also interested if you could share any  
11 details, now or in post-hearing comments, what  
12 typically happens in these scenarios? Is there some  
13 sort of response from management or coworkers to cool  
14 workers or respond to these workers? And if so, what  
15 does that response look like typically? And for those  
16 questions, we'd be interested in experiences of the  
17 broader UFCW membership, not just Mr. Lopez's record.

18 MS. VALENTINA: Thank you, Ms. Petropoulos, for  
19 that question. Rigo, if you have anything to share  
20 about the frequency of people passing out in your  
21 plant, that would be great. If not, I am absolutely  
22 happy to do more walkthroughs, talk to members, and

1 talk about the frequency of these events, because it  
2 really is -- they're very serious. And it's a  
3 testament to how ineffective the heat action plans are  
4 in these plants, if there are any in place.

5 MR. LOPEZ: Yes, I'd like to talk about it. It  
6 usually happens every summer, so probably maximum of  
7 five people. Over this last week, somebody -- somebody  
8 fainted on the on the work and had to leave work. So  
9 it all depends on -- on the heat and the -- and the  
10 humidity of the workplace.

11 MS. VALENTINA: Thank you, Rigo. And like I said,  
12 I'm happy to provide more insight from other member  
13 experiences in the post-hearing comments.

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

15 MR. SCHAYER: Stephen Schayer, again. Thank you  
16 again to Ms. Valentina and Mr. Lopez for your testimony  
17 and for answering our questions. Your Honor, that  
18 concludes the questions from OSHA.

19 JUDGE BELL: Any questions from the Solicitor?

20 MR. MOCZULA: Daniel Moczula, for the Solicitor's  
21 Office. In your written comment, you address the need  
22 for anti-retaliation provisions. I was wondering, what

1       have your members' experiences been communicating about  
2       heat-related hazards and injuries to management and  
3       what the responses have been? You're welcome to do  
4       this in the post-hearing comment.

5               MS. VALENTINA: Yes, we will -- we will do so in  
6       the post-hearing comments. Thank you.

7               JUDGE BELL: Are there any other questions for  
8       these witnesses?

9               MS. CARLON: Yes, Your Honor, we have one from Ms.  
10       Shrestha. Please state your name for the record.

11              MS. SHRESTHA: Hello. My name is Ayusha Shrestha  
12       and I'm with the AFL-CIO. First off, thank you to Mr.  
13       Lopez and Ms. Valentina -- testimony. I have several  
14       questions. This will probably be more towards Mr.  
15       Lopez, but of course, if Ms. Valentina can answer as  
16       well, that'd be great. Number one, Mr. Lopez, you, in  
17       your testimony, mentioned the grueling heat conditions  
18       you work under. I was wondering if workers have access  
19       to clean water in your plant? What does management do  
20       in your plant to protect you in the heat?

21              MR. LOPEZ: No, we don't. We don't have access to  
22       clear water.

1 MS. SHRESTHA: Okay. And then you also mentioned  
2 a lack of -- oh, sorry. This is Ayusha Shrestha from  
3 the AFL-CIO. You mentioned a lack of fans in your  
4 plants. Do you have a properly functioning AC or  
5 cooling system in your plant at all right now? What --  
6 what does that look like right now for your --

7 MR. LOPEZ: The only cooling -- cooling that we  
8 have is -- the ones that are working, it's for the  
9 USDA. For the rest of us, for the workers, they don't  
10 work. They -- they -- they don't -- they don't give us  
11 any cool breeze or nothing at all. And on the fans,  
12 there's some people that are missing fans, and they  
13 don't even get the -- the air that they need.

14 MS. SHRESTHA: Okay. And thank you for that  
15 answer. And then lastly, can you talk about how your  
16 coworkers with health complications deal with the heat  
17 at work? Are they disproportionately affected?

18 MR. LOPEZ: Yes, mostly my coworkers, they have  
19 diabetes or high blood pressure or certain health  
20 issues. And the heat affects them a lot. So all they  
21 need is clear drinking water, fans, and take breaks.

22 MS. SHRESTHA: Thank you so much. That concludes

1 my questioning. Thank you to both of you.

2 JUDGE BELL: All right. Thank you very much for  
3 your testimony, and we'll look forward to your post-  
4 hearing comments.

5 MR. LOPEZ: Thank you.

6 JUDGE BELL: Thank you.

7 MS. CARLON: Next speaker is Lauren Williams.

8 Please state your name and affiliation for the record.

9 MS. WILLIAMS: My name is Lauren Williams, and I  
10 serve as Vice President of Government Relations for the  
11 National Association of Wholesaler-Distributors.

12 JUDGE BELL: All right. Ma'am, you can go ahead,  
13 please.

14 MS. WILLIAMS: Thank you. To start, I just wanted  
15 to thank you for holding the hearing, and we appreciate  
16 you taking the time to listen to our testimony. NAW is  
17 the national voice of wholesale distribution, an  
18 association comprised of employers of all sizes in  
19 national, regional, state, and local industry trade  
20 associations that employs over 6 million workers in the  
21 United States.

22 Ensuring safety is always paramount to our

1 industry and we share in OSHA's mission to protect our  
2 workers. We agree that heat can pose risks to workers  
3 in a range of workplaces around the country, and  
4 employers should protect workers from excessive heat.  
5 We have significant concerns with the inflexible, one-  
6 size-fits-all rulemaking that was proposed. NAW has  
7 provided robust comments on the proposed rule outlining  
8 these concerns.

9 For example, wholesaler-distributors operate  
10 warehouses -- wholesaler-distributors operate  
11 warehouses throughout the country. Some employers  
12 operating warehouses maintain climate-controlled  
13 places. Many have voluntarily implemented heat illness  
14 prevention plans. Although the specifics of these  
15 plans vary, the variance is attributable to the fact  
16 that warehouses store a wide range of products, many of  
17 which require distinct considerations. For instance,  
18 some products, such as over-the-counter drugs and food  
19 products, necessitate temperature controlled  
20 conditions, while others do not. In many instances, it  
21 is impractical to provide air-conditioning in  
22 warehouses. Instead, our members use large open garage

1 doors and fans to help regulate the temperature within  
2 their facilities.

3 The proposed standard is overly broad, covering  
4 all employers in all industries and all regions of the  
5 country, and therefore it fails to distinguish between  
6 the numerous workplaces it seeks to regulate. This is  
7 likely why workplace safety regulators in California,  
8 Colorado, Oregon, and Washington have drawn  
9 distinctions between indoor and outdoor work when  
10 promulgating heat stress standards.

11 OSHA held a small business advocacy review panel  
12 on the potential heat standard, ahead of issuing a  
13 proposal. Unfortunately, the agency did not take  
14 seriously the concerns that were outlined in the  
15 report. Had OSHA heeded these recommendations, it may  
16 have rightly concluded that a one-size-fits-all heat  
17 standard is unworkable.

18 The scope of the proposed rule before us today  
19 demonstrates how impractical -- and inflexible nature  
20 fails to distinguish between workplaces. For example,  
21 a provision that causes concern for employers is the  
22 mandatory rest break requirements. Members take

1 important steps to ensure that their employees are  
2 protected from excessive heat in the workplace, such as  
3 providing employees immediate access to air-conditioned  
4 break rooms and cool drinking water. Members know and  
5 understand from experience to ensure their employee  
6 safety by allowing needed breaks, while at the same  
7 time maintaining continuity of their business  
8 operations.

9 However, OSHA's proposal that requires 15-minute  
10 breaks at least every two hours creates significant  
11 operational challenges. In warehouse environment, you  
12 have trucks coming in and out to unload and load  
13 products at different times. Members stagger plan  
14 breaks to account for necessary production timing and  
15 other workplace duties. Unfortunately, the  
16 inflexibility of the proposed standard does not allow  
17 employers, especially those operating indoor  
18 facilities, to account for and manage employee heat  
19 breaks while minimizing impacts to production.

20 Another provision in the rulemaking I'm going to  
21 focus on is the heat safety coordinator, given the many  
22 questions our members have. The proposed rule would

1       require employers to designate one or more heat safety  
2       coordinators to implement and monitor the HIIPP. As  
3       written, it is unclear whether the position would need  
4       to be staffed year round or what other duties the  
5       coordinator can hold. Larger companies with safety  
6       teams could assign current staff, if OSHA allows  
7       flexibility. But for smaller businesses, the vague  
8       mandate could mean hiring entirely new personnel,  
9       despite OSHA's assertion that employers would not be  
10      required -- for this rule.

11           The rule doesn't even say what the safety  
12      coordinator is actually supposed to do beyond vague  
13      compliance with the HIIPP. OSHA's failure to define  
14      this role, or factor in the real cost of hiring,  
15      training, and keeping these coordinators is just one of  
16      the many reasons this rule should be withdrawn.

17           Lastly, OSHA has not demonstrated that excessive  
18      heat presents a significant risk of material harm in  
19      all workplaces and circumstances the rule would  
20      regulate and/or that the proposed rule would  
21      substantially reduce or eliminate heat-related risk.  
22      We support OSHA's goal of protecting employees from

1 excessive heat in the workplace, but OSHA must operate  
2 within legal parameters of its statutory grant.

3 Our members have instituted procedures, where  
4 appropriate, to protect employees from excessive heat  
5 and these plans are designed specifically for each  
6 particular location, type of work, and applicable  
7 employees. These uniquely tailored and voluntary  
8 programs stand in marked contrast to the enforceable,  
9 one-size-fits-all approach that OSHA takes with this  
10 proposal. For the reasons outlined today and in our  
11 comments, we would urge the agency to withdraw the  
12 proposed rule. Thank you for the opportunity to  
13 provide testimony here today.

14 JUDGE BELL: Ms. Williams, thank you very much.  
15 We're going to defer any questions that we have until  
16 we've heard the next speaker. Are you able to stay  
17 with us for a few more minutes?

18 MS. WILLIAMS: Absolutely.

19 JUDGE BELL: Okay. Thank you very much.

20 MS. CARLON: The next speaker is Edwin Egee.

21 Please state your name and affiliation for the record.

22 MR. EGEE: Yeah. Thank you. My name is Edwin

1 Egee, and I am Vice President of Labor and Employment  
2 Relations at the National Retail Federation.

3 JUDGE BELL: Go ahead, please.

4 MR. EGEE: Thank you, sir. And thank you, Your  
5 Honor. And thank you to the folks at the Occupational  
6 Safety and Health Administration. I'm proud to  
7 represent the National Retail Federation. Our members  
8 represent -- excuse me. Our members operate stores  
9 nationwide. We represent both the largest retailers in  
10 the country, as well as mom and pop stores with only a  
11 few employees. Let me start by thanking the leadership  
12 of OSHA for this opportunity, and I'm pleased to share  
13 the views of the retail industry regarding the  
14 Occupational Safety and Health Administration's  
15 activities concerning excessive heat in the workplace,  
16 including the previous administration's proposed  
17 regulation.

18 Retailers have long demonstrated a strong  
19 commitment to ensuring workplace safety. This includes  
20 the establishment of climate-controlled environments  
21 and the implementation of voluntary heat illness  
22 prevention plans. Last year in 2024, NRF in -- in

1 concert with our friends at the National Association of  
2 Warehousemen, filed extensive comments with the  
3 Occupational Safety and Health Administration, arguing  
4 that the Biden rule exceeded OSHA's authority and was  
5 overly broad and essentially unworkable. NRF will  
6 continue to assert that OSHA has not provided  
7 sufficient evidence to demonstrate that excessive heat  
8 constitutes a significant risk in the workplace.

9 The proposed rule seeks to regulate what they  
10 consider to be a hazard, but is really a  
11 nonoccupational hazard. OSHA has failed to demonstrate  
12 that heat possesses a significant risk to all employees  
13 covered by the standard, considering the wide range of  
14 individual health factors that contribute to potential  
15 heat-related illnesses or injuries.

16 Unfortunately, there is a long history here of  
17 failed past OSHA rulemakings that are simply too broad  
18 and too burdensome and too unworkable to effectuate.  
19 This includes the ergonomic regulation from the late  
20 1990s and the COVID vaccine mandate from a few years  
21 ago. We do not want to see OSHA institute another one-  
22 size-fits-all approach that will -- that would be

1 detrimental to the economy, to employers, and to -- and  
2 to essentially everyone covered by the rule. The  
3 proposed regulation's standardized methodology is  
4 impractical given the diverse risks associated with  
5 excessive heat, which vary based on industry,  
6 geographical location, and the heat -- excuse me -- the  
7 health conditions of individual workers.

8 As I mentioned earlier, retailers across the  
9 country have already implemented significant, specific  
10 heat illness prevention plans. Each of these plans are  
11 particular to the nature of the workplace, and these  
12 programs better account for the nuances of individual  
13 workplaces. These programs would be undermined by the  
14 rigidity of the proposed rule.

15 The proposed rule's implementation would be  
16 challenging and costly for NRF members, requiring  
17 significant adjustments to existing operations. Some  
18 requirements, including extensive temperature  
19 monitoring and recordkeeping -- these requirements lack  
20 clarity, they're intrusive, and simply don't align with  
21 business realities. The costs related to these  
22 requirements are neither reasonable nor justified,

1 particularly considering existing General Duty Clause  
2 obligations. OSHA should further reconsider its  
3 approach, given the Supreme Court's decision in Loper  
4 Bright. As you know, that decision requires agencies  
5 to thoroughly consider the impact on the entire  
6 regulated community.

7 In closing, if OSHA decides to move forward with a  
8 rule, NRF remains committed to -- to supporting a rule  
9 that is feasible, flexible, and performance-oriented.  
10 NRF looks forward to working with our friends over at  
11 the Occupational Safety and Health Administration to  
12 effectuate such a rule. Thank you, and I thank you for  
13 the time and the opportunity to testify today.

14 JUDGE BELL: Thank you. Other questions from the  
15 OSHA room, either for Ms. Williams or Mr. Egee?

16 MR. SCHAYER: Yes, Your Honor. We do have some  
17 questions. Thank you, Ms. Williams and Mr. Egee for  
18 your testimony. I'm Stephen Schayer from OSHA. I just  
19 wanted to follow-up, Mr. Egee, on something you just  
20 said that the proposed rule would undermine existing  
21 heat-related safety programs that your members have,  
22 and your members already have taken proactive steps to

1 protect their workers. Could you please describe the  
2 steps that your members currently take and why you  
3 think the proposed rule would undermine them?

4 MR. EGEE: Yeah. Again, as I mentioned -- and we  
5 articulated this at length in our written testimony.  
6 You know, we feel like those -- those plans are  
7 tailored to each individual workplace. And given the  
8 importance of this issue for our membership, I'm happy  
9 to follow-up further in writing.

10 MR. SCHAYER: Okay. Thank you. And if possible,  
11 if any of your members are willing to share some of  
12 their plans in the post-hearing, I think that would  
13 help us to better understand, you know, where there's  
14 overlap and whatnot as well.

15 MR. EGEE: Yes, sir.

16 MR. SCHAYER: Okay. Thank you very much. Now I'd  
17 like to turn -- actually, I have one more question.  
18 Sorry. This is on the scope of the rule. In your  
19 comments, you discussed some concerns with the proposed  
20 exemption of short duration employee exposures at or  
21 above the initial trigger of 15 minutes or less in any  
22 60-minute period. So just wondering if you could

1 explain, now or in your post-hearing comment, how this  
2 proposed exemption could be more flexible, or how you  
3 propose it be -- it be changed to better address your  
4 concerns?

5 MR. EGEE: Yeah. And I'm happy to -- to defer to  
6 my friend from the National Association of Warehousemen.  
7 I would say -- you know, I would say for -- for most  
8 retailers, I think we were thinking about -- and we can  
9 articulate this further in writing, I think we were  
10 thinking about the employee who spends the vast, vast  
11 majority of the day indoors and then maybe has to pop  
12 out to service a customer in the parking lot or service  
13 a customer in the lawn and garden area, that kind of  
14 thing. That's what we were thinking about. But  
15 exactly how you approach that -- and again, I defer to  
16 Ms. Williams as well, if she has any comments. But you  
17 know, I -- you know, I think we can articulate that  
18 further going forward.

19 MR. SCHAYER: Great. Thank you very much. Ms.  
20 Williams, did you have any comments?

21 MS. WILLIAMS: No. I think we're just happy to  
22 expand upon that point in post-hearing comments. Thank

1           you.

2                   MR. SCHAYER:   Okay.   Thank you.   Now I'd like to  
3           turn to Zoe Petropoulos on the line.

4                   MS. PETROPOULOS:   Hi.   Zoe Petropoulos with the  
5           Directorate of Standards and Guidance.   I have two  
6           questions for you.   In your written comment, you  
7           expressed concerns with the monitoring requirements in  
8           paragraph (d) of the proposal.   Can you provide details  
9           or examples on how member employers currently monitor  
10          temperature or heat index at work sites?

11                  MR. EGEE:   Yeah, I think they would -- and I defer  
12          to Ms. Williams as well -- but I -- you know, I think  
13          there's a variety of -- of approaches there.   And I  
14          prefer to articulate them in writing.

15                  MS. WILLIAMS:   Yeah, I would -- I would agree with  
16          that.   I think -- in post-hearing comment.   I would  
17          just note, obviously, there are some standards already  
18          set in some of the states that our members are  
19          complying.   So we need to provide additional detail  
20          there.

21                  MS. PETROPOULOS:   Got it.   Actually that's -- you  
22          just made me think of a question based on what you

1       said. If you have any details or examples or any  
2       experiences from your member employers in those states  
3       about how they're complying with the rule and the rules  
4       in those states, we would be interested in more details  
5       you can share.

6           MS. WILLIAMS: Yeah. Happy to provide additional  
7       details. I know there were some compliance issues with  
8       some of the states as well. So happy to kind of share  
9       their experience.

10          MS. PETROPOULOS: Thank you. My other question  
11       was about emergency response and planning for  
12       emergencies. In your comment, you wrote that members  
13       already have emergency response plans in place and  
14       members already understand the need for advanced  
15       planning. But you also wrote that the proposed  
16       emergency response and planning provisions in the  
17       proposed rule provide challenges. And so we were  
18       wondering if you could provide some additional details  
19       as to what your member employers are already doing? So  
20       specifics from the plans that are already in place.  
21       And then also, if you could share how the provision, as  
22       proposed by OSHA, could potentially be modified to be

1 feasible for your member employers while also ensuring  
2 worker safety.

3 MR. EGEE: Yes, ma'am. I'd be happy to do so.  
4 And Lauren and I can actually write that one together  
5 in joint -- in joint comments, if that's all right.

6 MS. WILLIAMS: We -- additional comment.

7 MS. PETROPOULOS: That's it for me. Thank you so  
8 much.

9 MR. EGEE: Thank you ma'am.

10 MR. SCHAYER: Thank you. Stephen Schayer, again.  
11 Now I'd like to turn to Brenda Finter in the room here.

12 MS. FINTER: Good morning. Brenda Finter, OSHA  
13 Directorate of Standards and Guidance. Just one  
14 question. How often are vehicles not equipped with AC  
15 and what requirements for cooling areas should be put  
16 in place when a vehicle does not have AC?

17 MS. WILLIAMS: I guess I'll start. I think in  
18 general, from my understanding from our members, their  
19 vehicles are equipped with AC, but I would have to go  
20 back and kind of ask them some additional questions to  
21 provide you additional information there. So happy to  
22 answer that in post-hearing comment.

1 MS. FINTER: Thank you.

2 MR. EGEE: That's my experience as well.

3 MS. FINTER: Thank you.

4 MR. SCHAYER: Okay, thank you. Stephen Schayer,  
5 again. I would like to turn to Tiffany DeFoe.

6 MS. DEFOE: Hi. This is Tiffany DeFoe,  
7 Directorate of Standards and Guidance, OSHA. So in the  
8 joint comments that were submitted earlier to the  
9 record, you recommended that OSHA should withdraw the  
10 proposed rule for reasons that included your concerns  
11 about the proposed rest break requirements, which you  
12 stated would not allow employers to appropriately  
13 manage rest breaks in their facilities. Now, if OSHA  
14 does move forward with the rule that includes mandatory  
15 or as-needed rest break requirements, could you provide  
16 your thoughts, either now or in post-hearing comments,  
17 on what changes OSHA could make to the proposed  
18 requirements that would help address your concerns  
19 while still being protective of workers?

20 MR. EGEE: Absolutely. Yeah. No, I think that's  
21 a completely fair request. I think that's exactly  
22 something that we need to -- to engage upon with you,

1 and we're happy to do so in writing.

2 MS. WILLIAMS: Yeah, same. And I will just  
3 mention -- I think I mentioned this in my testimony  
4 here today. My conversations with members, if people  
5 are asking for a break due to heat-related, they are  
6 absolutely allowing them to take that break and to  
7 ensure their safety. But absolutely happy to go back  
8 and speak to our members about this and answer this in  
9 post-hearing comments.

10 MS. DEFOE: Thanks so much. And one more  
11 question. In the joint comments, there was also a  
12 concern expressed about the potential for as-needed  
13 breaks to be used excessively or inappropriately. And  
14 we had a similar concern raised by a couple of earlier  
15 commenters in the hearing. One of them had a  
16 suggestion that OSHA should provide guardrails to --  
17 to -- in the form of nonmandatory guidance that would  
18 accompany a rule, that would give more discussion about  
19 what typical rest break use would look like and just  
20 other kinds of corollary discussion to help sort of  
21 normalize what -- what are the expectations around rest  
22 breaks for employers and employees. And I'm wondering

1 if your organizations have thoughts they would like to  
2 share about whether such guidance could help address  
3 concerns about potential misuse of as-needed rest  
4 breaks? And if so, if there's any specific information  
5 that your organizations think it should include.

6 MR. EGEE: Yeah, absolutely. We did articulate  
7 that concern in in our written comments. And as far as  
8 recommendations going forward, we're happy to share  
9 some.

10 MS. DEFOE: That's all I have. Thank you so much.

11 MR. EGEE: Thank you ma'am.

12 MR. SCHAYER: Thank you. Stephen Schayer, again.  
13 Our final questions from the OSHA panel will be from  
14 Rachel Carse, on the line.

15 MS. CARSE: Hi, this is Rachel Carse from OSHA. I  
16 know we talked a little bit about sharing HIIPPs. And  
17 I just wanted to make clear to Ms. Williams, if you  
18 also have members' HIIPPs that you can share, we would  
19 appreciate that.

20 I was also wondering if you had an idea of what  
21 percentage of your membership has existing heat plans  
22 in place? If you have any estimates or information on

1       how common it is within your industry, we would  
2       appreciate that information.

3               MS. WILLIAMS: I don't have that off the top of my  
4       head. I would need to ask our members and submit that  
5       information to you in post-hearing comments. Thanks.

6               MR. EGEE: I'm sorry. I couldn't hear -- you  
7       broke up a little bit for me. How common what is in  
8       our industry?

9               MS. CARSE: Heat Injury Illness Prevention Plan.

10              MR. EGEE: Oh, yeah. Absolutely. Yeah.

11              MS. CARSE: And secondly, you mentioned air-  
12       conditioning and warehouses. And we're also interested  
13       in knowing what share of warehouses across your  
14       membership, have temperatures maintained below 80  
15       degrees?

16              MR. EGEE: Yeah, I think we mentioned that in the  
17       comments. Lauren, did we not?

18              MS. WILLIAMS: I don't think we go into detail  
19       around the percentages. That's certainly something we  
20       can try to get more detail on to provide you with.

21              MS. CARSE: Yeah, thanks. That would be great. I  
22       think the comment just mentioned that some. And if you

1 have any more specific information, we would appreciate  
2 that. Thank you.

3 MS. WILLIAMS: Thank you.

4 MR. SCHAYER: Okay. Thank you. This is Stephen  
5 Schayer, again. Thank you, Ms. Williams and Mr. Egee  
6 for your testimony today. And that concludes the OSHA  
7 questions, Your Honor.

8 JUDGE BELL: All right. Any questions from the  
9 Solicitor?

10 MR. MOCZULA: Daniel Moczula for the Solicitor's  
11 Office. Just one question. Mr. Egee, you mentioned  
12 that there was a lack of clarity in some of the  
13 proposed requirements for this OSHA standard. If, in  
14 your post-hearing comments, you could highlight these  
15 provisions and make recommendations to further add  
16 clarity, we would much appreciate it. Thank you.

17 MR. EGEE: Yeah, absolutely. We'd be happy to do  
18 so, sir.

19 JUDGE BELL: All right. Are there any other  
20 questions for these witnesses?

21 MS. CARLON: Yes, Your Honor, we have three. The  
22 first is from Ms. Arberry. Please state your name for

1 the record.

2 MS. ARBERRY: Hi. Chenay Arberry with the AFL-  
3 CIO.

4 JUDGE BELL: Go ahead please.

5 MS. ARBERRY: Oh, hi. My question is for either  
6 panelist. Sort of following the line of what Rachel  
7 Carse with OSHA just asked, when do your members -- or  
8 when did your members first write their heat illness  
9 prevention plans? Do you have any idea when they  
10 formulated?

11 MR. EGEE: I assume that happened at various times  
12 for various employers.

13 MS. WILLIAMS: Yeah. I don't have any specific  
14 information to share on that.

15 MS. ARBERRY: And so in following that, how do  
16 your members update their heat illness prevention plans  
17 since they were first developed?

18 MS. WILLIAMS: I mean, that's something we can  
19 certainly kind of dive into more in our post-hearing  
20 comments.

21 MS. ARBERRY: Great. And then do either of your  
22 entities ever evaluate the effectiveness of the heat

1 illness prevention plans?

2 MR. EGEE: Of course.

3 MS. ARBERRY: And how often?

4 MR. EGEE: I mean, I think it depends on the  
5 employer, right? We represent thousands and thousands  
6 of businesses nationwide from, you know, two and three  
7 person operations to a massive employer. So it's hard  
8 for me to give a -- to give a standard response to that  
9 answer -- to your question.

10 MS. ARBERRY: That's all for me. Thanks, Your  
11 Honor.

12 JUDGE BELL: All right. Next question please.

13 MS. CARLON: Next question is from Ms. Valentina.  
14 Please state your name for the record.

15 MS. VALENTINA: Victoria Valentina with United  
16 Food & Commercial Workers Union.

17 JUDGE BELL: Welcome back. Go ahead with your  
18 question, please.

19 MS. VALENTINA: Thank you, Your Honor. My  
20 question is similar to the one that Ms. Carse asked.  
21 But you mentioned in your submitted comments that many  
22 of your -- many of your member companies have

1 implemented voluntary heat illness and injury  
2 prevention plans. And I was just wondering if you know  
3 the number and the percentage of your members that have  
4 voluntarily submitted these?

5 MR. EGEE: Yeah, I think we've already discussed  
6 that. It's just we have such a broad, broad  
7 membership, I can't possibly begin to give you numbers  
8 on these things.

9 MS. VALENTINA: Okay. That is all for me, Your  
10 Honor.

11 JUDGE BELL: Next question please.

12 MS. CARLON: Next is from Ms. Samii. Please state  
13 your name for the record.

14 MS. SAMII: Hello. My name is Nicole Samii,  
15 Senior Research Coordinator for United for Respect.  
16 How would workers be -- be protected against  
17 retaliation for reporting hot conditions, the need for  
18 a break, or having a heat-related illness in the  
19 absence of the proposed heat standard?

20 MR. EGEE: I'm sorry, could you repeat your  
21 question again?

22 MS. SAMII: How would workers be protected against

1       retaliation for reporting hot conditions, the need for  
2       a break or water, or for having a heat-related illness  
3       in the absence of the proposed heat standard?

4               MR. EGEE: I mean, I think -- and I don't want to  
5       speak for Ms. Williams, but I'd say our -- our members  
6       provide opportunities for employee engagement in a  
7       variety of different -- different respects. And again,  
8       it depends on the particular employer.

9               MS. WILLIAMS: Yeah, I would agree with that. And  
10       also, I would just note that employee safety is number  
11       one in all these facilities and firms. And protecting  
12       their safety is very important. So they take any type  
13       of concern extremely seriously.

14              MS. SAMII: Thank you.

15              JUDGE BELL: Any other questions for these  
16       witnesses?

17              MS. CARLON: Yes. Your Honor, we have one  
18       additional one from Mr. Lundegren.

19              JUDGE BELL: Mr. Lundegren, go ahead, please.

20              MR. LUNDEGREN: Thank you, Your Honor. This is  
21       Bruce Lundegren with the Office of Advocacy at the US  
22       Small Business Administration. Hi, Laura -- Lauren and

1 Ed, good to see you both. And I apologize, I missed  
2 the beginning of your statement. So I had another  
3 obligation.

4 But I wanted to ask you a two part question. One  
5 is dealing with this issue of hybrid work environments.  
6 OSHA's rule really deals with indoor and outdoor work  
7 environments. But I understand from talking with both  
8 of you about the nature of your work sites and that  
9 employees are continually moving, changing job tasks,  
10 moving indoors, moving outdoors. So how -- should the  
11 rule include some kind of hybrid work environment?

12 And then also, the second part is about  
13 impracticality, infeasibility, or creating a greater  
14 hazard. Are there aspects of your workplace where the  
15 rule as proposed would be either infeasible or  
16 impractical, or would create a greater hazard? Thank  
17 you.

18 MR. EGEE: Yeah, let me take the first one, and  
19 then I defer to my friend for the second one. I would  
20 say that, you know, in the first one -- and I  
21 articulated this to OSHA a minute ago -- is, we were  
22 thinking in terms of just, you know, imagine a large,

1 large hardware store where -- where employees come and  
2 go from the lawn and garden section, you know, for, you  
3 know, two minutes at a time, five minutes at a time,  
4 just very, very briefly. They go -- they leave the  
5 air-conditioned environment and go outside. We feel  
6 like the proposed rule from the Biden Administration  
7 didn't -- didn't properly address the de minimis nature  
8 of that exposure to heat. And it's something we -- we  
9 certainly would be eager to work with the  
10 administration on going forward.

11 MS. WILLIAMS: Yeah. Thank you, Bruce. I -- I  
12 would agree. I think, you know, your point is well  
13 taken, right? And we talked about this, I think, in  
14 our comments. There are a lot of positions in which --  
15 like, for example, a driver that may be in an air-  
16 conditioned cab, but then has to get out and help  
17 unload or load a truck. So there are a lot of  
18 circumstances in which the rule, kind of as I  
19 mentioned, it's kind of a one-size-fits-all, and it  
20 really doesn't totally work for every environment,  
21 which makes compliance extremely difficult for an  
22 employer. So that is definitely something I think the

1 administration should consider.

2 And then regarding infeasibility and impractical  
3 things, I know I mentioned a couple today, and we're  
4 happy to kind of expand upon those examples in post-  
5 hearing comments. But there are certainly times where  
6 you can't just stop something as you're doing it,  
7 because it may create a bigger safety concern for the  
8 workers -- the worker themselves or the workers around  
9 them. So that is something that we can kind of expand  
10 upon as typical scenarios, but that -- that is  
11 something that should be considered.

12 JUDGE BELL: Mr. Lundegren, you're muted.

13 MR. LUNDEGREN: Thank you Lauren. And this is  
14 Bruce Lundegren again. And I wanted to ask you a  
15 follow-up. You talked about a de minimis, you know,  
16 exception to the rule. There is there is a provision  
17 in there that says that it only kicks in if you've been  
18 exposed for more than 15 minutes in a 60-minute period.  
19 Does that satisfy your concerns or is that not  
20 adequate? Or does it just -- just too -- too  
21 prescriptive in nature?

22 MR. EGEE: Yeah, it's very prescriptive. And

1       again, we don't want -- you know, similar to -- I'm  
2       thinking about the, you know, the dual jobs rule that  
3       the past administration came out with, where you would  
4       essentially have to have, you know, every employee  
5       equipped with a stopwatch or recording their time and  
6       that, you know, in various -- in various scenarios.  
7       Again, that's just administratively burdensome. We're  
8       happy to work with the administration to find something  
9       that that makes sense in that area.

10           MR. LUNDEGREN: Okay. Thank you both, I  
11       appreciate it. Thank you, Your Honor.

12           JUDGE BELL: Thank you. Any other questions for  
13       these witnesses?

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

15           JUDGE BELL: All right. Thanks very much for your  
16       testimony. We appreciate it.

17           MR. EGEE: Thank you guys.

18           MS. CARLON: The next speaker is Jeffrey  
19       Atteberry. Please state your name and affiliation for  
20       the record.

21           MR. ATTEBERRY: Good morning. I'm Jeff Atteberry,  
22       Senior Policy Advisor in Upstream at the American

1           Petroleum Institute.

2                   JUDGE BELL:   Mr. Atteberry, go ahead, please.

3                   MR. ATTEBERRY:   Thank you sir.   I'd like to first  
4           thank the Occupational Safety and Health Administration  
5           for the opportunity to speak at this morning's hearing.  
6           Today, I'm speaking on behalf of API's nearly 600  
7           members who produce, process, distribute the majority  
8           of the nation's energy.   In today's comments, I'll be  
9           reiterating API's position on whether a heat rule  
10          should exist at the federal level, how to regulate  
11          extreme heat at the federal level in our opinion, and  
12          how -- and our high level concerns pertaining to the  
13          proposed heat injury and illness prevention rule.

14                  API does not oppose the idea of federal regulation  
15          protecting our industry's workers from the dangers of  
16          extreme heat.   Recognizing the grave significance of  
17          heat hazards in the workplace, we have made protecting  
18          workers against heat injury and illness a top priority.  
19          In fact, employers in the oil and gas industry have  
20          successfully managed the risk of heat for decades by  
21          incorporating tools such as OSHA-NIOSH Heat Safety Tool  
22          app, or OSHA's Heat Stress Guide into their

1 organization's own customized heat management programs.

2 Our comments, submitted in January of 2022 on the  
3 Advanced Notice of Proposed Rulemaking, highlight the  
4 regulation of extreme heat at the federal level. API  
5 indicated our preference was a federal standard that  
6 was flexible, performance-based, and backed by  
7 research. A flexible standard should encourage  
8 employers and employees to use technologies that  
9 measure and mitigate heat stress, as well as monitor  
10 acclimatization in individual workers, because  
11 individual monitoring is more effective in detecting  
12 and preventing heat stress.

13 In short, this rule is too expansive. It attempts  
14 to regulate numerous diverse industries with multiple  
15 operations, settings, and many geographic areas with a  
16 single rule. What works for the agricultural industry  
17 may not be what works for the oil and gas industry.  
18 Finally, unless the proposed rule is substantially  
19 changed, OSHA would create unnecessary burdens and  
20 stifle the creativity, innovation, individualized,  
21 performance-oriented solutions that the oil and gas  
22 industry seeks to foster.

1           Next, I'd like to focus on API -- API members' top  
2           three concerns with the current heat rule. These  
3           concerns include heat triggers, acclimatization, and  
4           breaks. Pertaining to heat triggers, in an effort to  
5           make the heat rule less prescriptive and less one-size-  
6           fits-all, the initial heat and high heat triggers could  
7           be eliminated. In the alternative, the triggers should  
8           be specific to a geographic region and consider local  
9           weather conditions and patterns.

10           Furthermore, as proposed, these thresholds are  
11           arbitrary and overly broad, because they do not  
12           consider the individualized factors that are important  
13           to heat to heat illness risk evaluations. As OSHA has  
14           acknowledged, the risk of heat stress also depends on  
15           external factors such as relative humidity, ambient  
16           temperature, access to cool locations, medical  
17           services, personal protective equipment being worn,  
18           ventilation, relative workload, metabolic work rate,  
19           clothing, and more. Eliminating OSHA's proposed  
20           triggers would allow an employer to factor in these  
21           important considerations, such as the geographic region  
22           and recent weather conditions and patterns.

1           Should OSHA retain the initial and high heat  
2           triggers in the final rule, it should do so in a way  
3           that is specific to the geographic region in question,  
4           as well as the recent weather conditions and patterns.  
5           For illustrative purposes, the low heat trigger could  
6           correspond to a location's P95 temperature, while the  
7           high heat trigger could correspond to a location's P98  
8           temperature. These values, by definition, would  
9           represent statistically extreme heat values at a -- at  
10          a specific location.

11          One final point on heat triggers. OSHA has  
12          examples of standards on heat that do not contain  
13          absolute thresholds. For instance, Nevada OSHA  
14          requires employers to conduct job hazard analyses  
15          instead of setting temperature thresholds. Under this  
16          approach, employers would assess working conditions  
17          when employees may be at risk of heat injury or illness  
18          and implement controls at their discretion to address  
19          those specific identified risks. OSHA should consider  
20          such workable alternatives that empower employers to  
21          assess working conditions and focus on exposures that  
22          present real risk to workers.

1           The second concern; new and returning worker  
2           acclimatization. OSHA should eliminate its  
3           prescriptive acclimatization mandates. Instead, any  
4           acclimatization requirement should be specific to  
5           geography, industry, and individual risk factors. API  
6           members agree that employers should help ensure that  
7           employees are acclimatized to the work environment.

8           However, the current provision is unjustified,  
9           inefficient and will prove to -- and will prove to be  
10          too challenging for numerous oil and gas companies to  
11          operationalize. As with the heat triggers, OSHA should  
12          provide greater flexibility for employers to tailor  
13          their heat management efforts on acclimatization to  
14          their particular workplace and employee populations.

15          OSHA has significantly underestimated the impact  
16          of its acclimatization provisions on the oil and gas  
17          industry. The industry relies on a rotating workforce  
18          that works roughly 14 days on, followed by 14 days off.  
19          This schedule could vary such that a worker is  
20          regularly is regularly off for slightly more than 14  
21          days at a time, thus subjecting that worker to a -- to  
22          a curtailed work schedule for the first several days

1           upon their return.

2           Beyond concerns related to inefficiencies, we  
3           foresee greater hazard to workers' safety if a  
4           significant portion of the workforce is acclimatizing  
5           under OSHA's proposed rule. More workers would be  
6           needed in small and safety sensitive work environments,  
7           or alternatively, additional work burden would be  
8           spread to the remaining portion of the workforce that  
9           is not on the acclimatization plan.

10          Many in the oil and gas industry work in limited  
11          settings, where more space cannot be made for more  
12          workers. The oil and gas industry understands the  
13          hazards associated with heat and has successfully  
14          managed them for decades with industry tailored  
15          methods. OSHA should provide greater flexibility in  
16          its acclimatization provision for employers to adapt  
17          their heat management efforts to their particular  
18          worksite operations and worker population.

19          Finally, OSHA's acclimatization provisions do not  
20          account for the fact that workers in different  
21          geographies will have different levels of baseline  
22          acclimatization to their environment. For example, a

1 new worker in the Permian Basin, who previously lived  
2 or worked in Texas, might already be acclimatized to  
3 their work environment.

4 Similarly, a worker who is away from work for more  
5 than 14 days, may have been in an environment during  
6 those 14 days that mimics or is even hotter and more  
7 humid than their work environment. There are a myriad  
8 of reasons why a worker, new or existing, might already  
9 be acclimatized to the work environment and would not  
10 need to gradually acclimatize again. These reasons  
11 need to be accounted for in a proposed rule.

12 Finally, regarding cooling breaks, OSHA should  
13 amend its overly frequent break provisions to allow  
14 performance-oriented, good faith use of breaks.  
15 Currently, the language on -- of the heat rule appears  
16 to provide employees with significant access to breaks  
17 as needed. Instead of using this language, employers,  
18 in conjunction with labor -- labor force and any  
19 authorized bargaining representatives, should be  
20 provided the flexibility to determine when breaks will  
21 best suit their workforce and operations, especially as  
22 it pertains to well control and safety.

1           Additionally, the heat rule should require  
2           employees to act in good faith in requesting and taking  
3           those breaks. As it stands, the heat rule would  
4           entitle a worker performing a job that requires low  
5           physical exertion to significant breaks if their work  
6           area is at a heat index of 80 degrees, so the initial  
7           heat threshold is triggered. But a worker performing a  
8           job that requires high physical exertion would not be  
9           entitled if their work area has a heat index of only 79  
10          degrees. A more performance-oriented requirement would  
11          eliminate this paradox. At the very least, the rule  
12          should be revised to require workers to act in good  
13          faith in requesting breaks, and acknowledge that  
14          employers will have to evaluate these requests based on  
15          current safety conditions at the time.

16                 In conclusion, these are the top three concerns  
17          API has with the current proposed heat rule. Our full  
18          comment letter contains additional points, as well as  
19          areas of the proposed rule flagged as ambiguous or  
20          inaccurate. API and its members stand ready to work  
21          with OSHA on a new rule, or create our own standard  
22          that applies specifically to our industry and can be

1 incorporated by reference.

2 In the meantime, regardless of rulemaking,  
3 employers in the oil and gas industry will continue to  
4 manage heat-related risks in a responsible, safety  
5 focused ways for their operations. This concludes my  
6 remarks. Again, I'd like to thank OSHA for the  
7 opportunity to speak.

8 JUDGE BELL: Mr. Atteberry, thanks very much.  
9 Questions from the OSHA room?

10 MR. SCHAYER: Yes. Your Honor. This is Stephen  
11 Schayer from OSHA. We do have some questions. Thank  
12 you, Mr. Atteberry, for your testimony. And we  
13 appreciate you proposing some alternatives. And if  
14 it's okay, I'd just like to ask some clarifying  
15 questions on the ones that you had about triggers.

16 MR. ATTEBERRY: Sure.

17 MR. SCHAYER: So in your testimony, you mentioned  
18 using the 95th percentile and 98th percentile  
19 temperatures as the triggers, one as the initial heat  
20 trigger, one as the high heat trigger to account for  
21 local conditions and geography conditions or  
22 geographical considerations. I'm wondering, are you

1       aware of employers who already take an approach like  
2       this at all?

3               MR. ATTEBERRY: I am not, but I'm happy to take  
4       that question back to my members and follow-up in post-  
5       hearing comments.

6               MR. SCHAYER: Okay, great. Thank you. And the  
7       second question was just about sort of the sources of  
8       this information. I'm wondering if you had any  
9       thoughts on what sources employers could use to find  
10      the 95th percentile or 98th percentile, or if you were  
11      thinking that they would kind of have to track the  
12      temperatures themselves and then calculate, you know,  
13      on their own?

14              MR. ATTEBERRY: I know in -- I believe the rule  
15      references the option to use, like the nearest National  
16      Weather Service weather gauge. And oftentimes that  
17      will have a historic level of data. You know, I think  
18      that could be a reasonable source for -- for trusted  
19      data information or weather information there.

20              MR. SCHAYER: Okay, I see. Yeah. Okay. And so  
21      just wondering if you think this would then be -- I  
22      guess I'm just wondering about the feasibility for --

1       for small employers, you know, to do this. But we do  
2       appreciate the suggestion.

3               MR. ATTEBERRY: Yeah, I understand. Thank you.

4               MR. SCHAYER: Yeah. If you have any more thoughts  
5       on that, you know, we'd appreciate it in the post-  
6       hearing comments.

7               MR. ATTEBERRY: Absolutely. I'll touch base with  
8       my members.

9               MR. SCHAYER: Sure. Thank you. In the second --  
10       or in another alternative that you mentioned in your  
11       written comments, but not in the testimony, you had  
12       proposed, actually, two alternatives for absolute heat  
13       triggers. So saying that if OSHA were to keep them, it  
14       should either increase the triggers -- and you  
15       suggested as an example, 85 degree heat index at the  
16       initial heat trigger and 100 degree heat index at the  
17       high heat trigger -- or keep only the initial heat  
18       trigger and then make the remainder of the rule  
19       performance-oriented.

20               So just had some questions about both of these  
21       approaches. In the first one of setting triggers of 85  
22       and 100 degrees heat index, do you have any evidence

1       that you could point to that could be used for OSHA  
2       to -- to justify these triggers?

3               MR. ATTEBERRY: I'll need to follow-up -- I'll  
4       need to follow-up in post-hearing comments, please.

5               MR. SCHAYER: Okay, thank you. That would be very  
6       helpful, if you can provide anything. On the second  
7       one, where you had suggested keeping the initial heat  
8       trigger but then making the remainder of the rule  
9       performance-based, I'm just wondering if you could talk  
10      a little bit more about how you would envision that to  
11      work? For example, if OSHA were to take this approach,  
12      would the controls at the initial heat trigger in the  
13      proposed standard still apply? So these would  
14      essentially be the paragraph (e) controls that we had  
15      requirements at or above the initial heat trigger. And  
16      then, if I understand correctly, that employers would  
17      be required to determine when and how to implement  
18      controls at a high heat trigger that they determine?  
19      Is that how you kind of envision it working?

20              MR. ATTEBERRY: I believe so, yeah. But again,  
21      I'd like to follow-up and polish up that aspect in --  
22      in post-hearing comments, please.

1           MR. SCHAYER: Sure, perfect. Yeah, any  
2           information you could provide on these alternatives  
3           would be very helpful. And you know, I hope you don't  
4           mind the questions. We -- we really appreciate you  
5           suggesting alternatives and would like to just get as  
6           much information, as much clarifying information about  
7           them as possible.

8           MR. ATTEBERRY: Absolutely. We stand ready to  
9           support it. Absolutely.

10          MR. SCHAYER: Okay. Thank you, Mr. Atteberry.  
11          Now, I'd like to turn to Jason Hammer.

12          MR. HAMMER: Hi. Jason Hammer with the  
13          Directorate of Standards and Guidance. Thank you for  
14          your testimony, Mr. Atteberry. I have a couple  
15          questions. My first question is related to  
16          acclimatization. So in your written comment and in  
17          your testimony, you indicated that OSHA does not need  
18          to impose any specific measures to accomplish the goal  
19          of acclimatization, and said OSHA should instead allow  
20          employers to conduct a job hazard analysis to identify  
21          real risk and tailor its response to the specific  
22          factors in play. Can you, either now or in post-

1       hearing comments, describe how this approach would help  
2       new and returning workers become acclimatized?

3               MR. ATTEBERRY: I'm happy to follow-up on that in  
4       post-hearing comments. Thank you.

5               MR. HAMMER: Great. Thank you. And my second  
6       question is related to one of the proposed scope  
7       exemptions. So in your written comment, you refer to  
8       heater treater buildings which meet the initial heat  
9       trigger. Can you further explain the conditions and  
10      processes inside these buildings and other indoor areas  
11      where workers are exposed to radiant heat sources, and  
12      just how employers are currently protecting workers  
13      from heat exposure in these areas?

14              MR. ATTEBERRY: Yeah. Can I follow-up with my  
15      downstream refining folks and follow-up in post-hearing  
16      comments? Thank you.

17              MR. HAMMER: Of course. Yep, thank you. That's  
18      it for me, Steve.

19              MR. SCHAYER: Okay. Thank you. Now I'd like to  
20      turn to Tiffany DeFoe.

21              MS. DEFOE: Hi, this is Tiffany DeFoe with the  
22      Directorate of Standards and Guidance, OSHA. Mr.

1       Atteberry, first, I want to echo Steve, and  
2       expressing -- thank you very much for providing your  
3       feedback on the -- on the topics that you have and --  
4       and my question area on rest breaks in particular.

5               MR. ATTEBERRY:   Yes.

6               MS. DEFOE:   Sorry.   So you had -- in your written  
7       comments, you had given some recommendations that any  
8       rest break requirements should be performance-oriented,  
9       that those requirements should be revised to require  
10      workers to act in good faith in requesting breaks, and  
11      to acknowledge that employers will have to evaluate  
12      requests based on the information available to them at  
13      the time.   And to make sure that we're fully  
14      understanding your intent in the feedback that you're  
15      giving, I wonder if it would be possible to provide any  
16      specific changes to the language of the rule that you  
17      think would capture your intent?

18              MR. ATTEBERRY:   I think allowing the flexibility  
19      to account for conditions within the workplace.   You  
20      know, I'm thinking from a well control safety  
21      standpoint.   Like if -- as an example, if I'm on a  
22      drilling rig and we're at a critical point where Mother

1 Nature gives us a kick and there is a well control  
2 issue and we -- we meet up on our time of having to  
3 take a break. I think having the flexibility and  
4 having the, you know -- you know, having that option to  
5 say, hey, the well -- you know, for other -- for  
6 safety's sake, for -- from a well control standpoint,  
7 it's more important to -- to -- to get that under  
8 control. I think that's the type of flexibility we're  
9 looking for. But again, I'm happy to polish that  
10 response up in -- in -- in post-hearing comments.

11 MS. DEFOE: Thank you very much. Yeah, sometimes  
12 we -- we think we understand what -- what a person is  
13 intending to say. And then if you provide the exact  
14 language that sort of represents what you're thinking  
15 of, that will make sure that we -- that we understand  
16 correctly.

17 MR. ATTEBERRY: Of course.

18 MS. DEFOE: And then also, with reference to the  
19 performance-oriented aspect, if you have any thoughts  
20 about how performance should be evaluated when creating  
21 a performance-oriented standard for rest breaks, that  
22 would be appreciated.

1 MR. ATTEBERRY: Okay. And I'm happy to follow-up  
2 in post-hearing comments there as well.

3 MS. DEFOE: And then I -- you had also, in your  
4 comments, talked about how employers in the oil and gas  
5 industry are already implementing processes to allow  
6 rest breaks on as-needed basis or on more fixed work  
7 schedules to mitigate heat hazards. And I'm wondering  
8 if -- if there are any examples that -- that you  
9 might -- you or your members might be able to provide  
10 of rest break schedules policies that represent  
11 successful mitigation of heat hazards in the industry?

12 MR. ATTEBERRY: I'm happy to take that question to  
13 my members and -- and provide some specific examples to  
14 you all in post-hearing comments. Yes.

15 MS. DEFOE: Thank you. And just based on your  
16 testimony just now, any also examples of the job hazard  
17 analyses that you mentioned and how these are used to  
18 determine what appropriate measures are in a particular  
19 workplace?

20 MR. ATTEBERRY: Absolutely. Happy to follow-up.  
21 Thank you.

22 MS. DEFOE: Thank you very much. That's all I

1 have.

2 MR. SCHAYER: Thank you. Stephen Schayer, again.  
3 I'd now like to turn to Brenda Finter in the room.

4 MS. FINTER: Good morning. Brenda Finter, OSHA  
5 Directorate of Standards and Guidance. In your written  
6 comments, you mentioned lack of flexibility for the  
7 break area requirements, specifically in areas like the  
8 North Slope of Alaska. What controls do employers in  
9 your industry currently use? For instance, can  
10 employers use portable shade sources such as pop up  
11 canopies or tents? And if not, why not?

12 MR. ATTEBERRY: Yes, employers can use that. And  
13 I think, you know, the specific aspect of the North  
14 Slope was really in referencing our heat triggers  
15 themselves and how -- how infrequent the North Slope of  
16 Alaska meets those -- those heat triggers. And I think  
17 our -- our -- our letter questioned the -- the  
18 relevance of the application of a heat law up on the  
19 North Slope, given the infrequency. I believe it's  
20 what, 17 days in the past 26 years or -- it was  
21 something extremely, extremely rare. In fact, I know  
22 in the last two years, it has not -- there has not been

1 a heat index that has exceeded 80 degrees at a weather  
2 reporting station in North Slope. So but I'm happy to  
3 take that question and follow-up more in post-hearing  
4 comments.

5 MS. FINTER: And either now or in post-hearing  
6 comments, could you please discuss your experience with  
7 the feasibility of using shade or any alternatives  
8 you've used?

9 MR. ATTEBERRY: I'm happy to touch on that in  
10 post-hearing comments please. Thank you.

11 MS. FINTER: And in addition, are there any other  
12 types of structures OSHA should consider for use as  
13 shade?

14 MR. ATTEBERRY: I think my members have mentioned  
15 misters as well, in addition to artificial sources of  
16 shade, but I can follow-up with them and polish that up  
17 in post-hearing comments.

18 MS. FINTER: Thank you. That's all I have.

19 MR. ATTEBERRY: Thank you.

20 MR. SCHAYER: Thank you. Stephen Schayer. Our  
21 final question from the panel will be Zoe Petropoulos.

22 MS. PETROPOULOS: I think my question was already

1 answered in one of his previous answers, so I'm good.

2 Thank you.

3 MR. SCHAYER: Okay.

4 MR. ATTEBERRY: Thank you.

5 MR. SCHAYER: Mr. Atteberry, thank you for your  
6 testimony and we look forward to any post-hearing  
7 comments you can provide. Your Honor, that completes  
8 the questions from the OSHA panel.

9 JUDGE BELL: All right. Thank you. Any questions  
10 from the Solicitor?

11 MR. MOCZULA: Daniel Moczula for the Solicitor's  
12 Office. No questions from us. Thank you for your  
13 testimony and time.

14 JUDGE BELL: Are there other questions for this  
15 witness?

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

17 JUDGE BELL: All right. Mr. Atteberry, thanks  
18 very much for your testimony.

19 MS. CARLON: Sorry, Your Honor, there is actually  
20 one that just was raised. Mr. Barab, please state your  
21 name for the record.

22 JUDGE BELL: If you're speaking, we're not hearing

1           you.

2           MR. BARAB:   Sorry.   This is Jordan Barab.   Is it  
3           my turn?

4           JUDGE BELL:   Yes, it's your turn.   Go ahead.

5           MR. BARAB:   Sorry, I was switching programs so I  
6           missed my introduction.   This is Jordan Barab.   Thank  
7           you for your testimony, Mr. Atteberry.   API -- I'm  
8           sure the API Institute and members are well aware of  
9           the process safety management standard, which I think  
10          is OSHA's probably best-known performance standard.  
11          And -- and it's been very successful in that arena  
12          because, you know chemical plants and -- and refineries  
13          are so complicated, so complex, of different sizes;  
14          it's impossible -- it would be impossible to do any  
15          kind of specification standard for that.

16          But along with that are -- is a -- is a great deal  
17          of work that employers at these chemical facilities  
18          have to do to show that they are actually protecting  
19          workers.   There's an enormous amount of documentation  
20          that has to be collected, an enormous amount of  
21          evaluation analysis and then oversight, reevaluation,  
22          possibly changing things.   It's a lot of work,

1        basically. I get the impression from those who are  
2        advocating for a performance-based standard in --  
3        around heat that all they -- you know, they imagine is  
4        just being, well, you know, you protect workers and you  
5        figure it out best. And you know, that'll be the end  
6        of it. Can you relate -- you know, a little bit  
7        describe the kind of work and the kind of evidence that  
8        you have to show OSHA or -- or just to comply with the  
9        standard, in order to be in compliance with -- with the  
10       process safety management standard?

11           MR. ATTEBERRY: Let me touch base with my  
12        downstream refining folks on that one and get back to  
13        you on -- and address that in post-hearing comments,  
14        please.

15           MR. BARAB: Okay. Thank you.

16           MR. ATTEBERRY: Of course.

17           JUDGE BELL: All right. Any other questions for  
18        this witness?

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

20           JUDGE BELL: All right. Mr. Atteberry, again,  
21        thank you. And we look forward to getting your post-  
22        hearing comments.

1           MR. ATTEBERRY: Absolutely, thank you. Have a  
2           good day.

3           JUDGE BELL: It's 11:55 Eastern Time. Have we  
4           arrived at our lunch break?

5           MS. CARLON: Yes, Your Honor.

6           JUDGE BELL: All right. So we'll be back at 1  
7           o'clock Eastern, correct? All right. I'll see you  
8           then.

9                       (Lunch break.)

10           MS. CARLON: This is Mariam Carlon from Abt  
11           Global, OSHA's contractor. It is 1 o'clock Eastern  
12           Time, and we are now rejoining OSHA's Informal  
13           Rulemaking Hearing for Heat Injury and Illness  
14           Prevention in 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  
20           left-hand corner of the application. You can  
21           individually select your caption language if  
22           translation is required.

1 I will now share the same slide in Spanish.

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

11 If you are speaking today, you will receive a  
12 notification on your screen that you are being promoted  
13 to the panelist group a few minutes before it is your  
14 time to provide testimony. Once promoted to the  
15 panelist role, you will be able to unmute and turn on  
16 your camera. We ask that you do not unmute or turn on  
17 your camera until your name has been called, and you've  
18 been asked to start your testimony.

19 Speakers connected by telephone should unmute  
20 their phones when called to testify. If you have  
21 submitted a presentation in advance, we will share the  
22 file and advance the slides. Please cue us verbally by

1 saying "next slide" when you need us to advance.

2 Depending on timing, there may be opportunity to  
3 ask questions of other speakers giving testimony. You  
4 may press the raise-hand button at the bottom of the  
5 Webex application to indicate that you have a question.  
6 If there is time, you will be called on by name and  
7 promoted to the panelist group to unmute and ask your  
8 question. If you are having any technical  
9 difficulties, please send an email with your name and  
10 phone number to [public\\_hearing@abtassoc.com](mailto:public_hearing@abtassoc.com).

11 Now we will continue with our public testimony.  
12 The expected speaking order is currently displayed on  
13 the screen. I will be introducing each speaker in  
14 turn. Please speak slowly and clearly so our court  
15 reporter can record these proceedings accurately.

16 The first speaker will be Karla Segundo. Please  
17 state your name and affiliation for the record.

18 MS. SEGUNDO MARTINEZ: Thank you. Good afternoon.  
19 Can you guys see me and hear me okay?

20 JUDGE BELL: We can both see you and hear you just  
21 fine. Go ahead, please.

22 MS. SEGUNDO MARTINEZ: Thank you, Judge.

1           Good afternoon, OSHA representatives and Judge  
2           Bell. I am Karla Segundo Martinez, Senior Manager of  
3           Government Relations at the National Association of  
4           Landscape Professionals, NALP. I manage various  
5           subjects that affect the lawn and landscape industry at  
6           the federal level, including OSHA. I also led the  
7           submission of our comments on the proposed standard for  
8           Heat Injury and Illness Prevention back in January.

9           NALP is a national trade association representing  
10          an industry of more than one million landscape, lawn  
11          care, tree care, and irrigation professionals in the  
12          United States, Canada, and overseas. We are committed  
13          to advancing the industry and helping our members  
14          succeed through advocacy, education, networking,  
15          training, and professional development.

16          Our members are all over the United States and  
17          because of the variation of our members' location --  
18          locations we believe this proposed rule is overly  
19          rigid, offering little flexibility for employers to  
20          determine the best way to protect workers from heat  
21          standards. The rule -- the rule is universally applied  
22          across a huge geographic area where weather conditions

1       are quite different, and across multiple industries  
2       where there are varying work conditions.

3             My remarks today will focus on concerns with the  
4       proposed standard, such as the heat index and  
5       correlation with the high heat threshold, mandatory  
6       breaks and seasonal workers' specifics, such as the H-  
7       2B Workers Program. Let me begin by making it clear  
8       that NALP believes that employers should protect  
9       employees from heat-related injuries and illnesses in  
10      both indoor and outdoor work environments, where there  
11      is extreme heat or extended exposure. And let me just  
12      say how ironic it is that we are conducting this while  
13      we are facing one of the worst heat waves this year so  
14      far. However, OSHA steps to address this issue and  
15      their current guidance throughout these proceedings  
16      suggest that OSHA's proposed standard is a one-size-  
17      fits-all approach.

18            In regards to the heat index and mandatory breaks,  
19      the proposed standard does not account for differences  
20      in geography - geographical workplaces, employee  
21      sensitivity to heat, nature of the job or task, or any  
22      of the other factors with determining how to protect

1 employees from overexposure to heat. To state an  
2 obvious example, in the proposed rule, 90 degrees is  
3 the high heat threshold. It has different impacts in  
4 different locations; 90 degrees in Las Vegas, which is  
5 very desert like, is not the same as 90 degrees in  
6 Houston, Portland, Chicago, or even here in D.C. As we  
7 are all aware, in the West Coast, the heat is more dry,  
8 and out here in the East Coast it's very humid, which  
9 makes it very different for workers.

10 One of the most unworkable provisions is the  
11 mandatory 15-minute rest break every two hours if the  
12 high heat trigger is met. As the rule is currently  
13 written, it demands that every employer makes their  
14 employees take a 15-minute break every two hours,  
15 regardless of whether they are suffering symptoms, or  
16 even if they would like to take such a break.  
17 Demanding this break would be highly disruptive to many  
18 folks that work in the lawn and landscaping industry  
19 and could create a bigger hazard.

20 The necessity of breaks depends on more than heat  
21 index. It is highly dependent on many factors. Some  
22 workers do not need or desire a break every two hours

1 as this disrupts the workflow. Others who have  
2 recently been sick or otherwise have a physical issue  
3 may need a break more frequently. The timing of these  
4 breaks should not be dictated by the rule. In  
5 addition, there are jobs -- i.e., working from heights  
6 like tree care -- where requiring a break may make the  
7 job more dangerous as it requires additional climbing  
8 up and down to the job site to take a break.

9 The mandatory 15-minute break raises more  
10 questions than answers them. Here I have some  
11 potential questions and some more specific examples  
12 that we may encounter in the lawn and landscape  
13 industry. If the employee -- if the employees are by  
14 pure commission, the worker will not want to rest since  
15 it could affect their commission. How are we, as an  
16 industry, supposed to enforce paid rest breaks if they  
17 are driven by commission? Another perfect example in  
18 my industry is a lot of these workers commute from one  
19 site to another. Thus, is driving from one site to  
20 another in an AC vehicle considered a rest break if  
21 they only work 60 minutes and then are driving for 15  
22 or 20 minutes to their next location to work an

1 additional hour? Would that trigger the mandatory 15-  
2 minute break?

3 Also, a lot of our workers work in very heavily  
4 shaded areas, some with tents, or constantly commuting  
5 back and forth to a trailer for their equipment. Would  
6 that also require a 15-minute break?

7 Another one of our concerns is in regards to  
8 seasonal workers specific. Most of our members hire  
9 seasonal workers for their seasonal peak, which is  
10 during the summer season. It is common for employees  
11 to leave during the season and new ones to be hired.  
12 Maintaining acclimatization records for a constant  
13 rotation of employees would be a continual task.  
14 Awareness of work area temperatures is important.  
15 Assuming that workers are accustomed to their work  
16 environments is important. However, measuring,  
17 logging, storage, and maintenance of these record-  
18 keeping requirements is unnecessary and not beneficial.

19 The green industry relies heavily on seasonal  
20 workers during their peak season. The H-2B visa allows  
21 foreign workers to work temporary nonagricultural jobs  
22 in the United States if an unemployed person capable of

1 performing such service or labor cannot be found in  
2 this country. The landscape industry is the -- is  
3 seasonal and is the largest user of the H-2B program,  
4 accounting for nearly half of all H-2B guest workers  
5 that use the program annually.

6 Several states or territories with small  
7 populations are the most dependent on H-2B workers  
8 because U.S. workers are least available there. H-2B  
9 maids typically serve at remote locations such as Cape  
10 Cod or national parks during the relatively brief and  
11 intense summer season. H-2B workers are also critical  
12 to traveling carnivals, where the jobs move from county  
13 to county.

14 In fiscal year 2022, the top five countries for H-  
15 2B visas were Mexico, Jamaica, Guatemala, Honduras, and  
16 El Salvador, all countries that remain warm year long.  
17 Knowing that the landscape industry relies heavily on  
18 temporary workers, most of who come from countries that  
19 have warm temperatures year long, it raises additional  
20 questions about OSHA Heat Rule concerning  
21 acclimatization, recordkeeping, and communication  
22 methods. Do H-2B guest workers returning to the same

1 employer from the previous season and residing in a  
2 warmer climate require acclimatization? If so, how  
3 would that be determined, or tested? Most times  
4 employers receive new seasonal workers; how long do  
5 they have to keep seasonal workers' records? If unable  
6 to communicate with employees and translation is  
7 needed, are those records supposed to be kept as well?  
8 If so, how long should the records be kept for?

9 On a final note, NALP believes more clarity is  
10 needed for what is considered a proper break. What  
11 destinations are categorized as approved break  
12 locations and when do working time starts if walking to  
13 a destination in time to take off and put on PPE is not  
14 included?

15 While excessive heat presents a hazard that must  
16 be addressed, employers have proven that they can  
17 provide safe workplace for employees during these  
18 times. Many of the steps that employers are taking are  
19 recommended by OSHA, including increased access to  
20 shade, water, and rest breaks. As many organizations  
21 have stated during these last few days, OSHA should  
22 allow more specific adjustments based on geography --

1 geographical, the nature of the jobs, and house status  
2 of individual employees. Such flexibilities would  
3 provide better protection for employees than a more  
4 rigid, one-size-fits-all standard.

5 Thank you very much. And I welcome your  
6 questions.

7 JUDGE BELL: Sorry. Thank you for your testimony.  
8 Are there questions from the OSHA room?

9 MR. BEARR: Yes, Your Honor, we do have a few  
10 questions. This is Jonathan Bearr with OSHA.

11 Thank you, Ms. Segundo, for your testimony. I  
12 have one question regarding recordkeeping for  
13 temperature records. And in the proposed rule, it does  
14 provide flexibility of maintaining temperature records  
15 for indoor work areas in a written form or  
16 electronically.

17 Electronic monitoring devices are readily  
18 available in the market, are easy to use, and many have  
19 storage capacity to be able to retain records for the  
20 proposed six months. I was wondering, do you think  
21 using electronic monitoring devices would make it less  
22 burdensome for your members to comply with the proposed

1 requirements?

2 MS. SEGUNDO MARTINEZ: I agree. I think as far as  
3 I'm aware, anything that takes control over, via phone,  
4 tablet, or anything in that matter makes it more doable  
5 for folks to utilize.

6 MR. BEARR: Thank you. I'm going to turn it over  
7 to -- on the line to Zoe Petropoulos.

8 MS. PETROPOULOS: I'm Zoe Petropoulos with the  
9 Directorate of Standards and Guidance. I have a couple  
10 of questions about the triggers, which you mentioned in  
11 your testimony and your written comments. And I know  
12 you've stated that -- NALP believes that the trigger  
13 should be defined based on regional -- a regional basis  
14 and adjusted to reflect the normal heat exposure of  
15 employees.

16 And I have a few follow-up questions about that.  
17 What geographic area would you propose OSHA consider  
18 for establishing any new triggers that would be based  
19 on geography; for example, at the county level, state  
20 level, or regional level, and what data would you  
21 propose OSHA rely on to establish those triggers?

22 MS. SEGUNDO MARTINEZ: I think just based on my

1 knowledge, a county would make sense. But we also see  
2 some counties that are very massive, you know, take up  
3 like half of the state. That would be very different.  
4 I'm from California myself, and I know in California  
5 the temperature that feels up in the Inland Empire is  
6 very different from closer to the beach or closer to  
7 the mountains area up north in California.

8 Being here in the DMV area, I know -- I feel like  
9 Virginia was a lot more hotter, but Maryland is more  
10 humid. And that's just crossing over one simple  
11 border. So I think looking at counties and regional  
12 areas, just kind of where you see a trend of the  
13 temperature remaining the same would be a good  
14 guidance.

15 MS. PETROPOULOS: Thank you. Are you aware of any  
16 member employers who are already taking this sort of  
17 approach? And if so, what data do they rely on?

18 MS. SEGUNDO MARTINEZ: Yes, we have a lot of  
19 members up in the West Coast where they have their own  
20 heat standards implemented. Oregon, Washington, and  
21 California, as well as other states that have recently  
22 created their state standards for -- to address the

1 heat waves, like Colorado. We have some here in  
2 Maryland as well, which that is one of the newest ones.  
3 And they just follow the guidance as specific as they  
4 can. And they try to remain the same crew in similar  
5 proximity than someone that would be up north or east  
6 or west of that state.

7 MS. PETROPOULOS: Thank you. And I have one more  
8 question based on your testimony. You mentioned at one  
9 point that 90 degrees Fahrenheit would have different  
10 impacts in different locations across the country. And  
11 I believe you mentioned that part of that is because  
12 there are varying levels of humidity across the  
13 country. And please correct me if I'm misstating that.  
14 I'm wondering if you believe OSHA's use of heat index  
15 and wet bulb globe temperature in the proposal instead  
16 of dry bulb temperature accounts for this, and why or  
17 why not?

18 MS. SEGUNDO MARTINEZ: I'm not very aware of the  
19 system that is currently being proposed, but we can  
20 definitely look into it and submit further comments on  
21 this. I know that, for example, being from California,  
22 it's very dry heat. We're here in the East Coast, here

1 in the DMV area, it's very humid. I don't think -- I  
2 don't -- I wouldn't be an expert in saying which one is  
3 worse or which one is better. I hate being out there  
4 because dry heat; it feels like it's burning your skin.  
5 But out here, the humidity, you feel so sticky and  
6 sweaty. But I think we can do further research on this  
7 aspect.

8 MS. PETROPOULOS: Thank you so much. That's it  
9 for me.

10 MS. SEGUNDO MARTINEZ: Thank you.

11 MR. BEARR: Jonathan Bearn, OSHA. For our next  
12 question, I'm going to hand it over to Ryan Tremain.

13 MR. TREMAIN: Hi, Ryan Tremain with OSHA,  
14 Standards and Guidance. You touched on the topic of H-  
15 2B workers and seasonal workers, and in your written  
16 comments you stated that you believe that consideration  
17 should be given to workers who are coming from  
18 predominantly warmer climates and may already be  
19 acclimatized. I was wondering, is there any specific  
20 evidence or methods that your members currently use to  
21 verify workers' prior work experience or their prior  
22 heat exposure before they begin work?

1 MS. SEGUNDO MARTINEZ: On the --

2 MR. TREMAIN: That's a --

3 MS. SEGUNDO MARTINEZ: Oh. Sorry.

4 MR. TREMAIN: Either today, or something you could  
5 probably follow up with your members, so sure.

6 MS. SEGUNDO MARTINEZ: Yeah, of course. I mean,  
7 just a quick response would be, a lot of the workers  
8 that we recruit are coming straight from their home  
9 countries, and they have to verify that as well as  
10 their work experience. We're also aware that a lot of  
11 these workers that we bring in year in, year out,  
12 called returning workers, work in the landscape  
13 industry back home as well, which exposes them to the  
14 same temperature year-round, where here it would only  
15 be for the summer season. But we can provide more  
16 information in additional comments.

17 MR. TREMAIN: Great. Thank you. That's all I  
18 have.

19 MR. BEARR: Jonathan Bearr, OSHA. Our next  
20 question will come from Eduardo Hernandez.

21 MR. HERNANDEZ: Hi, Ms. Segundo. Thank you for  
22 your testimony. Eduardo Hernandez, Directorate of

1 Standards and Guidance. I have one question on the  
2 effective communication requirement. So in your  
3 written comments, you raised some issues for OSHA to  
4 consider. One of those highlighted communication  
5 practices with workers. And we would really like to  
6 hear from you and your members, and really, what are  
7 the methods of communicating with the team leader and  
8 the employee, and what's working well?

9 MS. SEGUNDO MARTINEZ: Yes, of course. So I think  
10 it's very key to note that a lot of our workers are  
11 Hispanic, coming from Central America or Mexico. So we  
12 do have translation in place as far as anything  
13 regarding OSHA, safe practices, heat standards, and  
14 communication. We try to pair them with a superior  
15 that either speaks Spanish or can have direct access to  
16 translation. And you know, most of these individuals  
17 can communicate, just via phone calls or text messages  
18 if they have someone that directly speaks the language  
19 that they speak themselves.

20 MR. HERNANDEZ: Thank you.

21 MR. BEARR: The next question is going to come  
22 from the line, Tiffany DeFoe.

1 MS. DEFOE: Hi. This is Tiffany DeFoe with the  
2 Directorate of Standards and Guidance, OSHA. First, I  
3 want to thank you for the various questions and  
4 examples that you provided in your written testimony  
5 and that you touched on in your testimony here today  
6 too, this really help to give a feel for some of the  
7 challenges that apply to your industry.

8 And the questions that I have are for rest breaks.  
9 I wanted to first make sure that I understand clearly;  
10 you said in your testimony that the rest breaks should  
11 not be -- that the timing of rest breaks should not be  
12 dictated by the rule, and that came up in your written  
13 comments as well. And I want to -- should I understand  
14 that statement, are you recommending essentially that  
15 if OSHA moves forward with the final rule that the rest  
16 breaks provision should be limited to as-needed rest  
17 breaks, and there should be no mandatory, scheduled  
18 rest breaks? Is that a recommendation that you're  
19 making? Or is there something different that you had  
20 in mind?

21 MS. SEGUNDO MARTINEZ: I think you read that well.  
22 Just advising OSHA to do it as needed, especially if

1       somebody has witnessed -- like experiencing any heat  
2       symptoms, we would want them to take a break  
3       immediately, whether that was an hour from now or three  
4       hours from now. I think we need a little bit more  
5       flexibility knowing that a lot of our workers do work  
6       in shaded areas and are commuting from location to  
7       location instead of walking over to their next  
8       location. A lot of these residential contracts are not  
9       immediate neighbors, but rather quite a drive to the  
10      next location, which allows them to be indoors in an AC  
11      vehicle during that commute.

12           MS. DEFOE: Thank you. And then also in your  
13      comments, so you noted that your industry currently  
14      uses work breaks as a part of the normal work practice  
15      and that the frequency and length of these breaks vary  
16      depending on the level of heat exposure, type of work,  
17      the individual's acclimatization, and other factors.  
18      First, can you clarify, so when you said that, are you  
19      referring to breaks that are primarily planned breaks  
20      scheduled based on an understanding of those factors by  
21      the employer or supervisor? Or were you talking about  
22      the sort of as-needed breaks for - or was it a

1 combination that's prevalent in your industry?

2 MS. SEGUNDO MARTINEZ: There's definitely a  
3 combination of both, just kind of depending on how many  
4 workers are working on a site. If we have a larger  
5 group, we will rotate taking breaks, right, whether  
6 they are planned or as needed. I think another perfect  
7 example would be like, if someone needs to use the  
8 restroom, we're not going to deny them the usage -- of  
9 going to the restroom just because they're not on a  
10 break, right?

11 We would want to find some -- either on site or  
12 somewhere nearby for them to do what they need to do.  
13 Stay hydrated, especially, if they're consuming large  
14 portions of liquids to stay hydrated, whether it's  
15 water or electrolytes, they will probably need to use  
16 the restroom more often than not.

17 MS. DEFOE: Thank you. And last question. So  
18 when you're discussing sort of -- what you're  
19 discussing right now about the use of breaks currently  
20 in your industry, are you talking about sort of a  
21 customary practice, or are there sort of formal  
22 policies that your organization has and promulgates to

1           its members for its rest break policies?

2           MS. SEGUNDO MARTINEZ: As an organization, we do  
3           not have anything in place, but we do work closely with  
4           a lot of employers who kind of write out their  
5           employees' rights, including breaks, right, depending  
6           on how many hours they're working, where they're  
7           working. Some areas may be more burdensome than  
8           others, right? Just depending on whether it's  
9           commercial landscape or residential landscape, how  
10          large the property is, they might need a larger break  
11          or more breaks in between the project, just because  
12          they're technically doing more work in the sun  
13          exposure.

14          MS. DEFOE: Thank you. And I know I said last,  
15          but this is actually the last. If there are employers  
16          whose policies, or you know, how -- explanation of how  
17          they schedule breaks, if there are any employers you're  
18          talking to that are willing to share examples with  
19          OSHA, that this --

20          MS. SEGUNDO MARTINEZ: Yeah, of course, I can -- I  
21          can definitely look into that and submit that further.

22          MS. DEFOE: That'd be terrific. Thank you very

1 much. That's all I have.

2 MS. SEGUNDO MARTINEZ: Thank you so much.

3 MR. BEARR: And we have a couple more questions  
4 coming from Adriana Lopez.

5 MS. LOPEZ: Hello. Thank you for your testimony.  
6 Adriana Lopez, OSHA. Thank you for your testimony, Ms.  
7 Segundo. On average how many jobs do your members  
8 perform annually, would you say?

9 MS. SEGUNDO MARTINEZ: It would be a little -- I  
10 don't have a exact number, but it would all depend on  
11 the locations of the jobs, of the state they're working  
12 in. For example, a lot of our workers are seasonal  
13 across the country, but there's no such thing as a  
14 summer season when you think about Florida, California,  
15 Texas, Arizona, those warmer climates. But I can  
16 definitely look into this and respond in my additional  
17 comments.

18 MS. LOPEZ: Would really appreciate that. Thank  
19 you. And in your industry, what types of work make  
20 rest breaks more difficult? Like you mentioned, for  
21 example, performing tree care, and what percentage of  
22 those annual jobs are performing this type of work,

1           would you say?

2                   MS. SEGUNDO MARTINEZ: A lot of our members do  
3           mostly landscaping, which is mowing the lawn, you know,  
4           shaping the bushes and stuff. But we do represent also  
5           tree care workers and irrigation. So those would be  
6           heavily focused on -- right, for example, Davey Tree  
7           Care, they operate throughout all 50 states of the  
8           country. And they focus -- focus on maintaining the  
9           trees and planting new trees and additional projects  
10          like that.

11                  Another project that as an association we work  
12          every year, it's called renewals -- Renewal and  
13          Remembrance, which we operate here in the D.C. area at  
14          the Arlington Cemetery, and sometimes the Lincoln  
15          Memorial, or another one of the monuments where we have  
16          volunteers -- members coming to D.C., and they help  
17          maintain the green spaces of the D.C. area, kind of  
18          just to give back to our country, and provide our  
19          services for free.

20                  We also do planting trees where they're needed.  
21          And this is something that we have a lot of volunteers  
22          come from all over the country to the D.C. area to help

1 out. And that would be something good to look into  
2 just to see the positive impact that we're doing for  
3 our environment. As we talk about heat, we also know  
4 that planting more trees and taking care of our green  
5 spaces reduces the heat temperature that some may feel  
6 if they are shaded by trees.

7 MS. LOPEZ: Okay. Thank you very much. And then  
8 just a question about, how often is it the case that  
9 the work that you do is done in multiple work sites  
10 across different regions, with different typical local  
11 temperatures, meaning like across different regions?

12 MS. SEGUNDO MARTINEZ: Yes. I think a perfect  
13 example would be just here in the DMV area. They --  
14 most times we try to put it all as a one. But when we  
15 see the storms come, you see them coming from Virginia,  
16 moving forward to D.C., and then Maryland. And that  
17 impacts the temperature that you feel in those areas.  
18 And that's not -- you're talking about, probably like a  
19 two-hour drive in between from point A to point B.

20 And that's how a lot of our companies or a lot of  
21 our employees and employers work across -- you know, it  
22 could just be something small where -- another example

1       would be like the OC area in California that feels very  
2       persistent temperature-wise, except if you're closer to  
3       the beach. So I think it just varies depending on the  
4       weather. I think that's something we can't predict  
5       what it will target on a given day or time.

6           MS. LOPEZ: Thank you. And so in your comments,  
7       you expressed concern regarding the incentive of --  
8       pure commission on workers who decide to take their  
9       rest breaks. So I have two questions. What  
10      occupations in the landscaping industry are paid by  
11      commission?

12           MS. SEGUNDO MARTINEZ: I don't have a perfect  
13      example right now. But I can look into it. I do know  
14      that that was one of the concerns that we did hear from  
15      a lot of our members prior to submitting our comments.

16           MS. LOPEZ: Sure, that would be appreciated.  
17      Thank you. And what percentage of workers in those  
18      occupations would you say are paid by commission?

19           MS. SEGUNDO MARTINEZ: I wouldn't say it's a large  
20      sum, just off the top of my head, but I can look into  
21      it further.

22           MS. LOPEZ: Thank you. Yeah, that would be very

1 appreciated. And you noted that while rest breaks are  
2 important, that you were concerned about the  
3 requirement for mandatory 15-minute rest breaks every  
4 two hours during high heat conditions, and you  
5 mentioned Washington state and Oregon, and we wanted to  
6 know, can you tell me, what has your members'  
7 experience been with these mandatory rest breaks?

8 MS. SEGUNDO MARTINEZ: I think it was something  
9 they did more like gradual rather than sudden. A lot  
10 of them copy -- copy like California, also, when you  
11 talk about the heat and the heat wave that we're  
12 currently experiencing, something that's impacting all  
13 50 states now, where in the past you've seen the West  
14 Coast be a little warmer, and needed to implement, I  
15 would say, a little bit stricter regulations. But also  
16 kind of common-sense solutions, like these breaks when  
17 needed in those states.

18 MS. LOPEZ: Thank you. Okay. Thank you for your  
19 testimony. That concludes my questions.

20 MR. BEARR: Your Honor. That concludes OSHA's  
21 questions.

22 JUDGE BELL: All right. Great. Anything from the

1 Solicitor?

2 MR. MOCZULA: Daniel Moczula, for the Office of  
3 the Solicitor. No questions from us.

4 JUDGE BELL: All right. Are there other questions  
5 for this witness?

6 MS. CARLON: Yes, Your Honor, we have three. The  
7 first is from Mr. Parsons. Please state your name for  
8 the record.

9 MR. PARSONS: Good afternoon. Travis Parsons of  
10 the Laborers' Health and Safety Fund of North America.  
11 Can you hear me? And this is the first time using my  
12 video; I'm testing that out here.

13 JUDGE BELL: We can hear you. We can see you.  
14 Speak a little bit more slowly, please. But go ahead  
15 with your question.

16 MR. PARSONS: Thank you, Judge. So yeah, thank  
17 you for your testimony. I also live in the D.C. area,  
18 and especially during times like this, I really  
19 appreciate what all your members do, and we have a lot  
20 of members that overlap. My questions are, you know,  
21 you mentioned that you have crews across the country.  
22 California, Oregon, Maryland, Washington state; all

1       those states have, you know, rules, some almost 20  
2       years and some more recent. Are you guys operating  
3       successfully in those states?

4               MS. SEGUNDO MARTINEZ: Yes, we are, sir.

5               MR. PARSONS: And how are you complying with those  
6       rules?

7               MS. SEGUNDO MARTINEZ: To the T.

8               MR. PARSONS: Okay. That's the only question I  
9       have.

10              JUDGE BELL: All right. Thank you, sir.

11              MR. PARSONS: Thank you.

12              JUDGE BELL: Next question, please.

13              MS. CARLON: Mr. Barab.

14              MR. BARAB: Yeah. Thank you. So Ms.

15       (Indiscernible), you mentioned that a lot of the  
16       workers in your industry are Latino; they're from  
17       countries with warm climates. And I think you  
18       basically said that they are better acclimatized than  
19       workers who are not from those countries, or maybe from  
20       cooler states. Do you have any evidence that, say, a  
21       worker in Minnesota who's worked in a -- or say -- let  
22       me let me ask this. Do you have any evidence that a

1 worker from, say, Central America, who is working in an  
2 air-conditioned office is better acclimatized if they  
3 go to work in a construction site than a worker from  
4 Minnesota who's worked in an air-conditioned office and  
5 goes to work in a construction site?

6 MS. SEGUNDO MARTINEZ: Well, I think those two  
7 would be very similar examples, because they're both  
8 working indoors and then coming to the outdoors where  
9 they would need acclimatization, and then from my --

10 MR. BARAB: So any -- no matter where someone is  
11 working, and whether it's a southern state or a cooler  
12 northern state or comes from, you know, Maine or comes  
13 from Guatemala, they are equally in need of  
14 acclimatization?

15 MS. SEGUNDO MARTINEZ: If they were -- if they're  
16 coming in from indoors work experience prior, yes, they  
17 would.

18 MR. BARAB: Okay.

19 MS. SEGUNDO MARTINEZ: But if they're working  
20 outdoors, it would be different, sir.

21 MR. BARAB: Okay. Thank you. That's my only  
22 question.

1 JUDGE BELL: All right. Next question, please.

2 MS. CARLON: Ms. Shrestha.

3 MS. SHRESTHA: Hello. Thank you. This is Ayusha  
4 Shrestha, from the AFL-CIO. I wanted to ask; we've  
5 heard powerful worker testimony throughout this hearing  
6 from outdoor migrant workers who have spoken up about  
7 the retaliations that they've faced from their  
8 employers over taking necessary breaks, or trying to  
9 take necessary breaks. I'm specifically referring to  
10 testimony that we heard from Friday of last week by a  
11 lot of the farmworker groups.

12 I wanted to ask, how long of a break do workers  
13 get? What is the mechanism that allows a worker to  
14 take breaks if you are operating under the -- take  
15 breaks as a necessary model? And where do they get to  
16 take a break? What's provided at their break site?  
17 Just like -- I'm asking for the mechanism breakdown of  
18 how breaks are given to workers, especially migrant  
19 workers who are more vulnerable to dynamics in their  
20 workplaces.

21 MS. SEGUNDO MARTINEZ: I do hear these concerns a  
22 lot over my time working with the landscape industry.

1 I've been with them for over four years. As a Hispanic  
2 individual myself, I have -- I've come to really love  
3 this organization, that cares about their members and  
4 being face-to-face with their members, hearing the  
5 stories about their H-2B workers who are coming from  
6 Central America, Mexico, and other countries, from  
7 Latin origin. And I have not yet encountered any, I  
8 would say, bad actors.

9 I know they exist. I know they exist in every  
10 industry. Whether you're talking about the landscape  
11 industry, Congress, or any other organization, bad  
12 actors will always exist. However, our organization  
13 does not condone them. And we are very employee-  
14 employer friendly. As far as it goes, you know, I  
15 haven't -- I know -- I know it exists, I just haven't  
16 come across anything like that in my organization.

17 And we're very firm on that in how we treat our  
18 workers, especially knowing that a lot of them do  
19 require temporary workers that use the H-2B program.  
20 We're huge advocates for returning workers, which means  
21 that anyone who had utilized the program in the last  
22 three years would be able to come back without counting

1           towards that cap. And a lot of these individuals do  
2           come back to their same employers, and they treat them  
3           like family.

4           I know these bad actors exist out there throughout  
5           the country. I just haven't seen them in my industry  
6           yet. And you know, when I -- when I host these town  
7           halls or smaller table -- like round tables to hear  
8           their feedback, we include the owners, the managers,  
9           and the lower level, including foreign workers, into  
10          our discussions.

11          But we do not support any sort of retaliation. We  
12          think that if anyone needs a break, they should -- they  
13          should be able to have their break. I just don't have  
14          the breakdown of how they are determined depending on  
15          their company or anything like that. But I -- I can  
16          get that further information.

17          MS. SHRESTHA: All right. Thank you for that  
18          answer. That's all from me. I would love to read more  
19          about the breakdowns of the actual mechanisms in your  
20          post-hearing comments. Thank you.

21          JUDGE BELL: Do we have any more questions for Ms.  
22          Martinez?

1 MS. CARLON: Yes, Your Honor, we have a final one  
2 from Mr. Lundegren.

3 JUDGE BELL: Mr. Lundegren.

4 MR. LUNDEGREN: Thank you, Your Honor.

5 JUDGE BELL: Go ahead.

6 MR. LUNDEGREN: And hi, Karla. This is Bruce  
7 Lundegren from the Office of Advocacy at the U.S. Small  
8 Business Administration, and I wanted to thank your  
9 organization for your participation in the small  
10 business panel that we did on this rule back in 2023.

11 I just wanted to get -- ask you a question about  
12 the nature of your membership, and particularly the  
13 size and diversity of the companies that make up your  
14 membership. And I assume that you cover a broad array  
15 of members from really small to larger, and then also  
16 the nature of the work sites there. They're all  
17 different. They're constantly changing. Can you just  
18 talk a little bit more about that?

19 MS. SEGUNDO MARTINEZ: Yes, of course. So we do  
20 represent and work closely with small members and large  
21 members. One of our largest members would be  
22 Yellowstone Landscape. They operate in about 13

1 different states and have many different companies  
2 throughout those states. We also have smaller members  
3 that may only work in certain areas of Washington or  
4 Oregon. And I can give you an example. We do an H-2B  
5 fly-in every year. Yellowstone, knowing that they  
6 operate in 13 states, they always bring us four  
7 representatives to talk about this issue.

8 And then we have a smaller member who operates in  
9 Oregon. And he will meet with all of his elected  
10 officials just to kind of talk more about the need for  
11 seasonal workers. And they all have the same voice  
12 with us. I will still try to get them as many meetings  
13 as possible. And our agenda remains the same, not just  
14 because you operate in more states, you have more  
15 privilege.

16 Also, like I said, right, Oregon is more of a  
17 rain -- rainy state than California. Coming from  
18 California, I know growing up there, anytime it would  
19 rain, people would consider it a party and start  
20 recording; oh, my gosh, it's raining. Where here in  
21 Maryland it rains all the time, and I'm not recording  
22 it, right. So it just sort of depends on where someone

1 is coming, where someone is going, or where they've  
2 kind of, like, adjust to the climate in those areas.

3 MR. LUNDEGREN: Okay. And just as a follow-up; so  
4 if OSHA was to look at -- a lot of the small businesses  
5 are asking for a more flexible, less prescriptive  
6 standard, and if OSHA was to adopt something more akin  
7 to a performance standard where, you know, they let  
8 us -- that they established some broad parameters, how  
9 would you suggest OSHA go about enforcing something  
10 like that if it doesn't have like firm triggers but is  
11 more flexible based on geography and types of  
12 activities, things like that?

13 MS. SEGUNDO MARTINEZ: Yes. I think this is  
14 something we have worked closely with your organization  
15 as well in regards to smaller businesses. When talking  
16 about what would be considered a small business, right,  
17 if they have less people, they have less flexibility to  
18 check-up on their employees. Or you know, they have  
19 to, like, get a contract done, they might not be able  
20 to check on every single one of them. I don't have  
21 those answers with me right now, but I can definitely  
22 look further into how it would impact specifically to

1       our smaller members, versus our largest members, and  
2       submit further comments on that.

3               MR. LUNDEGREN: Great. Thank you very much.

4               Thank you, Your Honor.

5               JUDGE BELL: Thank you. Any other questions for  
6       Ms. Martinez?

7               MS. CARLON: They're not, Your Honor.

8               JUDGE BELL: All right. Ma'am, thank you so much  
9       for your testimony. It's been very helpful.

10              MS. SEGUNDO MARTINEZ: Thank you, Judge. And  
11       thank you, OSHA representatives, and to one -- everyone  
12       who asked me a question.

13              MS. CARLON: The next speaker is Lanie Riner.  
14       Please state your name and affiliation for the record.

15              MS. RINER: Good afternoon, and thank you for the  
16       opportunity to testify. My name is Lanie Riner. I'm  
17       the Executive Director of the Georgia Green Industry  
18       Association.

19              JUDGE BELL: Ms. Riner, thanks very much for being  
20       here today. Go ahead with your testimony, please.

21              MS. RINER: Again, thank you for the opportunity  
22       to testify. GGIA represents Georgia's ornamental --

1 I'm so sorry, my video -- sorry about that. GGIA  
2 represents Georgia's ornamental and environmental  
3 horticulture sector, including farms that produce  
4 field-grown and container-grown plants, greenhouse  
5 operations, cut flower producers, and turfgrass sod  
6 growers.

7 In addition to these farms, our membership  
8 includes landscape contractors, retail garden centers,  
9 irrigation professionals, and a range of allied  
10 businesses. Collectively, we are known as the green  
11 industry. According to the University of Georgia's  
12 2024 AG Impact Report, ornamental horticulture  
13 contributed 11.1 billion to Georgia's economy and  
14 supported 73,801 jobs across Georgia.

15 While we share OSHA's commitment to protecting  
16 worker health, the proposed heat rule standard proposes  
17 significant and disproportionate harm to our industry.  
18 As part of our official comment submission, we provided  
19 a report by Dr. Ben Campbell, the Extension Economist  
20 for Ornamental Specialty Crops at the University of  
21 Georgia.

22 He works closely with industry members to evaluate

1 economic impacts in real-world settings. His report  
2 illustrates the extensive financial and operational  
3 burdens this rule would impose on Georgia employers,  
4 particularly those in agriculture and specialty crop  
5 production. According to his findings, the estimated  
6 annual compliance costs per manager is \$2,280,  
7 primarily for time spent monitoring employees,  
8 documenting breaks, and traveling between work sites.

9 For an average worker, the time lost simply  
10 walking to and from designated break areas equates to  
11 \$499 per employee per year. These costs multiply  
12 quickly across seasonal crews and businesses with  
13 numerous locations. It's important to note they are  
14 not one-time expenses. These are ongoing and  
15 recurring, and they will continue to rise year after  
16 year as wages increase and labor pressures intensify.

17 For small and mid-sized businesses already  
18 operating on tight margins, this kind of compounding  
19 cost burden is not sustainable. For a greenhouse with  
20 just 20 employees and two field managers, this rule  
21 could cost over \$13,000 per year. That does not  
22 include the added burden of translation services,

1 revised staffing schedules, or compliance  
2 documentation. These costs hit small businesses the  
3 hardest, and in our industry, small businesses are the  
4 majority of the businesses.

5 Dr. Campbell's report also highlights serious  
6 regional disparities in how this rule would affect  
7 Georgia employers. Using real weather data, real  
8 temperatures from state monitoring stations, he found  
9 that in Blue Ridge, just 20 miles south of the Georgia-  
10 North Carolina line, only 33 percent of hours in July  
11 exceed 80 degrees Fahrenheit.

12 In contrast, in Attapulgus, located about 40 miles  
13 north of the Georgia-Florida state line, 59 percent of  
14 hours in July and August exceed that same threshold,  
15 with elevated temperatures continuing well into  
16 October. It's important to note this data reflects  
17 actual air temperatures, not the more restrictive wet  
18 bulb globe temperature or heat index proposed in this  
19 rule.

20 We know Georgia is hot, but this rule treats  
21 Georgia the same as New Hampshire. Even within our own  
22 state, the burden is uneven. If implemented as

1       written, many green industry businesses and operations  
2       in Georgia would be subject to compliance triggers  
3       nearly 90 percent of the time during the summer. This  
4       is not an equal standard; it's a geographic penalty on  
5       states with warm climates.

6           What's more, this rule assumes that a compliance  
7       structure designed for warehouse settings or  
8       construction zones can seamlessly transfer to open-air  
9       agriculture, but it cannot. Our members work in  
10      dynamic environments, moving plants, locations, and  
11      crews. A nursery may have workers tending to plants in  
12      nursery beds or greenhouses, unloading trucks, and  
13      staffing a retail area all in the same day. The idea  
14      of implementing a separate heat injury and illness  
15      prevention plan for each activity or site isn't just  
16      inefficient; it's unworkable. In practice, these  
17      layers of compliance don't lead to safer work; they  
18      lead to confusion, gaps in execution, and unintended  
19      risk.

20           The rule also introduces new safety hazards for  
21      both growers and for those working in the service-based  
22      sectors of the green industry. In an effort to reduce

1 exposure during the hottest part of the day, many  
2 employers may be forced to shift work to the early  
3 morning hours. But heavy equipment is not designed for  
4 low light operation. Operating tractors, mowers, and  
5 other machinery in the darkness increases the risk of  
6 accidents, equipment damage, and worker injury. The  
7 Georgia Governor's Office of Highway Safety actively  
8 discourages the use of slow-moving vehicles during dark  
9 hours for exactly these reasons. Ironically, this rule  
10 intended to protect workers would create conditions  
11 that put them in greater danger.

12 Meanwhile, local noise ordinances prevent many  
13 crews, especially landscaping tree services, from  
14 starting work before 7 a.m. That leaves employers  
15 stuck. They can't begin earlier, they can't shift  
16 operations later, and midday is now a regulatory  
17 minefield.

18 Retail garden centers face a different dilemma.  
19 These operations require continuous staffing to serve  
20 customers, restock inventory, and care for live plants  
21 throughout the day. Mandatory breaks every two hours  
22 would disrupt that continuity, potentially leading to

1 complex scheduling challenges and staffing gaps during  
2 peak business hours. Hiring additional staff to fill  
3 those gaps is not always feasible, financially or  
4 logistically.

5 Meanwhile, on farms that rely on piece-rate labor,  
6 mandatory breaks don't just disrupt workflow; they  
7 reduce take-home pay. These workers are paid by what  
8 they produce, and forced downtime means fewer earnings,  
9 even when they're willing and able to keep working.  
10 It's a policy that penalizes productivity, and it  
11 ignores how agricultural labor actually functions.

12 In both farm and retail settings, rigid break  
13 requirements create disruption without delivering  
14 meaningful improvements in safety. The administrative  
15 burden is also extreme. Many businesses in our  
16 industry operate across multiple counties, with crews  
17 that shift locations throughout the day. Managing  
18 site-specific heat plans, keeping accurate records, and  
19 ensuring multilingual compliance in real time is more  
20 than a tall order. It's an obstacle to doing business.

21 Our members aren't looking to cut corners. We  
22 already provide water, shade, rest breaks, and training

1 on heat-related illness. The vast majority also  
2 encourage the use of protective sun gear like hats,  
3 long sleeves, sunglasses. They're not resisting  
4 safety; they're resisting a one-size-fits-all  
5 regulation that doesn't fit our climate, our workforce,  
6 or the nature of our work.

7 And that matters, because these businesses don't  
8 just grow plants; they install, care for, and maintain  
9 them across homes, city parks, and public spaces. They  
10 don't just operate equipment; they operate with  
11 purpose, experience, and pride. Many are family run.  
12 Many operate on land that's been worked for  
13 generations. This rule, as written, threatens their  
14 ability to survive.

15 In short, this rule will not produce better  
16 outcomes. It will produce higher costs, greater safety  
17 risk, and serious regional inequity. It will strain  
18 small businesses, confuse workers, and make compliance  
19 harder, not easier.

20 We urge OSHA to consider the full weight of the  
21 data we've submitted, including Dr. Campbell's  
22 analysis, and to listen closely to those who live and

1 work in these conditions every day. The proposed rule,  
2 in its current form, would do more harm than good.  
3 Thank you for your time and your attention.

4 JUDGE BELL: Sorry I'm too effective with my mute  
5 button. Are there questions for Ms. Riner from the  
6 OSHA room?

7 MR. BEARR: Yes, Your Honor, we do have some  
8 questions. This is Jonathan Bearr with OSHA.

9 You mentioned -- thank you very much for your  
10 testimony. You mentioned within that testimony that  
11 the administrative burdens of the proposed rule were  
12 significant, in your opinion. If OSHA provided  
13 templates for written heat injury and illness  
14 prevention plans and training materials for employers  
15 to use, do you think that would reduce part of the  
16 burden and cost for your member organizations?

17 MS. RINER: I do believe that would help in some  
18 cases, but the separate plan for each site, that's  
19 going to be very difficult to manage. I mean, it's --  
20 particularly on the service-based side, which would be  
21 landscape, irrigation, tree care, they move to  
22 different job sites throughout the day, throughout the

1 week, throughout the month. And they're going to have  
2 to develop plans for each of those locations, the way  
3 this role is -- the way this rule is written. So it  
4 would still be -- even with a template, it would still  
5 be tremendously burdensome.

6 MR. BEARR: With that in mind, you know, do you  
7 think there's any alternatives that could be sought?  
8 You know, for instance, what work site characteristics  
9 would you suggest OSHA consider in determining whether  
10 a single HIIPP can cover multiple work sites?

11 MS. RINER: I would love the opportunity to  
12 consult with my members before answering that, but I  
13 will be glad to get back to you with comments on that.

14 MR. BEARR: Thank you very --

15 MS. RINER: Just to make sure that I'm covering  
16 everything.

17 MR. BEARR: We appreciate that. Thank you.

18 I'd like to turn the questions over to Ryan  
19 Tremain.

20 MR. TREMAIN: Sure. This is Ryan Tremain with  
21 OSHA Standards and Guidance. And I think I heard a bit  
22 of this in your testimony. And you certainly -- you

1 mentioned that your members already provide, you know,  
2 rest, water, shade, rest breaks, training. And I guess  
3 we would just be interested to hear more specifically  
4 what specific aspects. Again, I heard pieces of this  
5 in like the rigid rest breaks, maybe the recordkeeping,  
6 but OSHA would be interested to hear anything that you  
7 would have to pinpoint or spotlight that, you know,  
8 would create a significant more administrative burden  
9 beyond what you're already doing with the rest breaks.

10 MS. RINER: I think I understand the question . If  
11 I don't, just stop me and rephrase it. But we do  
12 provide best practices for heat and injury. These are  
13 highly skilled workers, and they are hard to come by.  
14 And we have to use federal programs like H-2A and H-2B  
15 to even fill the gap. We value these workers. We want  
16 to keep them safe. We focus on best management  
17 practices. We train for them to recognize heat injury.

18 It's just the regulation mandating a one-size-  
19 fits-all for every single person. It's not something  
20 that really even -- it's unfathomable for this industry  
21 and the way it works, particularly with the diversity  
22 of it, and how each job site, each specific job within

1           this industry, the way each of them run.

2                   So we would be more focused -- and we are now, but  
3           we would be much more supportive of best management  
4           practices and making sure that our people are taken  
5           care of, and managing that on site, on farm, on  
6           location, by ourselves handling it, which we are -- we  
7           work hard within our industry to do.

8                   MR. TREMAIN: Thank you very much. That's all I  
9           have.

10                  MR. BEARR: Jonathan Berr, OSHA. On the line, we  
11           have Tiffany DeFoe.

12                  MS. DEFOE: Hi. This is Tiffany DeFoe with the  
13           Directorate of Standards and Guidance, OSHA. First,  
14           I'd like to follow up on what you just said about --  
15           about your organization providing best practices and  
16           distributing those to your membership. I'm wondering  
17           if it would be possible to share your best practices  
18           with OSHA, as an example?

19                  MS. RINER: We'll be glad to. Yes. And actually,  
20           they are -- they are based heavily on you all's own  
21           recommendations for best practices, so.

22                  MS. DEFOE: There, thank you. And then in your

1       written comments, so you explained that the proposed  
2       requirements for mandatory rest breaks -- and you  
3       talked about that today as well -- are impractical for  
4       some employers and that alternative options are needed.  
5       And I just wanted to ask, either now or in comments  
6       following the hearing, if there are any specific  
7       changes to the proposed requirements that your  
8       organization would like to suggest that OSHA could make  
9       to make it more practical?

10           MS. RINER: I really would like to get with my  
11       members to make sure that I'm touching on all aspects  
12       of that, because that is -- that is a broad question.  
13       There are so many landmines for our industry  
14       specifically. I think that would be best if I could  
15       circle back on comments at the end.

16           MS. DEFOE: Of course. And I realize that I maybe  
17       was -- the way I framed the question wasn't ideal. I'm  
18       asking specifically about the rest-break provisions,  
19       but any --

20           MS. RINER: Okay.

21           MS. DEFOE: -- any similar sort of recommendations  
22       that you want to make for other specific aspects of the

1 rule are certainly welcome.

2 MS. RINER: We provide breaks as needed, and we  
3 trust our employees to tell us when they need those  
4 breaks.

5 MS. DEFOE: And so are -- so is your  
6 recommendation, then, for the rest-break provisions  
7 that they be limited to as needed and that the  
8 mandatory ones -- is that what you're --

9 MS. RINER: That would be a much better outcome,  
10 is allowing -- allowing businesses to manage it  
11 themselves, rather than a one-size-fits-all rule that  
12 you're trying to shove everybody into that same box,  
13 and it just does not fit.

14 MS. DEFOE: Thanks. And again, you know, when  
15 you -- when you speak with your members, if there are  
16 any other specific ideas that you want to bring back  
17 about the rest break provisions feel free to submit  
18 those in post-hearing.

19 MS. RINER: Thank you. Thank you, ma'am.

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

21 MR. BEARR: Jonathan Berr, OSHA. Our next  
22 questions will come from Rachel Carse, on the line.

1 MS. CARSE: Hi. My first question is about --  
2 actually, it's probably better now.

3 JUDGE BELL: Much better. Thank you.

4 MS. CARSE: You mentioned that proposals for  
5 mandatory rest breaks every two hours are impractical  
6 for piece-rate workers and create payroll complexities.  
7 I was just curious, in your experience, how prevalent  
8 piece-rate pay is in the landscaping industry, and in  
9 what occupations in landscaping are typically paid by  
10 piece rate?

11 MS. RINER: I'm going to correct you here on this.  
12 Piece rate is generally handled on production farms,  
13 and it is heavily utilized.

14 MS. CARSE: Okay. We estimated in our preliminary  
15 economic analysis that seven percent of workers are  
16 paid by piece rate for an industry. Is this estimate  
17 reasonable for your industry?

18 MS. RINER: I do not think so. We would need to  
19 get the economists involved on this, and there are  
20 plenty of experts, like Dr. Campbell, and several  
21 others across the country who focus specifically on  
22 specialty and ornamental crops. I would lean into

1       their expertise there, but I do believe that seven  
2       percent is grossly underestimated.

3           MS. CARSE: Okay. In written comments or in the  
4       written testimony, you noted that employers need  
5       alternative options for managing acclimatization. Can  
6       you provide more specific examples of what these  
7       alternatives for acclimatization would be that would be  
8       feasible for your members?

9           MS. RINER: I'm sorry, in -- was this in my  
10      testimony or the original comments that I submitted  
11      back in December?

12          MS. CARSE: The original comments.

13          MS. RINER: I will need to circle back on -- with  
14      my members for that, and I will -- I'll circle back in  
15      the end comments.

16          MS. CARSE: Okay. And the last question I'm going  
17      to read into the record because they are specific to  
18      Dr. Campbell's economic impact analysis, and I imagine  
19      you'll have to confer with him about it. And there are  
20      several parts, so bear with me.

21          Dr. Campbell assumes that workers are already  
22      receiving 15-minute breaks every two hours as the

1 industry norm. Is this an accurate representation of  
2 your industry?

3 MS. RINER: In greenhouse production, yes; in  
4 other sectors, maybe not.

5 MS. CARSE: Okay. And can you elaborate on why  
6 you believe supervisor observation of employers --  
7 employees is necessary to comply with the proposed  
8 rule?

9 MS. RINER: I don't. That was the (audio  
10 malfunction) --

11 MS. CARSE: Okay. That was an assumption in the  
12 economic analysis.

13 MS. RINER: It was a -- it was something within  
14 the rule that we read. Maybe we read that wrong. But  
15 it said that it was required that they had to be  
16 supervised during that time, and that was from the  
17 original rule language.

18 MS. CARSE: Okay. I --

19 MS. RINER: 346 pages, so I'm not sure. Maybe we  
20 missed something.

21 MS. CARSE: Well, if there's something --

22 MS. RINER: So we can circle back on it.

1 MS. CARSE: -- that's not clear, and that's  
2 helpful for us to know. So if you can point to that,  
3 that'd be helpful.

4 MS. RINER: Absolutely.

5 MS. CARSE: And the estimate that Dr. Campbell  
6 provided had an estimate of travel time to and from the  
7 work area, of five minutes each way for a total of ten  
8 minutes per break. Dr. Campbell's baseline assumption  
9 is that employees are taking breaks, but are not being  
10 paid for travel to and from shaded break areas. Is  
11 that consistent within the industry?

12 MS. RINER: Dr. Campbell -- a question -- and I'm  
13 not sure that I read that the same way you did.

14 MS. CARSE: Okay. If you could get back to us  
15 with that?

16 MS. RINER: Absolutely. I'll be glad to.

17 MS. CARSE: And I'm sure -- are you able to  
18 provide the estimates for the cost for San Diego? Dr.  
19 Campbell mentioned that they were higher, but it was  
20 blank on the table that was submitted.

21 MS. RINER: I live in Georgia. Our membership is  
22 in Georgia, and I have no idea what happens in San

1 Diego.

2 MS. CARSE: Okay. Well, it was in his economic  
3 analysis, so if you could just ask him and come back on  
4 that.

5 MS. RINER: I will be glad to. I will be glad to  
6 get him to respond to that.

7 MS. CARSE: Okay. In Dr. Campbell's economic  
8 impact analysis, he used a trigger of wet bulb globe  
9 temperature of 80 degrees for triggering the proposed  
10 requirements.

11 MS. RINER: No, no. That was an actual  
12 temperature, because the temperature monitoring systems  
13 across Georgia that have been in place for decades only  
14 measure actual air temperature. We know that the wet  
15 bulb globe -- sorry -- wet bulb temperature is higher  
16 than the actual air temperature based on the humidity  
17 in Georgia. It's hot. It's sticky.

18 MS. CARSE: Okay. This may change the question a  
19 little bit. It's -- that's what was stated, and it was  
20 a little unclear, so maybe it was just confusion on our  
21 end. So it -- would you anticipate that GGIA members  
22 would use the ambient temperature or the heat index?

1 MS. RINER: Most right now use the National  
2 Weather Service Heat Index, and they use the  
3 temperature monitoring systems within and on their  
4 farms to determine whether they are in the danger zone  
5 or the safe zone or the extreme danger zone, and they  
6 take care of their workers accordingly.

7 MS. CARSE: Okay. So if you could just get some  
8 of those clarifications from Dr. Campbell. We just  
9 want to make sure that when we're comparing our  
10 analysis to his, we're using the right benchmarks.  
11 Thank you.

12 MS. RINER: Okay. Thank you, ma'am.

13 MR. BEARR: Your Honor, that concludes OSHA's  
14 questions.

15 JUDGE BELL: All right. Any questions from the  
16 Solicitor?

17 MR. MOCZULA: Yes, Your Honor, one question.

18 Either now or in post-hearing comments, we'd be  
19 interested in knowing how you balance rest breaks as  
20 needed for your members with the production  
21 requirements. In your written comment, you mentioned  
22 retail garden centers and staffing requirements. So

1           for example, we would want to know how your members hit  
2           a balance between those two requirements. Thank you  
3           for your testimony and your time.

4           MS. RINER: I'll be glad to weigh in on retail  
5           garden centers. I also have worked in this industry in  
6           several different sectors. Everyone comes in when it  
7           opens, and just like you would shift your lunch breaks,  
8           breaks are also shifted throughout their -- no one is  
9           expected to work the entire day with no breaks. That's  
10          unreasonable.

11          And honestly, I don't know that anyone could ever  
12          be so acclimatized to do that, but it's the rigidity  
13          of every two hours. Because if everyone comes to work  
14          at the same time, shutting down your garden center for  
15          15 minutes two hours later is not a reasonable  
16          expectation.

17          MR. MOCZULA: Thank you for your testimony and  
18          time.

19          MS. RINER: Yes.

20          JUDGE BELL: All right. Are there other questions  
21          for Ms. Riner?

22          MS. CARLON: Yes, Your Honor. The first is from

1 Mr. Schneider. Please state your name for the record.

2 MR. SCHNEIDER: Hi. My name is Scott Schneider.

3 Thank you for your testimony, Ms. Riner. I had a  
4 couple of quick questions for you. You talked about a  
5 geographic penalty in Georgia versus Maine. Could you  
6 explain that? I mean, I know Georgia is hotter and  
7 more humid than Maine, that's taken into consideration  
8 by the trigger 80 degrees of heat index. So if it's  
9 not triggered, then obviously you don't have to do  
10 anything. So what exactly would you do to accommodate  
11 the geographic distribution or variation that exists?  
12 How would you -- how would you modify the standard to  
13 do that?

14 MS. RINER: I don't know. I think that's for the  
15 experts to decide, but I would say that trigger comes a  
16 whole lot more often in the southern states and -- and  
17 pretending like it doesn't, that's just ignoring the  
18 reality. Folks who've worked here and -- and continue  
19 to work here, these are heavy production states for  
20 agriculture, heavy production states, and this would  
21 literally shut that down. So the proposed rule is --  
22 it is -- it's going to, you know -- southern states,

1 hot states are going to be impacted more frequently  
2 than states that are -- that don't hit that trigger as  
3 often.

4 MR. SCHNEIDER: Right. Well, I mean, if you have  
5 a standard to protect workers from heat, obviously it's  
6 going to impact places that are hotter or more because  
7 you have to protect those workers more if it's hotter  
8 there, right?

9 MS. RINER: Well, do you understand that those  
10 thresholds get hit in Georgia in January sometimes?

11 MR. SCHNEIDER: Well, but if it's hot -- if it's  
12 hot, you have to protect them. So the question I have  
13 is you talked about the triggers. You said your  
14 employers use the heat index from the National Weather  
15 Service to decide when to provide protections.

16 MS. RINER: Yes.

17 MR. SCHNEIDER: And what -- what level do they use  
18 to make a determination that there's a risk of heat  
19 injury? Which is it?

20 MS. RINER: I've -- I've pulled that up right now.  
21 And I would encourage you to look at that as well.  
22 And -- and if you're looking at a wet bulb or a heat

1 index temperature and you are looking at 85 degrees, or  
2 even 80 degrees at 100-percent relative humidity, it  
3 feels like 87. That's still a beautiful day in  
4 Georgia. I'm just going to tell you. I've -- I've  
5 worked in greenhouses. I own a greenhouse. That is a  
6 beautiful day in Georgia.

7 MR. SCHNEIDER: So are you familiar with the  
8 scientific literature on heat stress and what causes  
9 heat illness --

10 MS. RINER: I am.

11 MR. SCHNEIDER: -- at what levels?

12 MS. RINER: I -- I am familiar with it and I have  
13 read it, but I would be very hesitant to quote it here.  
14 But I'll be glad to circle back on some of that  
15 information and get it to you.

16 MR. SCHNEIDER: Okay. I have one more question on  
17 the rest breaks. You said people take rest breaks as  
18 needed. Are you -- are you aware that thirst is not  
19 considered a good indicator for when employees need  
20 rest breaks?

21 MS. RINER: Yes. We based our best management  
22 practices on OSHA's own best management practices and

1 making sure -- and our trainings are also based on  
2 that. We train our people on recognizing those issues.  
3 We train them on staying hydrated. We train them on  
4 taking care of each other, protecting themselves from  
5 the sun and from the heat. All of those things have --  
6 are consistently done and have been consistently done  
7 throughout this.

8 Again, our workers are valuable to us. Our  
9 businesses could not operate. Their livelihoods would  
10 cease to exist. This is just over-burdensome  
11 regulation that is going to make it very difficult for  
12 any of our folks to make a living, business owners and  
13 workers alike.

14 MR. SCHNEIDER: And when you're -- you talked  
15 about a number of people working piece rate. And so if  
16 people are working piece rate, there probably is an  
17 incentive for them not to take a rest break because  
18 they're not getting paid. So how do you get them --

19 MS. RINER: That's is treated as --

20 MR. SCHNEIDER: -- to take rest breaks?

21 MS. RINER: -- most of those areas are set up  
22 in -- in shade or in cooler areas. We do everything

1           that we can to protect our workers and allow them to  
2           earn the best livings that they can.

3           MR. SCHNEIDER:   What I'm asking is, is if they're  
4           not getting paid for the rest breaks, if they're  
5           working piece rate, there's a disincentive for them --  
6           there's an incentive for them to continue working even  
7           though they might be at risk --

8           MS.RINER:   We -- we train and --

9           MR. SCHNEIDER:   We would have to deal with --

10          MS. RINER:   -- teach them -- we train -- teach  
11          them.   They have managers.   I feel like you're picking  
12          at it now.   This is standard practice across all of  
13          agriculture.   We protect our workers and we value them  
14          and even our piece-rate workers.   They are incredibly  
15          valuable to us, and we want them to earn an excellent  
16          living.   This regulation is going to limit their  
17          ability to do that.

18          MR. SCHNEIDER:   Okay.   Thanks very much.

19          MS. RINER:   Thank you.

20          JUDGE BELL:   Any other questions for Ms. Riner?

21          MS. CARLON:   Yes, Your Honor.   There is one more  
22          from Mr. Lundegren.

1 JUDGE BELL: Welcome back.

2 MR. LUNDEGREN: Thank you, Your Honor.

3 Hi, Lanie. This is Bruce Lundegren from the  
4 Office of Advocacy at the U.S. Small Business  
5 Administration. And I wanted to thank you and your  
6 trade association for your participation in the Heat  
7 Injury and Illness SBREFA Panel in 2023, and your  
8 member that participated on the panel.

9 I just -- I have a question to ask you. A lot of  
10 the talk during the SBREFA Panel was about the need for  
11 a flexible -- you know, to avoid a one-size, inflexible  
12 approach, to have flexibility and a performance-based  
13 standard. And I think -- I surmise your answer would  
14 be that no new rule is the one that you'd like best.

15 But one of the problems OSHA is confronting is if  
16 they were to develop a performance-oriented standard,  
17 how would they enforce it? Or maybe I should ask you,  
18 are there -- are there elements that OSHA could include  
19 in a very simple, straightforward, flexible rule that  
20 would provide for a safe workplace? So what elements  
21 would that have in it? And what -- and how would OSHA  
22 enforce it?

1 MS. RINER: Best management practices, training  
2 opportunities to ensure -- especially with the language  
3 barriers that are there, those are going to be very  
4 burdensome pieces for our folks economically. And then  
5 just flexibility, because our industry is so diverse  
6 across every single sector, like the prescribed every  
7 two hours must go to designated break area, must be  
8 monitored by manager. Those are very, very difficult  
9 components.

10 So just considering the nature of the work and  
11 removing those barriers so that our folks can comply,  
12 take care of their workers, make sure that they're  
13 operating safely, those would be the things that if  
14 there were a rule, we would want to see.

15 MR. LUNDEGREN: Okay. And you're -- this is Bruce  
16 Lundegren again. Your -- your members, they have  
17 programs in place now that you feel are highly  
18 effective?

19 MS. RINER: They have best management practices  
20 that they train in-house in place. Yes, sir.

21 MR. LUNDEGREN: Okay. Thank you very much. Thank  
22 you, Lanie. And thank you, Your Honor.

1 MS. RINER: Yes, sir.

2 JUDGE BELL: You're welcome. Any other questions  
3 for Ms. Riner?

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

5 JUDGE BELL: Ma'am, thank you very much for your  
6 testimony. It's been very helpful.

7 MS. RINER: Thank you, sir. Have a wonderful day.

8 JUDGE BELL: You, too.

9 MS. CARLON: The next speaker group is the  
10 Communications Workers of America, represented by Micki  
11 Siegel de Hernandez, Danny Sallie, Randy Rodriguez, and  
12 Ted Maple. Please state your name and affiliation as  
13 you all transition throughout your testimony.

14 JUDGE BELL: We're not able to hear you if you're  
15 speaking. There you are.

16 MS. SIEGEL DE HERNANDEZ: There I am. Just trying  
17 to get everything all set.

18 JUDGE BELL: Go ahead, please.

19 MS. SIEGEL DE HERNANDEZ: My name is Micki Siegel  
20 de Hernandez, and I serve as the National Deputy --  
21 Deputy Director for Occupational Safety and Health for  
22 the Communications Workers of America. I want to say

1           good afternoon. And thank you to OSHA for the  
2           opportunity to testify.

3           CWA represents a diverse membership of private-  
4           and public-sector workers across every state and Puerto  
5           Rico. Our members work in telecommunications, IT,  
6           airlines, manufacturing, news media, broadcasting,  
7           education, health care, public service, and law  
8           enforcement, among other industries.

9           Our members work for large and small employers,  
10          and so we are very sensitive about what the impact of a  
11          new heat standard will be, and how a heat standard  
12          might be operationalized in such a wide range of  
13          employers and work operations. Heat exposure impacts  
14          nearly all of our members. That's why we strongly  
15          support OSHA's heat injury and illness prevention  
16          standard for indoor and outdoor workplaces. Heat  
17          protection is not a luxury; it is a life-saving  
18          necessity.

19          Heat protections also enable workers to do their  
20          jobs despite the hazard. Workers who are made sick --  
21          or worse die -- from preventable heat exposure are not  
22          ever productive. No job should cost a worker their

1 life, especially when the risk is foreseeable and  
2 preventable.

3 Here are some suggestions we have for improving  
4 the language. One, include sedentary indoor workers.  
5 We urge OSHA not to exempt sedentary indoor workers  
6 from the final standard. CWA represents many call  
7 center employees and others in temperature-controlled  
8 environments. These systems can and do fail during  
9 heat waves or power outages. Even if temporary, those  
10 conditions still create health risks. A heat injury  
11 and illness plan must anticipate such disruptions and  
12 include mitigation strategies like remote work,  
13 alternative work sites, or mobile cooling. Employees  
14 should be trained on these contingency procedures in  
15 advance.

16 Enforceability. Enforceability is a strength, not  
17 a flaw. Some have criticized the standard as having  
18 been crafted with enforceability as the purpose or  
19 overly -- overly focused on citations. But  
20 enforceability is essential. It gives both employers  
21 and workers a clear framework. At CWA, we don't rely  
22 on OSHA as the first solution. We use safety

1 committees, contract language, worker training, and  
2 employer negotiations to solve safety and health  
3 problems.

4 A clear standard helps everyone. It sets a  
5 baseline that can be used proactively to improve or  
6 maintain protections and avoid enforcement issues  
7 altogether. Without a standard, too many employers  
8 will simply ignore the hazard, putting workers in  
9 danger.

10 I would like to address the one-size-fits-all  
11 concern. Critics have also called the proposal a one-  
12 size-fits-all standard. But it's not. OSHA's approach  
13 requiring a written HIIPP with specific elements  
14 actually allows employers to tailor protections to  
15 their specific workforces and conditions. Large  
16 employers already use this model across multiple  
17 locations for other safety issues and standards. It is  
18 a common practice. The standard does not dictate  
19 uniform procedures, it allows for flexibility within a  
20 required structure. This is not one-size-fits-all.  
21 It's targeted hazard prevention.

22 We would also like to strengthen worker

1 involvement. We recommend OSHA strengthen the  
2 requirement for involving nonmanagerial employees and  
3 their representatives in all stages of the HIIPP  
4 development, implementation, and review. Workers bring  
5 essential knowledge of the conditions they face and  
6 should help shape the solutions.

7 Heat waves and acclimatization. Another gap in  
8 the current proposal is how to handle sudden heat  
9 waves, especially early in the season. As another  
10 presenter pointed out, we're experiencing that right  
11 now. During such events even experienced workers may  
12 not be acclimated to the abrupt change. The 2018 MMWR  
13 Study evaluating occupational exposure limits for heat  
14 stress and outdoor workers in the United States from  
15 2011 to 2016 highlighted this very concern.

16 Employers must recognize the risks of these short-  
17 term, high-impact events. The HIIPP should include  
18 specific measures for unexpected heat waves. Modified  
19 work schedules, increased cooling breaks, changes to  
20 productivity expectations, and enhanced communication  
21 are some options, and workers should be trained on  
22 these protocols in advance.

1           Emergency response and heat conditions. Some CWA  
2           members respond to emergencies during extreme heat,  
3           such as restoring critical telecommunication services  
4           during storms or other crises. These situations  
5           involve extended hours, more than an eight-hour  
6           workday, unfamiliar environments, logistical challenges  
7           like securing water or shade, and other health and  
8           safety hazards.

9           Heat is an additional hazard that makes work in  
10          dangerous conditions during an emergency even more  
11          hazardous. We recommend the standard require employers  
12          with emergency response roles to include heat-specific  
13          protocols for those situations in their HIIPPs and  
14          training programs. And I am not referring to first  
15          responder operations.

16          Mobile and transient work sites. Many of our  
17          members -- many of our members' work is mobile and  
18          conduct -- and they conduct work in the field in  
19          temporary settings. It could be on roof tops, poles,  
20          manholes, construction sites, customer premises, and  
21          businesses of all types. These sites are often not  
22          under the employer's control, making traditional

1 controls harder to implement. OSHA should adapt the  
2 language -- the standard's language to address  
3 transient and mobile work sites and clarify how  
4 employers can meet requirements for monitoring  
5 conditions and ensuring access to breaks and cooling in  
6 those environments.

7 Personal risk factors. Some have expressed  
8 concern that employers can't account for workers'  
9 personal risk factors. But OSHA isn't asking employers  
10 to do that, and should not. And OSHA does not hold  
11 employers accountable for employees' personal risk  
12 factors and their -- and their personal susceptibility  
13 to heat illness.

14 Instead, the standard, rightly, requires training  
15 workers about individual risk factors, and encouraging  
16 them to seek medical guidance for concerns they may  
17 have about their health. Training should also stress  
18 that workers can and should request relief if they feel  
19 symptoms related to heat, even during some critical  
20 operations, something that requires adequate staffing  
21 and pre-planning on the part of the employer.

22 In conclusion, CWA thanks OSHA for moving forward

1 on this crucial standard. The time for action is now.  
2 Each year, preventable heat-related illnesses and  
3 deaths continue to occur. A strong, enforceable, and  
4 adaptable OSHA heat standard will save lives, and  
5 provide the clear guidance employers and workers need.

6 We urge you to finalize a strong heat injury and  
7 illness prevention standard that covers all workers,  
8 indoor and outdoor, sedentary and active, stationary  
9 and mobile, and ensures workers are trained, protected,  
10 and kept safe at their jobs from the danger of heat.

11 Thank you for listening.

12 And I would like to turn this over to our next CWA  
13 panelist, Danny Sallie. If you could promote him to  
14 present.

15 JUDGE BELL: Mr. Sallie, are you with us?

16 MR. SALLIE: Good afternoon. I can't seem to get  
17 my video working. Let's see what that does. It's not  
18 allowing my video to start, through the block.

19 JUDGE BELL: So if you're okay, we're okay with  
20 you going forward just with your audio.

21 MR. SALLIE: That's fine. Good afternoon. My  
22 name is Danny Sallie, and I'm a staff representative

1 for the IEU-CWA. That's the Industrial Division of the  
2 Communications Workers of America. And I work directly  
3 with IEU-CWA local unions, whose members are employed  
4 across a range of manufacturing facilities. I'm here  
5 today to express my support for OSHA's proposed  
6 standard on heat injury and illness prevention.

7 In my role, you know, and I visit plants  
8 regularly, meet with the workers, and see firsthand the  
9 conditions they face. My job also involves regular  
10 interaction with employers. Before this job, I worked  
11 in manufacturing myself from the Northeast to the  
12 Southwest, and I've experienced the punishing effects  
13 of high heat. I know what it's like to push through  
14 the workday, soaked in sweat, surrounded by hot  
15 equipment while wearing clothes that trap heat.

16 Heat stress in manufacturing is not hypothetical.  
17 It can be a daily hazard in some operations, and it's  
18 compounded by three things: One, indoor environments  
19 that trap heat, or outdoor environments exposed to high  
20 temperatures, humidity, and radiant heat; two, work  
21 processes that generate additional heat; and three, the  
22 personal protective equipment workers must wear for

1 safety.

2 In one of my first jobs, I worked in the  
3 electrical mechanical industry for a company that  
4 repaired electric motors. The plant had no climate  
5 controls, so when it was hot outside, it was even  
6 hotter inside. On top of that, our work required the  
7 use of industrial ovens, burn-out and bake-out ovens.  
8 That added to the heat load. We had to wear long pants  
9 and long sleeves for safety. You can combine high  
10 ambient temperatures, radiant heat from ovens, and  
11 heat-retaining clothing, and you have a perfect storm  
12 for heat illness.

13 Another example comes from work I did in  
14 substation yards, where we were completely exposed to  
15 the sun with no permanent shade. There were a few  
16 mobile canopies, but they offered little protection  
17 when working around metal components radiating stored  
18 heat. We also had to wear flame-resistant clothing  
19 necessary for safety, but it added significantly to our  
20 body -- body heat burden.

21 I continue to see risk and heat illness in our  
22 represented worksites. IEU-CWA represents workers at

1 New Flyer, a bus manufacturer with multiple plants  
2 across the country. Conditions vary dramatically  
3 between sites. As an example, in Kentucky, the plant  
4 is climate-controlled, and workers can wear shorts.  
5 But our facility we have in Alabama, the welders in  
6 particular face extreme heat in poorly cooled or poorly  
7 ventilated areas. They wear heavy PPE, you know,  
8 coveralls, welding helmets, gloves, and respirators  
9 because of the hazard of the welding work. The heat  
10 burden is serious, and the cooling systems often fail.

11 In contrast, at the New York -- at the New Flyer  
12 plant in St. Cloud, Minnesota, with similar heat risk  
13 in the welding area, the union negotiated contract  
14 language that protects workers through mandatory heat  
15 monitoring and structured rest breaks tied to wet bulb  
16 globe temperature, WBGT readings. Workers there get  
17 air-conditioned break rooms and defined rest -- work-  
18 rest schedules based on heat levels. It's a clear  
19 example that these protections are not only feasible,  
20 they're already working in some places. But in  
21 Alabama, workers doing the same job for the same  
22 employer don't have these protections. That's why a

1 constant national OSHA standard is essential.

2 Some employers do the right thing. As an example,  
3 my former plant; many managers came from the shop floor  
4 and understood the dangers. When the temperature rises  
5 past the threshold, work -- workers get mandatory ten-  
6 minute breaks every hour in a cooled area. More break  
7 time is added as heat increases. Some employers even  
8 allow workers to take breaks as needed.

9 You know, these are not revolutionary ideas.  
10 These are life-saving, proven, and entirely achievable.  
11 Unfortunately, not all employers are proactive. And  
12 that's the problem. Without a standard, too many  
13 workers are left vulnerable to preventable illnesses or  
14 worse, death.

15 The proposed rule rightly requires employers to  
16 assess heat risk, including from work processes and  
17 PPE, and to implement controls like hydration, shaded,  
18 or cold -- cooled rest areas, and scheduled breaks.  
19 These are basic, reasonable measures that save lives  
20 and support productivity.

21 The idea that these measures aren't feasible in  
22 manufacturing doesn't match reality. We have real-

1 world examples from both union contracts and employer-  
2 led policies showing they work. Employers who value  
3 safety and respect their workforce already implement  
4 them, and the industry does not grind to a halt.

5 This standard will level the playing field and  
6 ensures that no worker, regardless of whether they  
7 live -- or where they live, what plant they work in, or  
8 who their employer is, is put to unnecessary risk from  
9 heat.

10 On behalf of the IEU-CWA members and manufacturing  
11 workers across the country, I urge OSHA to adopt a  
12 comprehensive heat injury and illness prevention  
13 indoor -- in outdoor and indoor work settings  
14 standards. The risks are real. The solutions are  
15 feasible. Heat-related illnesses can be prevented, and  
16 every worker deserves to be protected.

17 MS. SIEGEL DE HERNANDEZ: Thank you, Danny.

18 MR. SALLIE: Thank you.

19 MS. SIEGEL DE HERNANDEZ: Randy, are you ready to  
20 go?

21 MR. RODRIGUEZ: Yes. Good afternoon, and thank  
22 you for the opportunity to testify. My name is Randy

1       Rodriguez. I'm a communications technician with the  
2       Houston, Texas Power Team at AT&T and an active member  
3       of the company's Five-State Power Team Safety  
4       Committee. I also serve as a local union steward for  
5       the Communications Workers of America, Local 6222, in  
6       Houston, Texas, where I chair our Safety and Health  
7       Committee, and I serve as a District 6, safety and  
8       health trainer.

9               I've spent years working in extreme heat and  
10       teaching others how to prevent heat-related illness.  
11       Today, I strongly urge OSHA to adopt a robust heat  
12       injury and illness prevention standard that includes  
13       protections for both indoor and outdoor workers. I'll  
14       be covering the importance of comprehensive training,  
15       the need for protections during emergency response  
16       operations and telecommunications, and the feasibility  
17       of a heat standard.

18               I want to begin by emphasizing the critical  
19       importance of training. For the past 16 years, CWA has  
20       developed and delivered in-person heat safety training  
21       for members above and beyond what most employers  
22       provide. Our class, which is one that I teach, covers

1 the physical and mental effects of heat illness, how to  
2 recognize signs and symptoms, respond to emergencies,  
3 report incidents, and identify unsafe work practices.

4 The training is worker-led and highly interactive.  
5 Unlike many employer-provided courses, our sessions  
6 allow coworkers to share real life experiences, ask  
7 questions, and walk away empowered to speak up and take  
8 action. We also teach members how to evaluate company  
9 procedures and address any safety gaps.

10 This training has saved lives. After one class in  
11 particular, a local steward recognized signs of heat  
12 illness in a coworker and intervened immediately. That  
13 worker was later hospitalized, but made a full recovery  
14 thanks to the training the steward received from the  
15 union.

16 All employers should provide comprehensive  
17 training to both employees and supervisors. A well-  
18 informed workforce is essential for preventing heat-  
19 related illness. We support OSHA's proposed training  
20 requirements and urge their adoption.

21 I also want to address the need for protections  
22 during emergency response work for nontraditional

1 responders. It is somewhat unclear in the current  
2 draft of the standard whether certain emergency  
3 operations, such as those carried out by communication  
4 employees like me, would be exempted from the  
5 protective measures in the heat standard during  
6 response activities.

7 A complete exemption would be a mistake.  
8 Communication workers aren't first responders, but we  
9 are critical to restoring infrastructure during  
10 disasters when risks are often highest. High heat  
11 conditions compound the safety risk. Just recently,  
12 our power team responded to Hurricane Beryl, working in  
13 high heat and dangerous conditions for extended hours  
14 each day. And while AT&T provides us with water, ice,  
15 and rest breaks, resources can quickly run low during  
16 prolonged emergencies; local stores may be closed or  
17 out of supplies, and infrastructure may be down due to  
18 power outages.

19 The standard should require employers to develop  
20 emergency-response-specific procedures for heat  
21 protections for nontraditional responders like myself,  
22 including reliable access to water, rest breaks, shaded

1 areas during response activities. Emergencies  
2 shouldn't mean unprotected.

3 Finally, I want to speak to those that claim that  
4 implementing a heat standard is too costly or  
5 burdensome. I work for a large, successful company  
6 that already provides many of the protections proposed;  
7 water, ice, cooling towels, electrolyte powders,  
8 adjusted work schedules when possible, hydration  
9 breaks, and encouragement to seek medical care, if  
10 needed. We also have formal safety committees, made up  
11 of both management and workers, to raise and resolve  
12 issues proactively. These programs are not only  
13 feasible, they're effective. They allow us to keep  
14 working safely, even in high heat conditions, and they  
15 don't break the bank.

16 Protecting workers and running a successful  
17 business are not mutually exclusive. But too many  
18 workers across the country don't have these  
19 protections. They face dangerous temperatures without  
20 access to water, rest, or training. Heat is a serious  
21 hazard, one that leads to countless preventable  
22 injuries and deaths each year.

1           OSHA has a responsibility to act, and a strong  
2           heat standard would save lives, improve working  
3           conditions, and give all workers the basic protections  
4           they deserve, whether they're in a factory, on a farm,  
5           or restoring power lines after a storm.

6           Please help protect the American worker. Let's  
7           stop preventable suffering and ensure that no family  
8           loses a loved one to a heat-related incident that could  
9           have been avoided. Thank you.

10          JUDGE BELL: Thank you.

11          MS. SIEGEL DE HERNANDEZ: Thank you, Randy.

12          Next on our CWA Panel is Ted Maple. Take it away,  
13          Ted.

14          MR. MAPLE: Good afternoon. Thank you for the  
15          opportunity to speak. My name is Ted Maple, and I'm a  
16          steward for CWA Local 7019, working as a passenger  
17          service agent for Piedmont Airlines at San Antonio  
18          International Airport. One of our groups of agents I  
19          represent are cabin appearance agents.

20          I was a cabin appearance agent myself, although I  
21          have a different job right now. These are the agents  
22          who clean and perform security checks on aircraft

1 overnight to make sure planes are clean, safe, and  
2 ready for the first flights the next morning. They  
3 work the night shift from 9:30 p.m. to 3 a.m. The job  
4 includes cleaning the seats, the tray tables, galleys,  
5 lavatories, mopping floors, securing seat belts, and  
6 doing a full security search of the entire plane.

7 Now, you wouldn't think that heat would be much of  
8 a problem working at night, but trust me, it is. All  
9 this work is done inside the planes that may have been  
10 sitting on -- for hours in the Texas heat. These  
11 aircraft were moved from gates to remote parking lot,  
12 and they are not powered on. That means we're cleaning  
13 and doing security checks inside sealed metal tubes  
14 with no ventilation and no air-conditioning. Windows  
15 cannot be opened. And in San Antonio, we regularly see  
16 outside temperatures of 95 degrees Fahrenheit or  
17 higher.

18 Last year alone, we had 26 days of 100-plus  
19 degrees. But inside those planes, it's significantly  
20 worse. As one of our agents put it, 89 degrees outside  
21 doesn't feel anything like 89 degrees inside a metal  
22 tube with no air flow. OSHA's proposed standard uses a

1 heat trigger when the heat index goes above 80 degrees.  
2 That happens almost every night in San Antonio for  
3 months on end. So we're at risk. And when it gets  
4 above 90 degrees, it's dangerous.

5 And I've seen what the danger looks like  
6 firsthand. We recently had a serious heat-related  
7 incident in our station. One of our cabin appearance  
8 agents collapsed during a shift. We believe it was  
9 heat exhaustion, or worse. He had to be rushed to the  
10 hospital emergency room. He was severely dehydrated  
11 and needed at least two bags of fluid by IV. Luckily,  
12 he was able to be released.

13 After this incident two of the other coworkers  
14 said they just quit. And they said, it's not worth it.  
15 OSHA proposed rule says employees must have heat injury  
16 and illness prevention plan. At our worksite, there is  
17 no real plan. That's one of the reasons we need OSHA  
18 heat standards.

19 At our site, there are two mobile air-conditioning  
20 units, but they frequently break down, and there's no  
21 backup. Planes used to be powered on to run their AC  
22 systems while we performed our jobs. But now that's

1 not done, and the management hasn't stepped up to make  
2 sure that aircraft can be safely cooled before we enter  
3 to do our work. That kind of engineering control would  
4 remove the heat hazard.

5 Access to water is another problem. Yes, there's  
6 water provided in the break room inside the terminal,  
7 but once we leave the break room to work, we rarely  
8 come back. We just move from plane to plane, get our  
9 10 to 12 planes done before our shift ends. If we  
10 leave our post to hydrate or cool down, we risk  
11 disciplinary action. We're told to bring our water  
12 bottles, but there's no structured system to ensure  
13 safe hydration on site where our work is performed.

14 Supervision is inconsistent. Sometimes there's a  
15 supervisor on the plane, sometimes not. But what  
16 really matters isn't just being present; it's being  
17 trained and empowered to support safe working  
18 conditions. Supervisors also need to understand the  
19 signs of heat-related illness, to encourage workers to  
20 speak up, and create an environment where people feel  
21 safe asking for help or taking a break.

22 Too often, there's pressure to finish quickly,

1 even when we're told we could ask for more time. Most  
2 of us don't because the culture doesn't make it feel  
3 safe to do so, and agents are afraid of retaliation.

4 As a former football coach of 31 years, I've seen  
5 what heat-related illness can do and how quickly it can  
6 escalate. During my time as working as a coach, we  
7 were trained on what to look for in an athlete  
8 suffering from heat illness. During my coaching  
9 careers, I've seen, firsthand, the long-lasting effects  
10 it can have.

11 People -- people often don't recognize the danger  
12 in themselves; that's why I believe training is a key.  
13 We need real training. Once-a-year reminder to "drink  
14 water; it's hot out there" isn't enough. Workers need  
15 to know what slurred speech, confusion, headaches,  
16 dizziness look like, not just in themselves, but in  
17 each other. This is a matter of life and death and why  
18 we need a strong, enforceable OSHA heat standard for  
19 indoor and outdoor work.

20 Employers should provide cooling systems that  
21 work, ensure water is available where the work happens,  
22 enforce real breaks out of the heat to cool down,

1 without retaliation, implement a thorough training  
2 program for workers and supervisors to prevent heat-  
3 related illness or death, and involve workers and their  
4 representatives in creating an updated heat safety  
5 plan, as the rule proposes.

6 We're not asking for anything unreasonable. We  
7 just want to do our jobs and go home safe to our  
8 families at the end of the night. This proposed  
9 standard can help make this a reality, and long  
10 overdue.

11 Thank you again for the opportunity to speak  
12 today.

13 JUDGE BELL: Thank you.

14 MS. SIEGEL DE HERNANDEZ: Thank you, Judge. That  
15 concludes our formal testimony, and we're happy to take  
16 questions.

17 JUDGE BELL: All right. Thank you all for your  
18 testimony. Very much appreciated.

19 Questions for members of this panel from the OSHA  
20 room?

21 MR. BEARR: Yes, Your Honor, we do have some  
22 questions.

1 First off, I want to thank everyone from CWA who  
2 provided testimony today. I was wondering, you know,  
3 if it was possible, perhaps in post-hearing comments,  
4 to provide further information that would help us at  
5 OSHA more fully understand the working conditions of  
6 your union members, in particular, what their  
7 experiences are with accessing -- accessing rest  
8 breaks.

9 I know Mr. Sallie mentioned the wide range of  
10 experiences based on two workplaces, but it would be  
11 helpful to know what other workers in those places, as  
12 well as in other workplaces, what their experiences  
13 are, any knowledge of safety plans in those workplaces  
14 or trigger points or actions that allow workers to  
15 access rest breaks, or what indications they're using  
16 to seek them. So that would be helpful.

17 MS. SIEGEL DE HERNANDEZ: We are happy to gather  
18 the information that we can and provide that in our  
19 post-hearing comments. We have -- it's hard to make  
20 general comments when there are, you know, thousands of  
21 workplaces and just so many different scenarios. And  
22 we have -- but we will -- we will put together what we

1 have, and many of our -- our breaks, we have breaks  
2 that we negotiate in our represented workplaces.

3 And then during high heat conditions, there are  
4 some - there's some additional contract language that  
5 may have been negotiated, like Danny Sallie had  
6 mentioned at our New Flyer plants that have used -  
7 they've used triggers that really - that can escalate  
8 the kinds of protections that are provided as the heat  
9 conditions get worse. And so we are happy to - to show  
10 that to you.

11 MR. BEARR: Thank you. Our next questions are  
12 coming from Zoe Petropoulos. She's on the line.

13 MS. PETROPOULOS: Zoe Petropoulos with the  
14 Directorate of Standards and Guidance. I have a few  
15 questions. So we've heard from multiple witnesses and  
16 commenters on recommendation for OSHA to have a  
17 geographically varying trigger or set of triggers.  
18 Does CWA agree with this approach? Why or why not?

19 MS. SIEGEL DE HERNANDEZ: This is Micki Siegel de  
20 Hernandez. I -- personally I don't understand the need  
21 or the -- the reference to -- whether the variance in  
22 weather conditions -- of course, weather conditions

1 vary, including temperature, relative humidity, dew  
2 point, every day, everywhere, and not just by region --  
3 region or state, but from town to town, locality to  
4 locality, higher elevations, lower elevations, and so  
5 on.

6 This is the Earth, right, so we have we do have  
7 weather variations. But the heat -- the OSHA heat  
8 standard, by establishing certain triggers, sets a bar  
9 that is -- that can be applied no matter where those  
10 heat conditions are. So a heat index -- right now  
11 where I am, the heat index is over 100 degrees. In  
12 another place of the country, it wouldn't matter if it  
13 was New York or Arkansas or Idaho or Texas, a heat  
14 index of over 100 degrees is going to be dangerous and  
15 feel similar and will require the same level of  
16 protection and care for workers.

17 So to use the -- to say that because there is  
18 variation in temperature, workers cannot be protected,  
19 that just does not follow at all. And of course  
20 workers can be protected from heat. And you know, I  
21 might add that every single one of us protects  
22 ourselves from heat in our personal lives, no matter

1       where it is that we go. We find -- we find a way to do  
2       that.

3               In the workplace there are so many additional  
4       processes and conditions that will add to the heat  
5       burden, and so starting with appropriate heat triggers  
6       can help -- can help provide necessary protections. It  
7       has to be done. I don't see any other way.

8               And I would also say that our employers that have  
9       programs that are implemented across the country, you  
10      know, we have large employers that operate in many  
11      other states, or all other states, they don't have a  
12      different heat plan for -- and heat protections for  
13      every town where they operate. That would be crazy.

14              It is common practice, right now, for employers to  
15      have programs that are -- are implemented across their  
16      footprint, potentially some individualized --  
17      individualized protections if there's a certain  
18      operation in a particular area. But employers, all the  
19      time, have programs for their entire footprint. And  
20      that's -- to me, that is what OSHA is proposing with  
21      the OSHA Heat Standard. They would do the same thing.

22              MS. PETROPOULOS: Thank you. My next question. I

1 believe you mentioned the exemption for indoor  
2 sedentary workers in your testimony, but correct me if  
3 I misheard that. If you're aware of any data on heat-  
4 related injuries and illnesses among sedentary indoor  
5 workers, if you could share those in your post-hearing  
6 comments, OSHA would appreciate that.

7 MS. SIEGEL DE HERNANDEZ: I will say that heat  
8 illnesses are so under-reported and under-recorded that  
9 within our union, I know that I do not have sort of a  
10 large reliable data set. I will say, though,  
11 anecdotally, that over the years and to the present  
12 time, I get more complaints coming to me that have to  
13 do with locations that involve sedentary workers, where  
14 HVAC systems have failed during -- during the  
15 summertime. And this is, you know, across the country.

16 And I am contacted; people say, what can we do  
17 about this? And even when it may be temporary, we  
18 never know -- temporary can be weeks before that's  
19 fixed, and so employers -- we work with employers to  
20 figure out what might be a temporary fix for this  
21 temporary problem so that workers still can do their  
22 work, but not in those conditions.

1 MS. PETROPOULOS: Thank you. That's it for me,  
2 Jonathan.

3 MR. BEARR: Jonathan Berr, OSHA. Our next  
4 questions will be coming from Patti Downs.

5 MS. DOWNS: Hi, everyone. Patti Downs with the  
6 Directorate of Standards and Guidance. And you just  
7 partially answered one of the questions I was going to  
8 ask. So I'm just going to piggyback on that a little  
9 more. Do you or any of your employers -- is there a  
10 policy for how long employees may continue to work if  
11 the AC breaks down before those contingency plans go  
12 into place? Are you aware of any, or?

13 MS. SIEGEL DE HERNANDEZ: I'm not aware of any  
14 that specifically state that. I do know that there is  
15 great reluctance-- because there isn't a requirement  
16 out there, there is great reluctance. And we often  
17 sort of get into some discussions and negotiations,  
18 sometimes heated ones, to actually make certain  
19 changes, because it will eventually be fixed, because  
20 it will eventually change.

21 And our approach to this is, you have conditions  
22 that are impacting workers right now, in this moment,

1           and they need to be protected. And we have seen too  
2           many times conditions that were temporary, and  
3           temporary lasted for a very long time. Even a couple  
4           of days in, you know, in the weather that we're  
5           experiencing now in a building would be -- would be  
6           difficult for -- for many people, and employers  
7           should -- should take measures.

8           What those measures are, it really will depend on  
9           what the work actually is and what kind of flexibility  
10          the employer might have. I will say that since COVID,  
11          many of our employers, particularly for call centers,  
12          have much more flexibility in terms of remote work. So  
13          they may have employees at work in a climate-controlled  
14          environment. And if there's -- whether it's a heat  
15          emergency or some other kind of issue that might arise,  
16          they can much more quickly transition to work, that  
17          could be temporary without really impacting  
18          productivity.

19          MS. DOWNS: Okay. Thank you. Patti Downs again.  
20          Have your members worked at employers who have tried  
21          cooling fans, and if so, what was their experience with  
22          the use of fans? And if not, what alternative controls

1 or PPE are currently being used to keep employees in  
2 those spaces cool?

3 MS. SIEGEL DE HERNANDEZ: Again, in some  
4 locations, fans can be used or have been used, as has  
5 been noted many times, after a certain temperature, you  
6 know, above 90 degrees, or maybe even lower. Just  
7 blowing hot air is not cooling anyone, and so not  
8 really an appropriate -- an appropriate kind of  
9 control.

10 We have seen, depending on the employer, a variety  
11 of devices that might be used to cool a site. I'd like  
12 to ask, you know, if it's okay to turn this -- ask  
13 Randy or Danny about any cool -- well, we know Danny --  
14 we know, Ted, there's -- there's no cooling in the  
15 planes that they're working on right now, from fans,  
16 but if they have any examples.

17 Randy works inside in some very hot environments,  
18 so I would just ask if he has anything to add to that.

19 MR. RODRIGUEZ: Yes, Randy Rodriguez. The fans  
20 that we do have available, just like you said, if  
21 you're in a hot environment, it's just basically moving  
22 that hot air around. Although if you are sweating, it

1 does help, you know, with that cooling effect. But we  
2 don't -- we don't use them as a permanent fix, no.

3 MS. SIEGEL DE HERNANDEZ: I would also add --  
4 Micki Siegel de Hernandez. I would also add that in  
5 some circumstances, fans would not be appropriate  
6 because of other hazards that are in the workplace, and  
7 fans would -- would spread contamination into the air  
8 in a way that we would not want to -- not want to see.  
9 So it's very -- it's very work-site and work-operation  
10 specific about how we would look at what would be an  
11 appropriate control, rather than one way of cooling,  
12 you know, across an entire industry.

13 MS. DOWNS: Okay. Thank you. Well, OSHA would be  
14 very interested in any thoughts you had in addition on  
15 that, or if you wanted to expand on any of those in the  
16 post-hearing comments. That's all for me, Jonathan.  
17 Thank you.

18 MR. BEARR: Jonathan Bearn, OSHA. Our next  
19 question will be asked by Brenda Finter.

20 MS. FINTER: Hi. Brenda Finter, OSHA, Directorate  
21 of Standards and Guidance. I just have one question.  
22 Are there any protocols you suggest for contacting

1 employees who are in hard to reach areas, such as areas  
2 with poor broadband connection?

3 MS. SIEGEL DE HERNANDEZ: This has been an issue  
4 that really has plagued us for many, many years. We  
5 have -- because we do have workers that are in remote  
6 areas, and rural areas in particular, and even cell  
7 service is not available in some of these areas, so we  
8 have looked at devices to alert the employer -- you  
9 know, emergency devices that can be pressed to alert  
10 the employer.

11 We have -- AT&T was one example where -- piloted  
12 some of those. And it was never -- never ultimately  
13 implemented for a variety of reasons. So I can't say  
14 that we have come up with a permanent solution for  
15 that. There are certainly -- there are certainly  
16 devices that could be used, you know, satellite-related  
17 radios. And we used one during -- for hiking where you  
18 could make contact. But I don't see that as a viable  
19 alternative for most employers and work sites.

20 MS. FINTER: Thank you.

21 MR. BEARR: Jonathan Berrar, OSHA. I will turn it  
22 over to Adriana Lopez.

1 MS. LOPEZ: Adriana Lopez, OSHA Directorate of  
2 Standards and Guidance. Thank you for your testimony.  
3 As a union that covers workers across the United  
4 States, have you evaluated the impact of state-level  
5 heat regulations on employees?

6 MS. SIEGEL DE HERNANDEZ: So we have not --  
7 sorry -- are you -- is there more to your question?

8 MS. LOPEZ: No. That's it. Thank you.

9 MS. SIEGEL DE HERNANDEZ: So some of the heat  
10 standards have been around for a while. Some are new.  
11 We have certainly been involved in advocating for  
12 strong state heat standards. We have not yet  
13 instituted a -- what I would call a more formal  
14 investigation of the impacts and the changes that may  
15 have occurred across many different employers as a  
16 result of those standards.

17 But we are in the process of looking at a number  
18 of things that we would like to do internally around  
19 heat, you know, above and beyond what has happened  
20 already, and to continue negotiations with employers.  
21 I do know that none of our employers have gone out of  
22 business. Nobody has shut down operations. This

1       hasn't disrupted workflow in any significant way.

2               Employers have -- some employers that we are aware  
3       of have complied with the new regulations and may have  
4       updated plans that they already had in place to make  
5       that happen. So I will look into that further and see  
6       if we have any particular evidence that we can share,  
7       to date.

8               MS. LOPEZ: Thank you very much.

9               MR. BEARR: Jonathan Bearn, OSHA. That concludes  
10       OSHA's questions.

11              MR. MOCZULA: This is Daniel Moczula from the  
12       Solicitor's Office. We have no questions. Thank you  
13       very much for your time and testimony.

14              JUDGE BELL: Are there other questions for members  
15       of this panel?

16              MS. CARLON: Yes, Your Honor, we have two. The  
17       first is from Mr. Parsons.

18              MR. PARSONS: Hello. Travis Parsons, Laborers'  
19       Health and Safety Fund of North America. In your  
20       testimony, you mentioned training should also stress  
21       that workers can and should request relief if they feel  
22       heat illness-related symptoms, even during critical

1 operations. Sometimes that requires adequate --  
2 adequate staffing, maybe some extra staffing. Can you  
3 expound on why this is so important and how it can be  
4 accomplished?

5 MS. SIEGEL DE HERNANDEZ: Sure. Workers have to  
6 be able to get relief if they are experiencing  
7 symptoms, and there are many operations where  
8 workers -- or the worker can't just walk away from  
9 their jobs, and there are lots of different kinds of  
10 operations where it would be dangerous to just take a  
11 break, to reduce the crew size. And you can't just do  
12 that. So this is something that involves planning  
13 ahead of time, and usually that planning does involve  
14 having a relief staff who can take over the operations.  
15 It shouldn't be -- it has to be decided on ahead of  
16 time.

17 We had and -- we had a heat -- a serious heat  
18 incident -- incidents, I would say, plural, at a  
19 location -- we represent workers in passenger service,  
20 and many of these workers work on the ramp, on the  
21 tarmac doing lots of heavy physical labor, loading and  
22 unloading baggage, moving equipment around, and work on

1 the tarmac is often ten or more degrees higher than if  
2 you just measured the temperature in the air.

3 So you know, stressful job, and it's also always  
4 under time pressures, so getting planes turned around  
5 from the point at which they arrive to when they can  
6 actually leave, and all the work has -- done, there is  
7 always time pressure, always, and metrics for that. So  
8 people are moving quickly.

9 And back in 2023, in July of 2023, in a station in  
10 Florida -- Panama City, Florida, there one -- for -- on  
11 one of the days there -- there was a crew of about  
12 eight people, three of the employees suffered from heat  
13 exhaustion, one suffered from a heat stroke and had to  
14 be brought to -- and all three went to the hospital.  
15 The individual who was a supervisor who suffered from  
16 heat stroke was seriously -- seriously harmed for quite  
17 some time afterwards.

18 And probably about a week and a half after that,  
19 in the same month, same work location, a similar kind  
20 of thing happened, where several employees suffered  
21 from heat-related illness, heat exhaustion, syncope,  
22 and they also had to be brought to the hospital. So

1       this wasn't just one employee who was feeling -- I  
2       mean, that's a concern, always, multiple employees  
3       definitely related to the work and the inability of  
4       people to actually take a break if they need it.

5           And I want to add that the temperatures at that  
6       time began at 76 degrees in the morning; employees  
7       start early in the morning. They were -- for most of  
8       the day in the 80s. And for a period of both of those  
9       days during those incidents, were in -- rose to 90. So  
10      hot, but not what -- not what one might think of as  
11      excessive, but something that is covered by the OSHA  
12      heat standard.

13           So 80-degree days can be very, very dangerous.  
14      OSHA did an investigation. They -- the employer was  
15      cited with a serious violation under the General Duty  
16      Clause, and the employer contested -- it went through  
17      that whole process -- and finally settled that case.  
18      They still had the citation. The citation wasn't  
19      vacated.

20           And we got some enhanced settlement language that  
21      enabled employees -- that should have enabled employees  
22      to request a break if they need it and were feeling

1 symptoms. That has not been implemented yet. And so  
2 we are still working with this employer, and we have  
3 tried to negotiate language to do that.

4 But to your question, Travis -- that was a long-  
5 winded answer, but to your question, had there been  
6 foresight where other employees could have stepped in  
7 before people collapsed on the ground and had to be  
8 brought to the hospital, had the employer also had a  
9 thorough training program so that employees understood  
10 the signs and symptoms and did not feel fear of  
11 retaliation, which is another constant in this type of  
12 work, then those -- those illnesses could have been  
13 prevented. But it would have required the employer to  
14 have people available and to make it okay to switch  
15 people out if they were feeling sick before they got  
16 hurt.

17 MR. PARSONS: All right. Thank you for that very  
18 comprehensive answer. That's the only question I have.  
19 Thanks.

20 JUDGE BELL: All right. Are there other questions  
21 for this panel?

22 MS. CARLON: Yes, Your Honor. There is one more

1 from Ms. Reindel.

2 MS. REINDEL: Good afternoon. I just want to  
3 thank you, thank the CWA Panel for their great  
4 testimony. And I have two questions.

5 Micki, you had mentioned -- you had mentioned that  
6 you have employers who cover multiple work sites in  
7 different regions and different areas across the U.S.,  
8 and you think -- kind of touched on it a little bit.  
9 But I was just wondering if you could expand on  
10 examples of employer plans where you do have them cover  
11 multiple work sites, multiple regions, and addressing  
12 heat exposure, but also any other, you know, safety and  
13 health exposures where they vary? And maybe -- if not  
14 right now on the spot, maybe for the post-hearing  
15 record. That's my first question. Thank you.

16 MS. SIEGEL DE HERNANDEZ: Sure. So Randy  
17 mentioned the heat plan -- or heat program within one  
18 of our telecommunications companies, that is a good  
19 example. These programs are often created by the  
20 health and safety departments, the corporate health and  
21 safety departments that cover all health and safety  
22 within -- within the employer, and also involves input

1 from the union and input from operational managers to  
2 make sure that these programs actually can work and be  
3 implemented.

4 So we have examples of heat programs already in  
5 place -- always room for improvement, but they cover --  
6 they cover the entire footprint. That's the approach  
7 that the employers take for -- that some employers take  
8 for many different kinds of health and safety issues,  
9 and for programs that may be required under health and  
10 safety standards.

11 So for example, protection from lead in  
12 telecommunications companies -- the telecom  
13 companies -- not just one, but the -- all of them have  
14 a lead plan. It's not different in every location; it  
15 covers -- it covers work operations. And these plans  
16 include very specific protocols, procedures. They may  
17 have job -- work -- work aids for employees as well for  
18 very specific work operations. So it's very complete.  
19 And this is something that gets implemented across the  
20 country.

21 And also following -- following the establishment  
22 of any plan, of course, you know, we're very strong on

1       wanting comprehensive training. So we have worked with  
2       employers to develop that training and to make sure  
3       that the information -- the program itself, that people  
4       understand the program and can implement it --  
5       implement it.

6               And when there are problems in the field with any  
7       of the program elements -- as you know, Randy  
8       mentioned -- we also use health and safety committees  
9       and other ways to bring those issues to the employer to  
10      improve the plan. And so there is a constant  
11      improvement. I don't mean daily, but there is a  
12      process for improvement, providing input, and also  
13      improving plans as they -- as they are implemented.

14             MS. REINDEL: Thank you for that answer. And I'm  
15      not sure if I said this at the front, but I'm Rebecca  
16      Reindel, and I'm from the AFL-CIO.

17             And my second question is, you also touched upon  
18      employers not, you know, tailoring heat plans to  
19      personal -- personal risk factors, or personal health  
20      information. Could you explain a little bit more about  
21      why employers should not collect that kind of  
22      information -- both the employee information about

1       their personal risk factors or anything that could make  
2       them more susceptible on the personal front, but  
3       also -- and I guess it's a kind of a two-part  
4       question -- could you provide any examples where OSHA  
5       has conducted an investigation involving heat in your  
6       workplaces, but they did not hold the employer  
7       accountable for employees' personal health information?  
8       If that makes sense. Thank you.

9               MS. SIEGEL DE HERNANDEZ: Sure. Thank you for  
10       that long question, Rebecca. Micki Siegel de  
11       Hernandez.

12              So in answer to the first part, it is not the  
13       employer's business what people's personal health  
14       conditions are, whether physical health or mental  
15       health. There are many, many, many things that could  
16       make an individual more susceptible to heat-related  
17       illness, including pharmaceutical drugs. Most people  
18       are taking some -- something at this point, or may have  
19       one or multiple heat issues. And employers -- and I  
20       would say we don't collect that information. It's not  
21       really anybody's business except the individual for  
22       that kind of health information.

1           Employers are not set up to evaluate any of it.  
2           Let's say they put out a questionnaire. What would an  
3           employer do with that list? There's no book to go to.  
4           And this means that you have a risk level of this or a  
5           risk level of that. Most primary care providers would  
6           not be able to actually make that assessment. It is  
7           something that individuals should be thinking about  
8           and, as I said earlier, should seek advice from a  
9           health care provider.

10           But no employer is set up to evaluate that. And  
11           in my opinion, that information can just be used for --  
12           other than protections, and to discriminate against  
13           employees or to use it as an excuse for why when an  
14           employer doesn't -- is not protecting workers, why they  
15           may have suffered from a heat-related illness.

16           And I think that when you start thinking about all  
17           of the different health conditions that could  
18           contribute to raising risk, it doesn't ever end.  
19           Should women report when they're pregnant? Should, you  
20           know, like, what -- what is -- what would need to be  
21           reported? And so I would say, you can't even go down  
22           that road.

1           And this has been a concern for a while in part  
2           because there was an OSHA case where it was suggested  
3           to the employer in -- as something they could do for  
4           abatement. And we strongly, strongly objected to that  
5           because of all of the -- just all of the problems that  
6           would be created.

7           Related to that is OSHA does not hold employers  
8           responsible for employees' individual health risks  
9           related - related to - that might increase risk for  
10          heat-related illness. As one example - and we've had  
11          several fatalities over the years. Some of them we did  
12          think that the employer's lack of protections were the  
13          major contributing factors, and OSHA did not find the  
14          employer - did not cite the employer. So we disagreed  
15          on some of those.

16          But the most recent case, in 2022, was a very,  
17          very sad -- a sad situation where we had -- there was a  
18          member of ours who wanted to change his job from  
19          working on the inside to becoming an outside plant  
20          tech. And when somebody -- when they start -- and this  
21          is in telecommunications -- when they start work to  
22          work on the outside and do that kind of work, there's a

1 lot of training that they receive, and they may -- they  
2 have to go for a lot of safety training as well. So it  
3 might be a month's worth of safety training. And it's  
4 referred to as pole climbing, but it involves much more  
5 than pole climbing; you know, manhole use, use of  
6 ladders, all kinds of things.

7 And so this individual, he was well along in his  
8 career, not all that far from retirement, actually, and  
9 he decided that he wanted to switch. The pay was  
10 better. Whatever his reasons were, he decided he  
11 wanted to switch. And towards the beginning, he went  
12 to pole-climbing school -- had not yet started in the  
13 field -- went to pole-climbing school, and at the very  
14 beginning of the training, early in the training, he  
15 was -- had been up on the pole, was coming down at  
16 about six feet, and they just heard him yell out, and  
17 he was just dangling from the pole.

18 And he ended up, he had a heart attack and died.  
19 So it was -- it was tragic that that happened. But in  
20 the OSHA investigation of that case, they looked at all  
21 of the variables that they would look at in terms of  
22 what happened, what people knew, what he might have

1       said, you know, what they might have noticed in working  
2       with him, and also looked at the, looked at the work  
3       conditions; how they conducted the training, how much  
4       time was outside, how much time was inside, what kind  
5       of breaks did people have, what the temperatures were?  
6       They had wet bulb globe temperatures that were  
7       recorded.

8               And they looked at all of that. And ultimately at  
9       the end of that -- and I thought it was a thorough  
10      investigation. At the end of all of that, they  
11      determined that this employee had health conditions  
12      that unfortunately ended his life, but that the  
13      employer was -- the employer was doing everything that  
14      they should have done to protect all of the employees  
15      who were in that particular situation, and at that  
16      particular training. So they did not cite the  
17      employer. There was no -- no enforcement in that  
18      sense.

19             And we did not think that the employer should  
20      be -- should be cited, because it was clear from the  
21      investigation and information and documentation that  
22      the agency had collected that, unfortunately, it was

1 something that was regarding his health.

2 MS. REINDEL: Okay. Thank you very much. Those  
3 are -- those are all my questions.

4 JUDGE BELL: All right. Any other questions for  
5 this panel?

6 MS. CARLON: There is one more, Your Honor, from  
7 Mr. Glucksman.

8 JUDGE BELL: Mr. Glucksman, welcome back.

9 MR. GLUCKSMAN: Hi. Thank you very much, Your  
10 Honor. And to the panel, it's not really directed at  
11 any one person in particular, but I had a couple of  
12 questions about contacting lone workers, presuming that  
13 some communication workers might be out in the field  
14 alone doing -- you know, doing work.

15 And so I guess the first question -- again, for  
16 anyone -- do you feel that requiring that lone workers,  
17 you know, be contacted every two hours is -- is  
18 essential for protection against heat stress when  
19 they're out in the field working alone? Is two hours  
20 about the minimum that people should be contacted, just  
21 to touch base?

22 MS. SIEGEL DE HERNANDEZ: I think it's reasonable,

1       assuming they can be contacted. You know, we have --  
2       we have employees that if the connections can remain,  
3       they also -- they have tablets, aside from that --

4               MR. GLUCKSMAN: Um-hum.

5               MS. SIEGEL DE HERNANDEZ: -- they have tablets,  
6       and can use that to communicate with employers. And  
7       you know, they may be communicating far more often --

8               MR. GLUCKSMAN: Mm-hmm.

9               MS. SIEGEL DE HERNANDEZ: -- about particular  
10      jobs. So I think it is -- that is a good ballpark  
11      figure.

12              MR. GLUCKSMAN: Mm-hmm.

13              MS. SIEGEL DE HERNANDEZ: It's, again, going to  
14      depend on the work operation. There are some -- there  
15      are some locations where, you know, managers may not be  
16      able to do that, but an employee might be able to check  
17      in, and you know, that still doesn't prevent any  
18      problem, right? Somebody might have a problem, because  
19      we've had workers who have died on the job not having  
20      to do with, you know, heat or their work conditions --

21              MR. GLUCKSMAN: Mm-hmm.

22              MS. SIEGEL DE HERNANDEZ: -- and who are

1       discovered -- discovered at some other point. So you  
2       never really know when there may be a problem and --  
3       for heat or any other issue. But I think at some  
4       regular interval would be -- could be helpful.

5               MR. GLUCKSMAN: And in terms of communication  
6       devices -- you just mentioned the tablets, but are two-  
7       way radios or like noise-reducing protective  
8       communication products, are those used often? Or do  
9       you see those as being effective for communicating with  
10      workers in the field?

11             MS. SIEGEL DE HERNANDEZ: So I honestly can't  
12      answer, Dan, how often something like that is used. I  
13      would not say that it is common in all -- just thinking  
14      of telecommunications in particular.

15             MR. GLUCKSMAN: Yeah.

16             MS. SIEGEL DE HERNANDEZ: That, you know, it is --  
17      it is common. We are always looking for improved  
18      devices and ways to communicate with lone workers,  
19      workers who are in remote areas. And so if you have  
20      any thoughts on that, we're always happy to look at  
21      that.

22             And you know, one of the things that we do with

1 employers is bring it to an employer -- you know, look  
2 at it, bring it to an employer's attention, have pilot  
3 programs that are set up, and evaluate whether or not  
4 that's something that -- you know, that might work, but  
5 yes.

6 MR. GLUCKSMAN: Yeah, yeah. And we can also, you  
7 know, submit something some of our -- thinking on this  
8 in the post-hearing comments on this. Two other  
9 things; you had mentioned that one time a worker died  
10 of heat stress, are quote/unquote, "man down" systems  
11 used a lot? Or could they be used more often?

12 MS. SIEGEL DE HERNANDEZ: Can you sort of explain  
13 what it is that you're asking?

14 MR. GLUCKSMAN: Yeah. Yeah.

15 MS. SIEGEL DE HERNANDEZ: Just explain -- explain  
16 a little bit more.

17 MR. GLUCKSMAN: I think it's, you know, some kind  
18 of technology that would signal to a supervisor  
19 somewhere, you know, that someone has, you know,  
20 stopped moving -- almost like a PASS device that the  
21 firefighters wear.

22 MS. SIEGEL DE HERNANDEZ: Right.

1 MR. GLUCKSMAN: Like someone has stopped moving or  
2 maybe the monitors -- you know, some kind of biological  
3 function, like pulse, or something like that?

4 MS. SIEGEL DE HERNANDEZ: I am personally not  
5 aware of where that -- whether or not that's used  
6 anywhere. That doesn't mean that it's not. I don't --  
7 I can't speak for every single work site that we  
8 represent.

9 MR. GLUCKSMAN: Yeah.

10 MS. SIEGEL DE HERNANDEZ: I would ask any of my  
11 other panelists here if they have heard of that,  
12 particularly in some high-risk occupations, if they're  
13 aware?

14 MR. GLUCKSMAN: Okay. Well, thank you very much.

15 MS. SIEGEL DE HERNANDEZ: Thanks, Dan.

16 JUDGE BELL: Any other questions for this panel?

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

18 JUDGE BELL: All right. Thanks to all of you very  
19 much for your testimony and for your willingness to  
20 answer questions in detail. Thank you.

21 MS. CARLON: At this time. Your Honor, the panel  
22 was asking for a ten-minute recess, if time permits.

1 JUDGE BELL: Well, okay. So my clock says 3:15.  
2 So let's be back at 3:25 Eastern Time.

3 MS. CARLON: Sounds great.

4 JUDGE BELL: Thank you.

5 (Break.)

6 MS. CARLON: All right. We are now back. Our  
7 next speaker is David Chincanchan -- Chincanchan,  
8 excuse me.

9 Please state your name and affiliation for the  
10 record.

11 MR. CHINCANCHAN: I am David Chincanchan, and I  
12 serve as the Policy Director for Workers Defense  
13 Project.

14 JUDGE BELL: All right, sir. Go ahead, please.

15 MR. CHINCANCHAN: Thank you.

16 Well, good afternoon, Your Honor and OSHA panel,  
17 Office of the Solicitor. Again, my name is David  
18 Chincanchan. I serve as the Policy Director for  
19 Workers Defense Project in Texas. Our organization has  
20 participated in providing comments on this proposed  
21 rule over the last several years, has advocated for  
22 this rule publicly, and more recently submitted written

1           comments in January of this year.

2           We thank you for your consideration of a common  
3           sense standard to protect workers from heat-related  
4           illness, injury, and death. My goal today is to  
5           elaborate on a written comment and provide a  
6           perspective from Texas workers who are  
7           disproportionately impacted by this clear occupational  
8           hazard.

9           Next slide, please.

10          Workers Defense Project is a member-led  
11          organization that organizes Latine immigrant workers in  
12          Texas to fight for dignity and respect. For over two  
13          decades, our members have worked alongside community  
14          partners and stakeholders from across our state to  
15          successfully develop, vet, and implement common sense  
16          policies that create safer jobs.

17          And as the risk of heat-related illness, injury,  
18          and death facing Texans at their worksites has grown  
19          and intensified, protecting workers from this glaring  
20          occupational hazard has become one of our members' most  
21          pressing priorities.

22          Next slide, please.

1           We work alongside workers in various industries,  
2           including construction, manufacturing, hospitality,  
3           care, and others. To our members who work in these low  
4           wage, often dangerous industries, it is evident that  
5           this proposed rule would save countless lives and  
6           provide necessary, deserved, and overdue relief to  
7           millions of Texas workers, who labor in extreme heat  
8           with little to no say over the working conditions that  
9           impact their health and safety.

10           For all of these reasons, we offer our  
11           organizations strong support for adopting this rule and  
12           present the following perspective on the conditions in  
13           our own state to convey the urgent need for action.

14           Next slide, please.

15           So today, I'd like to speak to you about three  
16           conditions that illustrate why this rule is needed in  
17           Texas.

18           Number one, state inaction and preemption. While  
19           our local governments have recognized heat as a serious  
20           occupational hazard and have taken steps to address it,  
21           the state government has not only failed to act to  
22           protect workers, but in recent years, they have shifted

1 to a stance of outright obstruction to these life-  
2 saving solutions. And you'll see more about that.

3 Number two, rising heat hazards. Our summers in  
4 Texas are getting hotter and hotter each year, meaning  
5 that the heat hazards and the inevitable heat threat of  
6 heat-related illness that accompanies it will continue  
7 to intensify over the years.

8 And number three, dangerous industries. On this  
9 issue, I'll focus on the most visceral dangers in the  
10 construction industry, though I'd like to emphasize  
11 that it is not the only industry in which workers face  
12 these kinds of hazards.

13 Next slide, please.

14 So before I explain recent preemption efforts that  
15 have undermined the will of local voters to address  
16 these issues, I want to explain some of what we had in  
17 place and have lost.

18 In the cities of Austin and Dallas, local elected  
19 officials work with our members, our partners, their  
20 constituents and stakeholders, staff, subject matter  
21 experts to create local heat safety ordinances. In  
22 both of these cities, almost 15 years ago in Austin and

1        10 years ago in Dallas, ordinances were adopted that  
2        would require the most basic protection for  
3        construction workers: a required ten-minute rest break  
4        for every four hours worked.

5                In these instances, particularly in Dallas, the  
6        advocates for this ordinance faced severe opposition  
7        from construction industry employers, who claimed that  
8        this was too burdensome and would impact productivity.  
9        They claimed they already gave their workers water and  
10       rest even though the actual real world experiences of  
11       workers contradicted that narrative. Then they heard  
12       from families, including small children, who had lost  
13       loved ones because they were denied water and a simple  
14       water break at work.

15               They posed a question: "Does ten minutes of so-  
16       called productivity or profit really outweigh the value  
17       of a human life?" Thankfully, those local elected  
18       officials, the ones working on the ground who heard  
19       directly from their constituents every day, approved  
20       these common sense policies.

21               Next slide, please.

22               On June 14th, 2023, Governor Greg Abbott answered

1 the same questions through his actions. He signed  
2 House Bill 2127, the Texas Regulatory Consistency Act,  
3 also known as the Death Star Bill, into law.

4 One of the explicit goals of this sweeping  
5 preemption legislation was to dismantle basic heat  
6 safety protections afforded to Texas workers through  
7 local ordinances, like those providing protected rest  
8 breaks for construction workers in Dallas and Austin,  
9 and to prevent other cities from enacting similar ones.  
10 In fact, this had an immediate chilling effect as the  
11 city of San Antonio was in a multi-year process to  
12 establish heat safety protections that came to a halt  
13 and as a result was much more limited in scope.

14 Next slide, please.

15 On June 19th, only five days after the signing of  
16 HB 2127, as its proponents celebrated the signing,  
17 officials in Harrison County reported that 35-year-old  
18 Justin "Cory" Foster, a lineman working to restore  
19 power after a storm in East Texas, had died due to heat  
20 exhaustion. The very next day on June 20th, Eugene  
21 Gates, a 66-year-old letter carrier with more than  
22 three decades of experience on the job, suffered a heat

1 stroke and died while delivering mail in a Dallas  
2 neighborhood. He collapsed on a front yard in a Dallas  
3 neighborhood. These have been the result of state  
4 inaction, obstruction, and preemption in our state.

5 So next, I'd like to talk about the rising heat  
6 hazards in Texas.

7 Next slide, please.

8 These heat-related deaths are not isolated.  
9 Though every single one of these tragedies is felt  
10 deeply in our communities, they are unfortunately  
11 becoming more common in our state.

12 The summer of 2023 in Texas -- when the bill was  
13 signed -- went on to break long-standing heat records.  
14 Some cities, like Austin and El Paso, experienced  
15 streaks of over 40 days of brutal and sweltering heat  
16 reaching above 100 degrees Fahrenheit. There were more  
17 days when the heat went over 100 degrees, but these  
18 were 40 days in a row. The state's official data for  
19 2023 recognized 562 deaths, in which heat was a primary  
20 or a contributing cause of death in that year alone.

21 Next slide, please.

22 We know that number of Texans who have died due to

1 heat-related illness has continued to grow in recent  
2 years, but quantifying the exact amount has proven  
3 difficult. For example, according to the Texas  
4 Department of State Health Services, there were 777  
5 heat-related deaths from 2013 to 2019, yet an analysis  
6 by the Texas Tribune, a state-wide nonprofit news  
7 outlet, which accounted for some of the factors that  
8 complicate accurately quantifying heat-related deaths  
9 in our state, estimates that the actual number of  
10 deaths during that period was approximately 998.

11 Next slide, please.

12 So here, I'd like to pause to address a theme that  
13 has come up multiple times throughout the course of  
14 this hearing. It's my understanding that some of the  
15 decisions about which workers -- which workers to  
16 include and which to leave out in the proposed rule  
17 were determined by the availability or lack of  
18 availability of literature and data for certain  
19 industries. I'd just like to point out that that is a  
20 major part of the problem.

21 In Texas, there is no systematic method among the  
22 public agencies, medical facilities, and industries in

1       our state to collect accurate data on heat-related  
2       illness, injuries, or death that are experienced by  
3       Texans at work, which leads to inaccurate records in  
4       which incidents like these are either underreported or  
5       misattributed to other causes. So understanding the  
6       number of work-related deaths caused by heat is further  
7       complicated for several reasons, which I'll expand on  
8       in the next few slides.

9               Next slide, please.

10              Oftentimes, the full extent of the effects of heat  
11      stress on the body while performing work activities is  
12      not always clear while workers are still on the job.  
13      Earlier, I spoke about the case of Mr. Justin "Cory"  
14      Foster, the 35-year-old lineman who lost his life due  
15      to heat illness. Mr. Foster left his job feeling sick  
16      from exposure to heat and died hours later in a hotel  
17      room removed from his worksite.

18              We hear stories from the members of our  
19      organization all the time about the short-term and  
20      long-term effects of heat exposure. One of our members  
21      has told us she required multiple surgical procedures  
22      in her eye at the risk of losing her vision, and her

1 doctors have told her that it is a result of long-term  
2 exposure to direct sunlight and heat at her work.

3 So next slide, please.

4 Heat illnesses, like heat stroke, can also lead to  
5 organ failure, including heart failure, which may be  
6 declared by officials as the cause of death without  
7 accounting for heat exposure as the actual underlying  
8 cause. This was the case in the workplace death of Mr.  
9 Antelmo Ramirez, a 57-year-old construction worker who  
10 in 2021 died on a worksite in Travis County with an  
11 internal body temperature of 106.4 degrees Fahrenheit  
12 and whose death was initially attributed to a heart  
13 attack.

14 Mr. Ramirez's death prompted OSHA to launch an  
15 investigation, which according to the Texas Observer,  
16 resulted in a citation being issued to the employer for  
17 exposing workers to, quote, "the recognized hazard of  
18 ambient heat with a heat index of 98 degrees Fahrenheit  
19 in direct sun." This case was so egregious that OSHA  
20 issued the maximum fine of about \$14,500. This level  
21 of OSHA involvement only happened after tragedy struck,  
22 a tragedy that could have been prevented. As for the

1 fine, a drop in the bucket for major employers will do  
2 absolutely nothing to allow Antelmo's family to see or  
3 hold him ever again.

4 Next slide, please.

5 According to an NPR investigation, based on 2021  
6 data, at least 53 workers have died in Texas since 2010  
7 due to heat. Based on these examples and many more  
8 like them, it's clear that the number of work-related  
9 deaths caused by heat in Texas is likely much higher.

10 Though it's important to address the need for more  
11 accurate data to help us recognize the full extent of  
12 this threat, the data that we do have now and the  
13 growing list of fatalities on their own make it  
14 absolutely clear that heat is a worsening occupational  
15 hazard in our worksites that necessitates the adoption  
16 of this rule. After all, these statistics are not just  
17 numbers. Each one of these deaths represents an  
18 irrevocable and immeasurable loss to grieving friends,  
19 families, and loved ones.

20 So finally, I'd like to talk about the dangerous  
21 conditions in the low wage industries in Texas and  
22 specifically focus on construction.

1           Next slide, please.

2           The Texas construction industry consistently ranks  
3           among the most dangerous in the nation. In fact, it is  
4           often cited as the most dangerous in the nation. On  
5           average, a construction worker in Texas dies every  
6           three days. According to the Texas Department of  
7           Insurance's 2023 Census of Occupational Injuries, in  
8           2021, there were 127 construction fatalities, 140 in  
9           2022, and 124 in 2023. In manufacturing, there were 31  
10          in 2021, 34 in 2022, and 32 in 2023. And literally  
11          thousands more workers are injured each year.

12          These are not only heat-related injuries or  
13          fatalities, of course, but heat is an occupational  
14          hazard that can compound others. You've heard in a  
15          past session of this hearing that heat can impact our  
16          body's functions. As one example, it can impact our  
17          balance; or another, it can impact our ability to grip.  
18          As you can imagine, that can result in injuries or  
19          fatalities that may not seem related to heat but, in  
20          fact, are.

21          By the way, Texas remains the only state in the  
22          nation that does not require private employers to

1 provide workers' compensation insurance. The only  
2 state out of 50.

3 Next slide, please.

4 Now, I'd like to talk about the dangers beyond the  
5 immediate physical risks to workers. Workers in low  
6 wage industries in Texas not only face dangerous  
7 working conditions as a lack -- and a lack of  
8 appropriate safety training, they must also contend  
9 with wage theft, misclassification, harassment, and  
10 discrimination. And unfortunately, when workers assert  
11 their rights to combat these injustices, they often  
12 face retaliation. For immigrant workers in Texas, that  
13 retaliation may be amplified by taking the form of  
14 immigration-based threats or actions.

15 All of this illustrates the need to have clear  
16 standards for both workers and employers to have an  
17 understanding of clear rules, responsibilities, and  
18 obligations. And so I'd like to conclude with some  
19 recommendations, and most of these are in support of  
20 what already is proposed in the rule with some  
21 exceptions.

22 Next slide, please.

1           First, the NPRM asked if it would be reasonable to  
2           require the Heat Injury and Illness Prevention Plan, or  
3           HIIPP, and the related heat safety training and  
4           materials to be made available in a language that each  
5           employee, supervisor, and heat and safety coordinator  
6           understands.

7           We would argue that not only would it be  
8           reasonable, but failing to do so would undermine the  
9           entire purpose of this requirement because making sure  
10          this is accessible to everyone in a way they can  
11          understand is what will equip folks on a worksite to  
12          keep themselves and others safe.

13          Next slide, please.

14          We also ask that you set the triggers at levels  
15          supported by science and best practices. I am not a  
16          technical expert on this. But what I will say about  
17          this is that, while some had -- have advocated against  
18          the trigger levels by arguing that, in states like  
19          Texas, the amount of days where the heat index exceeds  
20          the initial trigger are high, that simply points to the  
21          reality that the risk to workers and the need for  
22          protections is higher here in Texas and in other places

1           where it's hot.

2                   It's absolute illogical to say that some places  
3           don't need protections because it's hot there when  
4           obviously it is the places where extreme heat is most  
5           common that require the most protections. Their  
6           arguments do not account for the many traveling workers  
7           that come to Texas for employment or workers entering  
8           new fields in which they have no experience or limited  
9           experience. They also don't account for heat exposure  
10          levels in different occupations. And most  
11          frustratingly, some of these arguments equate everyday  
12          life activities in hot places to the kind of strenuous  
13          manual labor that requires acclimatization.

14                  I read in one of the written comments -- it  
15          basically argued that, because people can get hot and  
16          get injured during an outing to the beach, heat is a  
17          more generalized hazard, and therefore, it's not  
18          something that we should address at the workplace. The  
19          problem with that is that everyday life activities --  
20          when performing everyday life activities, access to  
21          rest, shade, and water are a given, and there aren't  
22          the employment and financial pressures present that

1 workers have at work. So it seems somewhat flippant to  
2 ignore all of the dangers and conditions that are  
3 present in our industries in our workplaces.

4 Next slide, please.

5 We also recommend that you extend protections to  
6 indoor workers who perform sedentary work. This one  
7 has been spoken about a lot today, but all I will say  
8 on this is that, while one can reasonably expect that  
9 some factors like the shade provided by a structure  
10 that indoor workers occupy can mitigate the risk, there  
11 are other hazards that come with that, such as lack of  
12 ventilation, heat trapping, or the presence of  
13 materials that radiate heat, which all can exacerbate  
14 the hazard. The rule should extend protections to  
15 indoor workers who perform sedentary work if they are  
16 exposed to the same heat trigger levels as other  
17 workers.

18 Next slide, please.

19 We recommend that you require paid rest breaks to  
20 prevent heat illness, injury, and death. For workers  
21 who labor in extreme heat conditions, rest breaks  
22 should not be understood -- rest breaks should be

1 understood to be an essential requirement for the  
2 performance of their job and a necessary tool to keep  
3 them safe and not be seen as a benefit or a privilege  
4 or a luxury. As such, rest breaks should be mandatory,  
5 scheduled, and paid for by the employer.

6 Employers should also be required to provide paid  
7 rest breaks at the initial trigger of 80 to 89 degrees  
8 and not just be asked to allow and encourage workers to  
9 take them. To illustrate this, there is a well-  
10 documented case of a construction worker, Roendy  
11 Granillo. Mr. Granillo was a 25-year-old construction  
12 worker who, in 2015, while working on installing  
13 flooring in a Dallas-Fort Worth area residence, began  
14 to feel ill due to heat exposure. Mr. Granillo asked  
15 his supervisor for a chance to take a break to drink  
16 water but was denied. He experienced a heat stroke and  
17 organ failure, and he was pronounced dead at a nearby  
18 hospital just hours later.

19 Next slide, please.

20 We recommend that you require paid rest breaks or  
21 leave to workers who experience heat illness in an  
22 emergency situation. So, many workers in industries

1 with high risk of heat exposure face financial  
2 hardships, so they may be reluctant or unwilling to  
3 inform supervisors if they are experiencing heat  
4 illness symptoms so that they may seek the necessary  
5 medical attention because of fear of losing even a few  
6 hours' wages.

7 One thing that I think -- there was a slide lost  
8 in the presentation. But -- but another recommendation  
9 would be just strong support for acclimatization. As  
10 you know, according to OSHA's own findings, almost half  
11 of heat-related deaths occur on a worker's first day on  
12 the job or a worker's first day back after an extended  
13 absence, and over 70 percent of heat-related deaths  
14 occurred during a worker's first week. So for these  
15 reasons, it's clear that acclimatization is a vital  
16 tool in protecting workers from heat illness, injury,  
17 and death unless we include it in the rule.

18 Next slide, please.

19 So to conclude, in light of the grim reality of  
20 the hundreds of deaths and thousands of injuries in  
21 workplaces across Texas each year, the arguments made  
22 by opponents of heat safety requirements claiming that

1 an OSHA standard isn't necessary ring hollow. Their  
2 claims that employers already voluntarily provide rest,  
3 shade, and water simply do not align with the real-  
4 world experiences shared by many workers in Texas.

5 While some employers certainly take responsible  
6 precautions to protect workers, many do not and will  
7 not unless they are required to. Ultimately, the  
8 health, safety, and lives of workers should not be  
9 dependent on the uncertain charity or decency or lack  
10 thereof of employers and supervisors.

11 Next slide, please.

12 So to close, workers in Texas need this rule. Our  
13 local elected officials' hands are tied. Our state  
14 elected officials refuse to recognize the problem. Our  
15 summers continue to get hotter, and our industries more  
16 dangerous. Please adopt this rule as soon as possible.  
17 It may be the only relief Texas workers can hope to  
18 receive.

19 Thank you very much for your time.

20 JUDGE BELL: Thank you.

21 Questions from the OSHA room?

22 MR. BEARR: Yes, Your Honor. We do have a few

1 questions. And thank you for your testimony, Mr.  
2 Chincanchan.

3 I guess, you know, we've heard many groups that  
4 have testified during this hearing that the proposed  
5 standard is too prescriptive and that OSHA should adopt  
6 a more flexible performance-oriented standard. Do you  
7 have any recommendations on how OSHA could structure a  
8 more performance-based standard, yet -- that ensures it  
9 is sufficiently protective and provides enough clarity  
10 for employers to be able to ensure that they are in  
11 compliance?

12 MR. CHINCANCHAN: Yeah, absolutely.

13 Well, something that we've been really grateful  
14 for is the emphasis programs and the hazard alerts and  
15 everything that OSHA has been working on in the last  
16 few years. I would say that, similar to -- to a  
17 previous panelist is that that is what, in my mind, the  
18 HIIPP is for. I think we've heard a lot of folks be  
19 concerned with kind of a one-size-fits-all approach,  
20 which to me seems to be kind of a no-size-fits-none  
21 approach.

22 But -- but I think that's what the HIIPP is meant

1 to do. It is meant to provide that kind of flexibility  
2 to take into account the different conditions and  
3 circumstances in different industries and different  
4 workplaces. And so I think you already have a great  
5 start in that. We can -- we can think through  
6 potentially in the industries where our members work  
7 most in construction and manufacturing how we might be  
8 able to improve that and get back to you with -- with  
9 potentially some additional suggestions for that. But  
10 I guess I -- I would disagree that the rule is  
11 inflexible already.

12 MR. BEARR: Thank you.

13 What elements of the Heat Injury and Illness  
14 Prevention Plan do you believe should be prescriptive  
15 in nature? I think in your testimony you mentioned  
16 trigger levels and scheduled rest breaks that are paid.

17 MR. CHINCANCHAN: Yeah.

18 MR. BEARR: Are there any other aspects that you  
19 would think need to be prescriptive, and which do you  
20 think could be more performance-based?

21 MR. CHINCANCHAN: Yeah. I think -- I think in  
22 terms of the -- the rest breaks. One of the things

1       that I was -- that I was hoping to emphasize is that  
2       the rest breaks do, you know, need to be required,  
3       paid, and scheduled because, otherwise, what will  
4       happen is the workers who face a ton of financial  
5       hardships, especially in -- in construction and in  
6       manufacturing in Texas -- there are -- there are a lot  
7       of studies on this, which I'd be glad to share,  
8       including some that we have conducted ourselves, that  
9       talk about the pressures that workers face and -- and  
10      the financial hardships.

11           And so for both rest breaks as well as informing  
12      employers about heat illness symptoms, there's this  
13      enormous pressure on workers basically not to -- not to  
14      do that; not to take the rest breaks, not to inform  
15      supervisors or employers about their heat illness  
16      symptoms because, honestly, even just a few hours of  
17      wages that could potentially be lost to them could  
18      mean, you know, not being able to pay your rent, not  
19      being able to pay for groceries. And so I think that's  
20      why that part definitely has to be very prescriptive.

21           And of course, you know, through the HIIPP, like,  
22      there can be -- there can be some flexibility in there,

1 but in general, I think that's -- that's in our mind  
2 why -- why the rest breaks have to be -- have to be  
3 that way.

4 As -- as for the trigger levels, I guess the big  
5 question that has come up is -- is, you know, about  
6 whether there should be geographic trigger levels,  
7 whether there should be differences, and I think that  
8 the previous panelist also, I think, provided a really  
9 great response to that, which is that the trigger  
10 levels really set a bar.

11 If you are in a location where there isn't extreme  
12 heat, where those trigger levels aren't being reached,  
13 then you -- as an employer, you have nothing to worry  
14 about, right, because the things that would be  
15 triggered by those levels wouldn't be in effect. But  
16 in places like Texas or other southern states, where we  
17 have extreme heat -- like I mentioned we had 40 days --  
18 a 40 day streak of -- of 100 degree weather -- that  
19 does need to be in place. That's when workers need --  
20 need help the most.

21 As far as the -- the performance-based standards,  
22 I actually am not really sure how they -- how the folks

1       who are proposing that would recommend that that would  
2       work, so I'm not sure that I can comment on when that  
3       would be appropriate.

4               MR. BEARR: Thank you.

5               Yeah. If you could submit those studies that you  
6       were talking about in your post-hearing comments, that  
7       would be wonderful.

8               I'm going to hand it over to Tiffany DeFoe; she's  
9       on the line.

10              MS. DEFOE: Hi. For the record, this is Tiffany  
11       DeFoe with Directorate of Standards and Guidance.  
12       Thank you very much for your testimony and for your  
13       written comments as well.

14              I wanted to follow up -- this is actually --  
15       follows on a little bit with Jonathan's questions just  
16       now. During the course of this hearing, we've received  
17       a variety of comments that the proposed requirements  
18       for mandatory rest breaks every two hours are too  
19       inflexible for some workplaces.

20              And the suggestions that we have been receiving  
21       from folks who have made these comments, which are  
22       largely employer associations, is that the standard, if

1       it moves forward, should provide -- should provide more  
2       flexibility on how frequently rest breaks -- sorry,  
3       it's -- it's been a long day -- how frequently rest  
4       breaks must be scheduled or, alternatively, that the  
5       final rule should require employers to allow workers  
6       breaks as needed to prevent overheating but should not  
7       include any mandatory rest breaks.

8               And so I've been asking during the course of the  
9       hearing for the thoughts of people who have both  
10      expressed interest in exploring flexibilities in the  
11      rest break situation and the thoughts of worker  
12      organizations on the suggestions that have been brought  
13      forward. And so I'd like to ask if you would provide  
14      commentary from your organization on --

15             MR. CHINCANCHAN: Yeah.

16             MS. DEFOE: -- the suggestion -- yeah. Thank you.

17             And in both aspects of the suggestion certainly --  
18      I think that in your -- in your written comments,  
19      you've been -- and in your testimony -- you've been  
20      very clear about your position and reasoning for the  
21      mandatory nature of breaks, but there is -- if you  
22      could also provide comments on whether you see any need

1 for additional flexibility in the way that timing is  
2 structured and any thoughts you have on that aspect of  
3 the suggestion we've received.

4 MR. CHINCANCHAN: Yeah. Yeah. Absolutely. I  
5 think we -- we can definitely put some information on  
6 that together and send it your way. I think the reason  
7 that we kind of omitted really weighing in on -- on  
8 that more technical aspect of it is because, even  
9 though we've worked in the past with some academic  
10 partners who have done studies on heat stress,  
11 including someone from the University of Texas, those  
12 studies are somewhat dated. I think, you know, it's --  
13 they're from a long time ago, but I'd still be happy to  
14 share that.

15 But the reason we didn't weight in on it  
16 necessarily is because we really do think it should be  
17 determined by experts, by folks who can have a really  
18 deep understanding of the effects of heat on the human  
19 body at those varying levels of temperature.

20 And I think the -- the -- that periodic break that  
21 you're talking about, I think in that frequency really  
22 only kicks in at the -- at the higher trigger levels if

1 I remember correctly.

2 And so you know, I -- I can imagine how someone --  
3 an employer, I guess, would argue that that may not be  
4 necessary at some of the lower trigger levels, and  
5 they -- they may be right about that.

6 But I think that, as you all obviously continue  
7 to -- to work on this rule, I think our only  
8 recommendation on this is that -- that, you know, you  
9 consult with your -- your own experts or -- or other  
10 folks who have a more kind of scientific or -- or  
11 medical, like, background to be able to determine what  
12 would be most appropriate. I think what we don't want  
13 is for it to simply be, like, a matter of convenience  
14 rather than a matter of science or, you know, physical  
15 reality.

16 MS. DEFOE: Thank you very much. And we  
17 definitely are doing our due diligence on the  
18 scientific front, but -- but it's extraordinarily  
19 helpful to us if organizations like yours also  
20 supply -- you've obviously been reading a lot yourself,  
21 and if you could also just provide us any studies that  
22 you want to make sure we pay attention to.

1 MR. CHINCANCHAN: Of course.

2 MS. DEFOE: We'd really appreciate it.

3 MR. CHINCANCHAN: Thank you.

4 MS. DEFOE: Thanks.

5 That's all I have.

6 MR. BEARR: Jonathan Berr, OSHA. Our next  
7 question will be asked by Adriana Lopez.

8 MS. LOPEZ: Hello, Adriana Lopez, OSHA Directorate  
9 of Standards and Guidance. Thank you for your  
10 testimony.

11 Some employers and their representatives have  
12 expressed concerns about OSHA's proposed break  
13 requirement, arguing that it may lead to excessive use  
14 of break privileges and lost productivity. Does the  
15 Workers Defense Project believe that this will occur?  
16 Why or why not?

17 MR. CHINCANCHAN: No, absolutely not. I think the  
18 problem is actually the opposite of that. So when we  
19 hear from our members anecdotally -- and I'll give you  
20 an example. I mentioned in my comments the case of Mr.  
21 Antelmo Ramirez. He actually -- he died as a result of  
22 this heat exposure during the construction of the Tesla

1           Gigafactory in Travis County.

2           There was another individual who -- who worked at  
3           the same site, who actually also suffered from heat  
4           illness and passed out. Someone had to call in, you  
5           know, medical support for -- for her. She was clearing  
6           out construction debris.

7           And she has shared with us that they -- the  
8           supervisors there that she was working with -- would  
9           deny them the ability to even take a needed restroom  
10          break and would often chastise them for doing that and,  
11          you know, accuse them of -- of not doing their job.

12          I told you about the example of Roendy Granillo,  
13          who specifically asked for a rest break because he was  
14          feeling sick and needed water, and obviously, him being  
15          denied also resulted in his death.

16          And so I think the real concern is -- is, you  
17          know, the opposite of this, which is why these breaks  
18          need to be required.

19          Now, if the rules were very clear about when  
20          workers -- you know, when -- when these rest breaks  
21          were scheduled and the periods that are listed in  
22          the -- the rule, the time periods, I think that would

1 make it very clear for -- for both the employers and  
2 supervisors as well as the workers about what they --  
3 what they have a right to do.

4 Now, I will say in -- in my comments, I did say  
5 that, in addition to those scheduled paid rest breaks,  
6 we should also consider emergency breaks when someone  
7 is actively experiencing the symptoms of heat illness.

8 Now, in that situation, I think if someone has  
9 been trained to recognize the symptoms of heat illness,  
10 they would know whether that is something that is, you  
11 know, being abused, I think was the word, or not. But  
12 I -- yeah, I don't -- to us, I -- I -- I think that  
13 would be the, you know, maybe a secondary concern as  
14 opposed to the concern that, even when you have  
15 scheduled paid rest breaks, folks would still be denied  
16 the ability to take them.

17 MS. LOPEZ: Thank you.

18 MR. BEARR: Your Honor, that concludes OSHA --  
19 OSHA's questions.

20 JUDGE BELL: Any questions from the Solicitor?

21 MR. MOCZULA: Daniel Moczula for the Solicitor's  
22 Office. No questions, but I would like to motion to

1 enter in the PowerPoint presentation used during the  
2 Workers Defense Project testimony into evidence as  
3 Exhibit 9.

4 JUDGE BELL: I'll grant that motion.

5 MR. MOCZULA: Thank you.

6 JUDGE BELL: All right. Any other questions for  
7 this witness?

8 MS. CARLON: Yes, there is one from Mr. Schreiber.  
9 Please state your name for the record.

10 MR. SCHREIBER: This is Nate Schreiber from the  
11 Laborers' Health and Safety Fund of North America.

12 JUDGE BELL: Go ahead, please.

13 MR. SCHREIBER: Thank you, Your Honor.

14 David, I really appreciated your testimony. I  
15 thought it was very insightful. I just wanted to ask,  
16 you know, or state a couple things. We've heard a lot  
17 of testimony, you know, stating the rule is unnecessary  
18 or overburdensome, and it's mainly being stated by, you  
19 know, companies. So we're sure about how they feel.

20 I was wondering if you had any data you could  
21 provide, you know, on how the workers feel. How do the  
22 workers who are performing the work in the heat feel

1       about a proposed OSHA standard or, you know, some of  
2       the elements within the standard?

3               MR. CHINCANCHAN: Yeah, absolutely.

4               So we -- we did collect about 130 comments that --  
5       that we submitted. Some of those were from allies, but  
6       many of those were from our members. I will say that  
7       is a little bit difficult to do because, to be  
8       perfectly honest, the -- the needs of workers haven't  
9       really been valued or taken into account, especially  
10      in -- in our state, and so that data and information  
11      hasn't really been collected, in addition to the other  
12      challenges that I was talking about, where sometimes  
13      the data that is collected is misattributed to -- you  
14      know, to other causes and things like that.

15              But if -- I don't know if there is an opportunity  
16      to -- to maybe submit some specific worker experiences  
17      from folks who have personally experienced heat illness  
18      or -- or injury as part of the post-hearing comments.  
19      I would -- I would really appreciate the opportunity to  
20      do that if that's possible.

21              MR. SCHREIBER: Thank you, David.

22              JUDGE BELL: All right. Any other questions?

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

2 JUDGE BELL: All right. Sir, thank you very much  
3 for your testimony. We greatly appreciate it.

4 MR. CHINCANCHAN: Thank you.

5 MS. CARLON: The next speaker group is the  
6 Laborers' Health and Safety Fund of North America,  
7 represented by Ryan Papariello, Travis Parsons, Nate  
8 Schreiber, and Shannon Jones. Please state your name  
9 and affiliation as you all transition throughout your  
10 testimony.

11 MR. PARSONS: All right. Good afternoon. This is  
12 Travis Parsons from the Laborers' Health and Safety  
13 Fund of North America. I'm going to start. Then Nate  
14 Schreiber is going to go second. Ryan Papariello is  
15 going to go third, and then Shannon Jones is going to  
16 take us home.

17 So thank you for the opportunity to speak today.  
18 Thanks to OSHA for all your hard work on this important  
19 rule, and thanks to Judge Bell for keeping these  
20 hearings running smoothly and keeping us all in line  
21 when needed.

22 I really want to shout out to OSHA. I have to

1       admit I miss -- I miss the in-person hearings and  
2       watching people's reactions. But you guys have done a  
3       heck of a job with this hearing, and I know it's not  
4       over yet, but good job.

5               My name is Travis Parsons, and I'm testifying  
6       today on behalf of the Laborers' Health and Safety Fund  
7       of North America, where I serve as the Director of  
8       Occupational Safety and Health. The fund supports the  
9       Laborers' International Union of North America, LIUNA,  
10      and its more than 530,000 members, skilled workers who  
11      often perform physically demanding jobs in extreme heat  
12      both indoors and outdoors across all 50 states.

13             LIUNA members build our nation's infrastructure,  
14      including roads, bridges, water systems, and schools,  
15      and work across every segment of the energy sector as  
16      well. We also represent more than 70,000 public  
17      employees who provide essential services, and we  
18      represent -- represent over 47,000 mail handlers  
19      through our affiliate, the National Postal Mail  
20      Handlers Union.

21             We strongly support OSHA's effort to establish a  
22      national heat standard. With rising temperatures and

1 longer summers, heat has become one of the most  
2 pressing work -- workplace hazards facing our workers  
3 and our members today.

4 Hundreds of workers suffer heat stroke, kidney  
5 failure, and even death each year simply for doing  
6 their jobs. These tragedies are not inevitable. They  
7 are completely preventable.

8 Without an enforceable OSHA standard, many workers  
9 will continue working under tight production deadlines  
10 with little to no access to basic protections, like  
11 water, shade, rest breaks, or adequate training. These  
12 are not luxuries. They are essential safeguards and  
13 basic human rights.

14 Relying on voluntary measures in the General Duty  
15 Clause has proven inadequate for protecting workers  
16 from heat stress. In fact, a 2022 GAO Government  
17 Accountability Office report outlined the major  
18 challenges OSHA faces in investigating and citing heat-  
19 related violations without a specific standard for heat  
20 illness.

21 The result? Protections vary widely across states  
22 and industries, and way too many workers fall through

1 the cracks.

2 This proposed rule offers a much-needed solution  
3 for that. It creates a clear, science-based framework  
4 with enforceable requirements, like hydration, rest,  
5 shade, acclimation, training, and emergency response.  
6 These protections will save lives, reduce injuries, and  
7 improve productivity, and promote long-term health and  
8 safety in the workplace.

9 Excessive heat already costs the U.S. economy over  
10 100 billion annually in lost productivity alone. By  
11 2030, the losses are estimated to double into 200  
12 billion, and by 2050, they could even reach as much as  
13 500 billion, according to several sources out there.  
14 This is in a lot of news media outlets and some  
15 scientific journals. Therefore, doing nothing has --  
16 has a high, high, high cost, just sitting here, sitting  
17 back and doing nothing.

18 So we also support the testimony submitted by the  
19 AFL-CIO and North America's Building Trades Unions,  
20 with whom we work closely with on safety and health --  
21 health issues every day.

22 I now want to take a couple moments to address two

1 recurring themes that I've heard throughout these  
2 hearings: the idea that this rule is one-size-fits-all  
3 and the call for a purely performance-based standard.

4 While the rule rightfully sets baseline heat  
5 protection using temperature triggers across all  
6 industries, it also builds in meaningful flexibility.  
7 To me, one-size-fits-all is more of a soundbite than it  
8 is a fair critique of this rule.

9 OSHA's proposal is not rigid -- is not a rigid  
10 one-size-fits-all mandate. It establishes a national  
11 baseline through triggers of protections while allowing  
12 employers flexibility to tailor plans to their specific  
13 work sites, mainly through site-specific Heat Injury  
14 and Illness Prevention Plans, or HIIPPs.

15 Employers assess their unique risk and determine  
16 appropriate controls on those job sites. The rule also  
17 includes reasonable exemptions, like those for short-  
18 term exposures or certain indoor conditions and  
19 telework to reflect operational realities.

20 The idea that different regions require completely  
21 different protections misses the key point as the  
22 previous speaker just laid out. No matter where a

1 worker is located, the human body responds to heat the  
2 same way and needs the same protections. Our kidneys,  
3 neurons, and cooling mechanisms don't know whether  
4 we're in Arizona or Pennsylvania. They respond to heat  
5 load and hydration, not regional politics, convenience,  
6 or production schedules.

7 This rule strikes a thoughtful balance between  
8 worker protections and employer flexibility, as I  
9 pointed out earlier, and a federal standard ensures a  
10 baseline that employers in every state must meet. That  
11 way, no worker is left behind.

12 Now, let's talk about the idea of a purely  
13 performance-based approach for heat illness prevention.  
14 On paper, it sounds adaptable, but in practice, it's  
15 vague, inconsistent, and difficult to enforce. Without  
16 clear environmental triggers, like temperature or wet  
17 bulb globe temperature thresholds, worker protections  
18 become subjective.

19 Workers doing the same job under similar heat  
20 conditions may receive drastically different  
21 protections based solely on different employer  
22 interpretations. To me, that's not safety. That's a

1       gamble, and it doesn't align with OSHA's mission to  
2       ensure a safe and healthful working environment.

3               Performance-based standards also shift the burden  
4       to least-equipped, small and mid-sized employers who  
5       often lack resources to have safety and health  
6       expertise and then, eventually, on the workers who are  
7       expected to self-regulate even as the heat impairs  
8       their ability to think clearly or recognize symptoms.  
9       This is unrealistic and dangerous.

10              Furthermore, a reactive system waiting for signs  
11      of illness is a recipe for tragedies to continue to  
12      occur. Under-reporting becomes common, and by -- by  
13      the time someone speaks up, it may be too late. We've  
14      seen that time and time again with some recent  
15      fatalities that have been laid out in these hearings.

16              Well over 400 workers have died from occupational  
17      heat -- heat exposure over the last decade. That's not  
18      theory. That's reality, and it's unacceptable.

19              OSHA's job is to set clear, enforceable  
20      requirements that employers can follow, and inspectors  
21      can enforce.

22              A performance-based approach may sound good in

1 theory, but in the real world, it leads to inconsistent  
2 protections, weak enforcement, and greater risk for all  
3 workers. To me, a performance-based standard for heat  
4 stress is performative, not protective.

5 In conclusion, this rule is OSHA's chance to do  
6 what the science and -- and the moment demand, set a  
7 strong, enforceable baseline protections for workers  
8 exposed to dangerous heat. Workers should never have  
9 to choose between a paycheck and their health or their  
10 life.

11 I want to thank you for your time today, and I'm  
12 now going to turn it over to my colleagues, starting  
13 with Nate Schreiber.

14 MR. SCHREIBER: Nate Schreiber, Laborers' Health  
15 and Safety Fund of North America.

16 Can everyone hear me okay?

17 JUDGE BELL: Yes.

18 MR. SCHREIBER: Thank you, Your Honor, and thank  
19 you to OSHA for the opportunity to testify on this  
20 critical proposed rule.

21 My name is Nate Schreiber. I serve as an  
22 industrial hygienist for the Laborers' Health and

1 Safety Fund of North America. I'll focus my testimony  
2 on the health impacts of heat exposure, including the  
3 long-term and cumulative effects it can have on the  
4 human body.

5 Across the United States, construction workers  
6 represent only 6 percent of the workforce but account  
7 for 36 percent of all heat-related workplace  
8 fatalities. This is a stat that is alarmingly  
9 disproportionate.

10 As evidenced by this metric, addressing heat  
11 exposure is a crucial task that deserves our time,  
12 attention, and resources. Looking to the future, this  
13 problem is not going away. The planet is getting  
14 hotter, and 2024 proved to be the hottest year on  
15 record since the National Weather Service's inception.

16 On behalf of our organization's members, I would  
17 like to touch on a topic that is not discussed nearly  
18 enough and considerations that OSHA should keep in mind  
19 when weighing the need for a heat rule.

20 Outside of countless examples that have been  
21 discussed throughout these testimonies, I have a  
22 personal story that inspired me to give this testimony

1           today.

2           My brother is a welder and a track laborer for a  
3           large railroad company. He has shared with me  
4           countless safety concerns that he experiences on a day-  
5           to-day basis, such as train derailling, chemical  
6           exposures, heavy manual labor, and of course, heat  
7           exposure. He's often in remote locations, doing heavy  
8           manual labor in sweltering heat.

9           As his brother and a safety professional, I take  
10          particular interest in listening and trying to advise  
11          the best course of action for him to take. Early in  
12          his career, he said something that stuck out to me. It  
13          was simply put, but it was profound. He said, I don't  
14          mess around with the heat; it's no joke.

15          A little surprised by this, I asked why that is.  
16          In my mind, you're a really tough guy. Something as  
17          simple as heat wouldn't faze you.

18          He said, if you get overheated once, you're never  
19          quite the same afterwards.

20          He went on to say that many of his fellow  
21          coworkers had fallen victim to heat exhaustion over the  
22          years. They shared with him that, ever since this

1       experience, they just aren't the same when it comes to  
2       their heat tolerance. They can no longer stay in  
3       direct sunlight for extended periods of time. They  
4       can't keep up the same pace they could prior to  
5       experiencing heat illness, and they never quite seemed  
6       able to handle high temperatures the same.

7           I've listened to testimonials for the last few  
8       weeks, and the heat keeps getting referenced as a  
9       temporary burden that prevents companies from meeting  
10      their project deadlines. I understand the importance  
11      of project deadlines and profit streams, but the  
12      workers that fulfill those metrics are the most  
13      valuable asset of this equation.

14           Heat stress is a serious cumulative occupational  
15      hazard that should be given consideration on how to  
16      best man- -- and -- should be given thoughtful  
17      consideration on how to best manage and mitigate its  
18      exposure.

19           While many appear to treat heat illness as a  
20      momentary condition, the physiological consequences can  
21      actually last a lifetime. An often overlooked fact is  
22      that even one severe episode of heat stroke can cause

1 permanent physiological change to occur, particularly  
2 to the body's ability to thermoregulate itself.

3 Because of the way the body's thermoregulatory  
4 system works, repeated exposures that are perceived as  
5 low-level exposures may also cause cumulative internal  
6 damage. A dramatic heat stroke is not always necessary  
7 for damage to occur. This impairment means that single  
8 episodes of heat stroke should not be considered  
9 isolated incidents in time. That damage can make  
10 recovery and return to work in hot conditions  
11 exceptionally risky without proper controls or  
12 guidance.

13 Furthermore, research shows that individuals who  
14 have experienced heat stroke often fail heat tolerance  
15 tests and are twice as likely to experience recurrent  
16 exertional heat illness even with moderate exposures.

17 This cumulative damage is not speculation either.  
18 It is well documented in clinical and occupational  
19 medical literature. Survivors of heat stroke often  
20 suffer from increased susceptibility to future heat  
21 illnesses, long-term renal impairment, neurological  
22 damage, and just chronic issues with thermoregulatory

1 dysfunction.

2 The human body's resilience to heat deteriorates,  
3 and these damages accumulate, particularly when heat  
4 exposure is chronic, as it often is in construction,  
5 agriculture, and manufacturer settings.

6 In the sense of this proposed rule, OSHA is not  
7 only preventing acute injuries. It's also defending  
8 against a long-term occupational disease process.

9 The current regulatory structure allows everything  
10 to go unchecked. Each unreported or untreated heat  
11 incident has the potential to build towards a chronic  
12 injury. Any standard developed by OSHA must reflect  
13 this reality.

14 Heat illness is cumulative. Workers who  
15 experience an overexposure do not instantly return to  
16 baseline after their perceived recovery. They become  
17 vulnerable, and without enforcement of acclimatization,  
18 monitoring, and work rest protocols, these workers risk  
19 unmanaged exposures and preventable harm.

20 I'll conclude by saying, failing to act on heat  
21 hazards is a decision to allow irreversible damage to  
22 accumulate in the bodies of working people, people like

1           our members at LIUNA and people like my brother.

2           OSHA's proposed rule recognizes heat as the life-  
3           altering hazard that it is, and it rightly emphasizes  
4           prevention through acclimatization, hydration,  
5           engineering controls, and rest.

6           States like California, Maryland, Washington  
7           state, and Oregon have implemented heat illness  
8           prevention standards with demonstrable success.  
9           California's system, which has been in place since  
10          2006, has shown reduced fatalities where enforcement is  
11          consistent.

12          OSHA can build on this foundation with their  
13          proposed rule and set the bar for the entire country on  
14          how to manage heat stress.

15          I'd like to thank everyone for their time, and  
16          now, I'll turn things over to Ryan Papariello.

17          MR. PAPARIELLO: Can everyone hear me okay?

18          JUDGE BELL: Yes.

19          MR. PAPARIELLO: Okay, perfect. Good afternoon,  
20          and thank you to the OSHA staff and Administrative Law  
21          Judge Bell for the opportunity to present our  
22          testimony.

1           My name is Ryan Papariello, and I am the Safety  
2           and Health Specialist for the Laborers' Health and  
3           Safety Fund of North America. I'm the Chair of North  
4           America's Building Trades Unions' Heat Injury and  
5           Illness Prevention subcommittee. I also participate in  
6           the ASSP ANSI A1050 Heat Stress Management Standards  
7           subgroup and OSHA's Advisory Committee for Construction  
8           Safety and Health, or ACCSH.

9           Heat and extreme temperatures continue to cause  
10          preventable worker deaths in indoor and outdoor  
11          environments. Our members are on the front lines of  
12          construction, demolition, highway work, and other high-  
13          risk sectors, industries increasingly threatened by  
14          rising temperatures and dangerous heat exposures.  
15          Protecting workers from heat illness is not only the  
16          right thing to do. It's a smart business decision.

17          A healthy workforce means fewer medical incidents,  
18          lower associated costs, and higher productivity. The  
19          proposed rules -- the proposed rule identifies key  
20          factors essential to protecting workers from heat  
21          hazards.

22          One critical factor includes implementing a

1 comprehensive Heat Injury and Illness Prevention Plan,  
2 or HIIPP. A well-designed and written HIIPP is the  
3 cornerstone of any successful heat safety program. It  
4 serves as a -- as a proactive guide to protect workers  
5 from the dangers of heat exposure.

6 An effective prevention plan must include the  
7 fault -- the following elements with a few  
8 recommendations: water, rest, and shade provisions;  
9 clear employer and employer responsibilities; gradual  
10 acclimatization plan; emergency response plan;  
11 monitoring; heat hazard assessments; high heat  
12 procedures; buddy system procedures; training  
13 requirements and recordkeeping; and site-specific  
14 hazards and hierarchy of controls planning as well.

15 By implementing -- implementing these key  
16 elements, both employers and employees will gain a  
17 clear understanding of their responsibilities and  
18 actions needed on the job site.

19 I'd like -- I'd now like to address the critical  
20 component of heat -- heat illness prevention:  
21 acclimatization. This adaptive process includes  
22 gradual exposure to hot environments and improves

1 overall heat tolerance, particularly for new,  
2 returning, or unacclimatized workers. A comprehensive  
3 acclimatization plan can prevent fatalities in the  
4 first to two weeks of work. According to OSHA, most  
5 fatalities, 50 to 70 percent, occur in the first few  
6 days of working in warm or hot environments.

7 Extreme temperature fluctuations highlight exactly  
8 why this proposed rule must prioritize worker  
9 acclimatization. Just last week, temperatures in many  
10 parts of the country jumped from upper 50s to nearly  
11 100 degrees in a matter of days. These rapid shifts  
12 give the human body little time to adapt, significantly  
13 increasing the risk of heat-related illnesses.

14 Lack of acclimatization is one of the most well-  
15 documented risk factors for serious injury and fatal  
16 outcomes on the job. Unacclimatized workers do not  
17 sweat efficiently. Their sweat contains more salt.  
18 Their body temperature and heart rate increase more  
19 quickly when working, and their blood flow is not  
20 optimized for heat dissipation.

21 Versus acclimatized workers, their sweating rate  
22 is higher, which helps dissipate heat through

1        evaporative cooling. Their sweat contains less salt,  
2        which prevents development of electrolyte imbalances.  
3        They maintain lower body temperature and heart rate.  
4        And lastly, they experience increased blood flow to the  
5        skin to help to cool the body.

6                When workers travel to hot, humid locations,  
7        similar to how professional athletes must quickly adapt  
8        to unfamiliar environments, they often have little time  
9        to adjust before beginning strenuous job tasks.  
10       Without proper preparation, this sudden exposure can  
11       increase the risk of heat-related illnesses.

12               Acclimatization is the body's natural way of  
13       getting used to extreme conditions. Over time, it can  
14       improve performance and greatly reduce the risk of  
15       heat-related illnesses, like heat exhaustion and heat  
16       stroke.

17               This process is essential for keeping workers safe  
18       and productive in hot environments. I want to share  
19       the story of Tim Barber, a 35-year-old LIUNA member who  
20       tragically lost his life due to heat exposure while  
21       working on the Genesee River Bridge construction  
22       project in upstate New York. It was -- it was only his

1 second day on the job.

2 According to OSHA's investigation, he was not  
3 giving his essential protections, including water,  
4 rest, shade, training, or being acclimated to the  
5 conditions.

6 After his first day, his parents noticed that he  
7 didn't look well. He went to work the next day,  
8 collapsed at the end of his shift, and never returned  
9 home. Tim succumbed to hyperthermia caused by heat  
10 exhaustion and heat stress. He lacked the proven  
11 safeguards that could have saved his life because it  
12 wasn't required.

13 Tim was more than a worker. He was an artist. He  
14 loved country music. He was a devoted Buffalo Bills  
15 fan, and his death was 100 percent preventable.

16 Stories like this happen far too often. We must  
17 shift from a reactive to a proactive strategy that  
18 focuses on protecting workers from extreme -- extreme  
19 temperatures, sorry.

20 In closing, heat is not just a weather event.  
21 It's a workplace hazard, and this rule is long overdue.  
22 We urge OSHA to move swiftly and decisively to finalize

1 a strong enforceable heat injury and illness prevention  
2 standard.

3 Thank you for your time, and I'll turn it over to  
4 Shannon Jones.

5 MR. JONES: Hello, everyone. My name is Shannon  
6 Jones. I am the Field -- Tri-Fund Field Coordinator  
7 for Health and Safety Fund of North America. I cover  
8 the Mid-Atlantic region, which consists of 40,000  
9 members. My area is Virginia, West Virginia, Maryland,  
10 and North Carolina, D.C., and Pennsylvania.

11 So some of my life experiences has been -- I've  
12 worked the construction trade for about, I would say,  
13 15 years. I have poured concrete, 40- -- 40,000 yards  
14 of concrete within a week. I have passed out on the  
15 job site, just a lack of not knowing that I needed to  
16 drink water every day. When I woke up, I -- I was  
17 just -- I was just, you know -- just, I was -- I was  
18 out, you know.

19 So once I became an instructor in 2002, I  
20 educated -- got educated, and I realized that, you  
21 know, drinking water nowadays is -- is -- is a plus on  
22 the job site.

1           So as I go out to job sites, like asphalt sites  
2           when they're peer -- pouring asphalt and it's 190  
3           degrees and 300 degrees coming off the truck, you know,  
4           I make sure that the members are staying hydrated. I  
5           make sure that they have the proper clothes for -- you  
6           know, so they can sweat.

7           I talk to the safety officers and make sure that  
8           they have the proper tents, make sure that, you know,  
9           they have shade, the tents, make sure that they have  
10          water and all that good stuff.

11          So my testimony is that the heat -- heat standard  
12          is definitely needed by being a construction worker  
13          and -- and being out there in the field and, you know,  
14          just doing the job. It's -- it's definitely needed,  
15          and that's my testimony.

16          JUDGE BELL: All right, thank you very much.

17          Questions for this panel from the OSHA room?

18          MR. BEARR: Yes, Your Honor. We do have a few  
19          questions. This is Jonathan Bearn, OSHA. I'm going to  
20          hand it over to Eduardo Hernandez.

21          MR. HERNANDEZ: Hello, Eduardo Hernandez with  
22          OSHA. Thank you for your testimony, all four of you,

1 and for highlighting many worker testimonials about the  
2 impacts of heat.

3 In the written comments that were submitted, there  
4 were several key requirements outlined that argued --  
5 that you argued to be essential to protect workers from  
6 heat-related illness, and one of those was the buddy  
7 system.

8 So we'd be interested in hearing more about your  
9 members' experience in the success and feasibility of a  
10 buddy system, and you know, generally in your opinion,  
11 is it feasible to have more than one buddy or a small  
12 pod of workers observe each other? And yeah, if you  
13 have any recommendations on how to fulfill an  
14 observation requirement in the case of lone workers?

15 And happy to -- you know, if you want time to  
16 think about it, in post-hearing comments as well.

17 MR. PARSONS: Yeah, this is Travis. I'll start  
18 out, and then I'll probably kick it to Ryan Papariello,  
19 who's our buddy system pro.

20 But in -- in general, I have to go on the record  
21 and say this. I don't think there should be lone  
22 workers. I know they happen out there, but lone

1 work -- being a lone worker just isn't safe, especially  
2 when it comes to heat illness. How are you supposed to  
3 recognize signs and symptoms without a buddy?

4 So with that on the record, that I don't like lone  
5 workers and I don't think they should be out there, I  
6 know they happen, I'm going to kick it to Ryan to talk  
7 about the buddy system.

8 MR. PAPARIELLO: Can everyone hear me? Just  
9 making sure.

10 JUDGE BELL: Yes.

11 MR. PAPARIELLO: Okay, perfect.

12 So I do agree with Travis, you know, being in the  
13 Laborers and working with our members, we really don't  
14 like the lone worker policy or just lone workers in  
15 general.

16 We usually put a policy in, but for buddy systems,  
17 I really feel that it's very important to put into  
18 place, especially when you're doing training,  
19 especially early in the stage, new hire or a new hire  
20 orientation, whatever the case is, because that's where  
21 workers can check on their buddy, check on their  
22 brother, sister, check on their other -- you know.

1           Because a lot of our workers have been working  
2           with their buddy or their other worker for years, and  
3           they know when something is wrong, especially when  
4           you're far out. They might be -- they might be kind of  
5           remote, away from the job trailer, away from where  
6           homebase is, and I feel like the buddy system is --  
7           that's where it's most important.

8           Thank you.

9           MR. BEARR: For our next questions, I will hand it  
10          over to Zoe Petropoulos. She's on the line.

11          MS. PETROPOULOS: I actually only have one  
12          question for you, I think. We'll see.

13          We've heard from other witnesses during the  
14          hearing that OSHA has failed to account for what they  
15          describe as the natural acclimatization that workers  
16          develop from living in the same locale as where they  
17          work. Does your panel agree with this? Why or why  
18          not?

19          MR. PARSONS: Well, you know, as acclimatization  
20          occurs, we've heard about fatalities with workers that  
21          probably were acclimatized.

22          So you know, the example from Texas that we just

1 heard about in the previous speaker, obviously, that  
2 worker lived and worked in Texas and still succumbed to  
3 heat illness. So while acclimatization is very  
4 important, you know, I don't agree with some of those  
5 commentators that it depends on geography.

6 And we'd be happy to follow up with that in post-  
7 hearing comments as well.

8 MS. PETROPOULOS: Thank you.

9 That's it for me.

10 MR. BEARR: For our next couple of questions,  
11 they're going to be read into the record for you all to  
12 consider in your post-hearing comments.

13 Adriana Lopez?

14 MS. LOPEZ: Hi. Adriana Lopez, OSHA Directorate  
15 of Standards and Guidance.

16 Do you represent workers in Alaska or states with  
17 similar climates, and what type of indoor workers in  
18 these climates are exposed to heat in these  
19 environments? Is the outdoor temperature directly  
20 related to their exposure?

21 MR. PARSONS: Yes. We absolutely represent a ton  
22 of workers in Alaska and indoor and outdoor workers

1 across the country. For specific examples and numbers,  
2 I'd have to follow up in a post-hearing comment. But  
3 yeah, we're in all 50 states, and we have probably  
4 thousands of workers in Alaska that work indoor and  
5 outdoor. But for specific numbers, we'll follow up in  
6 the post-hearing comments.

7 MS. LOPEZ: Thank you. That would be great.

8 And what type of outdoor workers in these climates  
9 are exposed to heat?

10 MR. PARSONS: Well, so we'll follow up with that  
11 in post-hearing comments.

12 MS. LOPEZ: Great. That's fine.

13 And then as a union that covers workers across the  
14 United States, have you evaluated the impact of state-  
15 level heat regulations on employees?

16 MR. PARSONS: We haven't, per se, ourselves, but I  
17 did hear from previous testimony about a week ago some  
18 promising stuff out of California from Ellie Barbarash  
19 with the SEIU. She had a study that was referenced in  
20 a white paper, and it's going to be published soon that  
21 showed really good outcomes from Cal/OSHA standard and  
22 decreased.

1           And then as far as the other state rules, they're  
2           pretty new. A couple of them, Maryland was just last  
3           year, Washington state and Oregon, I'm sure they're  
4           helping. And we'll be happy to follow that and then  
5           follow up in post-hearing comments.

6           MS. LOPEZ: Thank you very much for your  
7           testimony. Those are all my questions.

8           MR. BEARR: Jonathan Bearr, OSHA.

9           I was asked by counsel just to remind the  
10          testifiers that, if you are planning to submit  
11          testimony from workers about the heat standard, that  
12          this is something that you can submit as part of your  
13          post-hearing comments.

14          With that, OSHA concludes our questions. Thank  
15          you, Your Honor.

16          JUDGE BELL: Any questions from the Solicitor?

17          MR. MOCZULA: No questions from the Solicitor.  
18          Thank you very much for your testimony and time.

19          JUDGE BELL: Any other questions for this panel?  
20          Are there other questions for this panel?

21          MS. PETROPOULOS: There are. I'm not sure if  
22          Mariam is still on. Is that the case? Has she dropped

1 off?

2 JUDGE BELL: Okay. Well, I'm going to assume that  
3 there aren't.

4 MS. PETROPOULOS: There are. We're having some  
5 issues on our end, so let me figure this out.

6 MR. HAMMER: Sorry. Can you hear me?

7 JUDGE BELL: Yes.

8 MR. HAMMER: Hi, this is Jason Hammer from OSHA.  
9 We have three -- questions from three different  
10 participants, Your Honor.

11 MS. PETROPOULOS: I see four.

12 MR. HAMMER: Oh, four now.

13 JUDGE BELL: Okay. Well, you're seeing --

14 MR. HAMMER: We can --

15 JUDGE BELL: You're seeing a lot more than I am.  
16 Who are we going to say has the first question?

17 MR. HAMMER: Scott Schneider. Let me promote you.  
18 I believe you can go off mute now.

19 MR. SCHNEIDER: Yeah. Thank you very much.

20 My name is Scott Schneider, and I had two  
21 questions.

22 I wanted you to elaborate on some stuff I heard in

1       your testimony. Some of the stakeholders have  
2       expressed concerns about the economic impact of the  
3       standard. In your view, how does protecting workers  
4       from heat stress actually benefit employers and the  
5       broader economy?

6               MR. PARSONS: Yeah. This is Travis Parsons. I'll  
7       take that.

8               Investing in heat protection isn't just the right  
9       thing to do. I think it's smart economics, to answer  
10      your question, Scott. It pays off in higher  
11      productivity, fewer injuries, fewer disruptions, and  
12      just overall healthier, more stable workforce.

13              As I testified, doing nothing is a cost, not --  
14      and it gets really expensive really quick for society  
15      as a whole. So you know, all those things I talk  
16      about, you know, productivity -- increased  
17      productivity, fewer injuries, is an investment instead  
18      of a cost.

19              MR. SCHNEIDER: Okay. Thank you.

20              The other question I had was, you know, there's  
21      been a lot of discussion about performance-based  
22      standards, and you said that they could lead to

1 inconsistent protections. So could you give -- explain  
2 that a little bit more or give an example of how this  
3 would put workers at greater risk?

4 MR. PARSONS: Yeah. This is Travis Parsons again,  
5 and I'll take that one again. Scott, thank you for  
6 that.

7 I think that was in part of my testimony, and part  
8 of CWA's testimony also covered some of this. I'll try  
9 to keep it quick. But imagine two different  
10 construction sites, both operating in the same city, in  
11 the same temperature, in the same -- let's just say  
12 same city, same county, with 95 degrees Fahrenheit or  
13 something like that heat index or WBGT measurement.

14 At site A, the employer has a really proactive  
15 heat safety plan. They do everything with monitoring.  
16 They provide breaks with shade. They schedule their  
17 breaks. They supply cold water. And they ensure  
18 workers are acclimatized.

19 In the same city, same county, we have site B.  
20 The employer takes a performance-based approach and  
21 leaves it up to the supervisor on the job, who don't  
22 believe in heat safety as a problem, thinks it's a

1       personal responsibility, and you know, they may or may  
2       not offer water. They don't necessarily have shade or  
3       breaks, and there's no monitoring going on. So how is  
4       that -- you know, that's two different scenarios with  
5       this performance-based in the same city and same  
6       county, and the workers aren't getting equal  
7       protections.

8               MR. SCHNEIDER: Okay. Thanks very much.

9               MR. PARSONS: Thank you.

10              JUDGE BELL: Who has the next questions, please?

11              MR. HAMMER: Our next question is from Jordan  
12       Barab.

13              MR. BARAB: Yeah, hey, Travis and everyone.  
14       Thanks for the testimony. It was quite interesting. I  
15       had two questions.

16              You mentioned -- and actually, many witnesses have  
17       mentioned that we don't need a standard. All we need  
18       is the OSHA to continue using the General Duty Clause.  
19       In your view, why is the proposed standard preferable  
20       to just relying on the General Duty Clause?

21              MR. PARSONS: Yeah. This is Travis Parsons. I'll  
22       take that one again. Thank you, Jordan, for that

1 question.

2 While the General Duty Clause plays a very  
3 important role as a catch-all for OSHA, it's really  
4 designed when there is no rule, there is no known  
5 hazards, and it's a catch-all for a safe worksite. So  
6 it's really insufficient alone to ensure effective and  
7 consistent worker safety, especially for a hazard like  
8 heat stress that requires clear preventative actions,  
9 and we know what they are.

10 Also, there's several notable cases and legal  
11 outcomes that have demonstrated the limitations and  
12 inconsistencies of relying on the General Duty Clause  
13 for heat-related hazards. One high profile -- high  
14 profile case is the Secretary of Labor v. A.H.  
15 Sturgill Roofing in 2019.

16 In that case, you know, there was a roofing  
17 situation where the worker succumbed, and they were --  
18 the citation was thrown out, and there was a very big  
19 bias at the end of it with a decision from the OSHA  
20 Review Commission. That they said, without specific  
21 enforceable OSHA heat standard, it's extremely  
22 difficult to hold employers accountable to prevent

1 heat-related incidents.

2 MR. BARAB: Okay. Are you aware of any -- or many  
3 or any General Duty Clause citations that were handed  
4 down by OSHA before a worker was injured or killed, or  
5 are they always pretty much after a worker is killed?

6 MR. PARSONS: All the ones I know of are reactive.  
7 I'd love to research that and find one that wasn't, but  
8 I'm happy to look into that and provide that at the  
9 post-hearing comments.

10 MR. BARAB: All right. One more question.

11 MR. PARSONS: What I know about is reactive.

12 MR. BARAB: Your comments, you said the key  
13 requirements were highlighted to protect workers from  
14 heat-related illnesses. Can you expand on the use of  
15 measurement tools and what should be used?

16 MR. PARSONS: Yeah. There's a lot of different  
17 ones out there, and I'm going to kick this one to Ryan  
18 Papariello to answer that. He researched this for us  
19 on our panel.

20 MR. PAPARIELLO: Thank you, Jordan. Thank you  
21 for the question. Ryan Papariello with the Laborers.

22 So there's many different options that are

1       available to employers, such as the heat index, AIHA's  
2       and OSHA-NIOSH's heat apps, wet-bulb globe temperature  
3       instrument, and even OSHA's wet-bulb globe temperature  
4       calculator. That's on their website.

5               So these technologies make it very easy and  
6       inexpensive for employers to measure and monitor heat  
7       throughout the workday, and really, we commend OSHA and  
8       NIOSH and AIHA for having free apps to use and then  
9       including in the proposed rule the flexibility to  
10      employers to choose an instrument or app that they want  
11      to use.

12             So thank you for the question.

13             MR. BARAB: Thank you. That's all I have.

14             JUDGE BELL: Who has the next question, please?

15             MR. HAMMER: Our next question is from Rebecca  
16      Reindel.

17             MS. REINDEL: Hi there. Good afternoon. This is  
18      Rebecca Reindel. My question is for anyone on the  
19      panel who is best to answer this.

20             The OSHA proposal doesn't have any requirements to  
21      use the hierarchy of controls or mentions any  
22      engineering controls for outdoor workers, but I know

1       that other recommendations have required this. Would  
2       you be able to provide us some examples of engineering  
3       controls that your outdoor workers, you know, use or  
4       that the workplaces could use? Thank you.

5           MR. PARSONS: Yes. So this is Travis Parsons.  
6       I'll take this, and then I'll let my colleagues fill in  
7       any gaps that I miss.

8           Obviously, indoors it's a lot easier for  
9       engineering controls, but there are engineering  
10      controls out there for outdoor workers. Any time you  
11      can increase general ventilation, fans, air blowing on  
12      the workers to cool them down, help, cooling fans  
13      throughout the worksite. There is sometimes -- you can  
14      actually have some air-conditioning units out there,  
15      not just fans moving air but actual air-conditioning on  
16      job sites. We have seen that. Any kind of reflective  
17      shields that can redirect radiant heat from heavy  
18      machinery or anything that's producing ambient heat.  
19      Insulating hot surfaces. Anything you can do to reduce  
20      moisture from -- and keeping maintenance on heavy  
21      equipment out there in the outdoors.

22           And then a bigger one, too, is when it comes to

1 rest breaks. There is a lot of stuff out there, like  
2 cooled seats or benches for rest break areas where  
3 you're providing shade and, like, misting fans I think  
4 is the one I missed, too. We've seen some really cool  
5 things recently as the heat goes on and on with misting  
6 fans on construction sites. Even Shannon, I think,  
7 might have an example of that from a work site he was  
8 on.

9 MR. JONES: Yeah. This is Shannon Jones,  
10 Laborers' Health and Safety.

11 Yeah. So I was on a asphalt job and it was, I  
12 mean, extremely hot. Similar to today in Washington  
13 D.C., so like 100 degrees. And they used, like, the  
14 misting fans that you would see at the amusement parks,  
15 and they work great. They -- you know, it actually  
16 cools the body down. They was rotating the guys, you  
17 know, like, every 15 minutes.

18 Like I said earlier, the temperatures get up to,  
19 like, 300 degrees in the area where the asphalt is  
20 being poured. So yeah, misting fans really work very,  
21 very well. The pop-up tents work great also. They --  
22 you know, they put the little shades down on the side

1 of the tent, and that works phenomenal just to block  
2 the sun and get a little air going, get a little mist  
3 going just to cool the body.

4 JUDGE BELL: All right. Who has our next  
5 question?

6 MR. HAMMER: Our next question is from Chris Cain.

7 MS. CAIN: Hi there. Chris Cain with North  
8 America's Building Trades Unions.

9 One of the things that's been brought up a lot  
10 during the hearing is that --

11 JUDGE BELL: Ms. Cain, we've lost you. Can't hear  
12 you anymore.

13 MS. CAIN: I was muted somehow. I'll start from  
14 the beginning of my question.

15 Some of the arguments that we've heard is that  
16 worker behaviors, like coming to work dehydrated or  
17 being on medicine make managing heat not feasible, I  
18 was wondering if you could respond to those arguments.

19 MR. PARSONS: Yeah. I'm going to have Nate  
20 respond to that. He did -- whenever he was doing all  
21 his research on cumulative exposures, I think he looked  
22 into this.

1           So Nate, you want to respond to that?

2           MR. SCHREIBER: Sure. Nate Schreiber, Laborers'  
3           Health and Safety Fund.

4           So in terms of worker behavior, I think that's,  
5           you know, a factor in any evaluation of, like, a safety  
6           system, for example. But when we look at the reality  
7           of workers, you know, they're not going to be able to  
8           give themselves a medical diagnosis, for example, if  
9           they're experiencing, you know, heat exhaustion.

10          Ultimately, it's up to the employer to control the  
11          structure of the workday. Things like break times,  
12          water access, shade availability as Shannon just  
13          provided. If a worker arrives maybe slightly  
14          dehydrated to the job site and then they work for eight  
15          hours on top of that with no kind of formal rest  
16          schedule or shaded area, you know, I think that goes  
17          beyond a behavioral issue, and you move into, like, a  
18          systemic kind of risk.

19          So I think a heat illness prevention program would  
20          account for that kind of human variability. You know,  
21          if you want to relate it to fall protection, you know,  
22          we don't assume workers are going to tie off. You

1 know, they got to be trained, and we have to stay  
2 within, you know, some boundaries. So it's about  
3 building safeguards to me.

4 MS. CAIN: Thank you. No more questions.

5 JUDGE BELL: All right. Are there any other  
6 questions for this panel?

7 MR. HAMMER: We have one more question from Dan  
8 Glucksman.

9 JUDGE BELL: Go ahead, Mr. Glucksman.

10 MR. GLUCKSMAN: Hi, thank you. A question for  
11 Shannon. I'm Dan Glucksman with ISEA.

12 Shannon, you had talked about workers doing  
13 asphalt paving and said something about, like, making  
14 sure they wear the right clothing. But can you talk a  
15 little more specifically about the kind of clothing  
16 that's recommended for workers who are doing the  
17 asphalt paving?

18 MR. JONES: Yeah. So they usually have a tendency  
19 to wear, like, a light color coat -- clothing because  
20 dark color clothing absorb more heat. They usually  
21 wear, like, athlete -- athletic shirts, you know,  
22 something that can actually hold the sweat, and as you

1 go under a fan, it will cool the body.

2 It's just a brutal environment. Like I said, it  
3 can get up to, like, 300 degrees around the spreader  
4 itself. So just, you know, you just make sure that,  
5 you know, you dress thin but safe, I should say.

6 MR. GLUCKSMAN: Yeah.

7 MR. JONES: A lot of breathable clothing works  
8 great. Even the hard hat nowadays, you know, they use  
9 the hard hats, and they have vents in the hard hat that  
10 usually work. Neck protectors, they use -- use neck  
11 protectors to shade the neck, long sleeve shirts, and  
12 they use a thin type of glove --

13 MR. GLUCKSMAN: Yeah.

14 MR. JONES: -- that actually helps with the --  
15 with the sun exposure.

16 MR. GLUCKSMAN: Right. Right.

17 MR. JONES: And the heat.

18 MR. GLUCKSMAN: All right. Great. Thank you very  
19 much. I appreciate that.

20 JUDGE BELL: All right. Any other questions for  
21 this panel?

22 MR. HAMMER: I see no more questions.

1 JUDGE BELL: All right. Any other witnesses to  
2 come before us today?

3 MR. HAMMER: That's it.

4 JUDGE BELL: All right. We're now at the end of  
5 all scheduled witnesses for today. I'd like to remind  
6 the hearing participants that they may submit  
7 additional evidence or statements relevant to this  
8 proceeding within 90 days of the close of the hearing,  
9 which will be September 30th, 2025. At that point, the  
10 record for this rulemaking will close.

11 On behalf of the Department of Labor, I wish to  
12 publicly thank all those who gave of their time and  
13 testimony to contribute to this hearing today.

14 To all participants, thank you for your interest  
15 in this important matter.

16 The hearing is adjourned for today, and I believe  
17 we'll reconvene at 9:30 a.m. Eastern Time tomorrow.  
18 Thanks, everybody.

19 (Whereupon, at 4:44 p.m., the hearing was  
20 adjourned.)

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