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Virginia Regulatory Town Hall
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SUBMITTED VIA EMAIL to cristin.bernhardt@doli.virginia.gov

**RE: Comments on Notice of Intended Regulatory Action
Heat Illness Prevention Standard, 16 VAC 25-210**

Dear Ms. Bernhardt and Safety and Health Codes Board:

The Coalition for Workplace Safety (“CWS”) respectfully submits these comments in response to the Notice of Intended Regulatory Action (“NOIRA”) regarding the development of a heat illness prevention standard by the Virginia Department of Labor and Industry and the Safety and Health Codes Board (the “Board”). CWS is a coalition of trade associations and companies representing many industries with millions of employees around the country, and tens of thousands of employees in Virginia. CWS advocates for the establishment of reasonable and responsible workplace safety standards and its members have significant experience with heat illness regulations in other states across the country.

CWS and its members support the core protections authorized in the Virginia Code, section 40.1-44.2: access to water, shade or climate-controlled environments, rest periods, acclimatization protocols, and effective training. These are recognized elements of heat illness prevention, and CWS encourages the Board to build its standard around them. Where CWS differs from some stakeholders is not on whether workers should be protected but on how to design a standard that achieves that protection without imposing requirements disproportionate to the risk in Virginia’s specific conditions.

CWS previously submitted comments regarding federal OSHA’s proposed heat injury and illness prevention standard. CWS attached those comments with this submission and incorporates the same feedback for Virginia.

Virginia Employers Have Strong Heat Safety Records

Existing public data indicates that Virginia employers maintain strong heat illness prevention practices. CWS members have voluntarily adopted robust heat protections, including

climate-controlled work environments, formal acclimatization plans, hydration programs, and mandatory cool-down rest breaks. According to publicly available VOSH inspection data (2022-2025) analyzed by CWS, VOSH conducted at least 282 inspections at Virginia worksites that included investigations under federal OSHA's National Emphasis Program for heat hazards. Of those inspections, only 11 resulted in General Duty Clause citations of any kind – indicating a 96 percent compliance rate among Virginia employers and a citation rate of less than 3 per year on a statewide basis.¹

These positive outcomes held even as inspection activity increased. VOSH conducted 111 heat-related inspections in 2025 and issued only four General Duty Clause citations after such inspections. The citation-per-inspection rate did not exceed five percent in any year between 2022 and 2025. And the positive outcomes came across industries – even in higher heat exposure jobs like construction, manufacturing, and food service, the citation rate never exceeded seven percent. Even with upticks in inspection activity, the results demonstrate that Virginia employers implement controls that protect their employees from serious heat-related hazards.

These outcomes also underscore that the Board can build on an already-effective and robust existing Virginia framework. VOSH and OSHA provide numerous guidance documents and compliance tips to employers on their websites, and compliance officers have educated employers about heat hazards under the National Emphasis Program.²

Virginia's Standard Should Reflect the Commonwealth's Working Conditions, Not Simply Copy Other States or Federal OSHA

This heat illness data supports a Virginia-specific standard that does not rely on the approaches applied in other states. When the Board proposed a heat illness prevention standard in 2021, its draft relied heavily on language adopted in states like Oregon, Washington and California. But Virginia is much different than those states. Oregon and Washington are much more temperate, so their heat illness plans apply on fewer days throughout the year. In California, temperatures vary widely from the mountains to the deserts to the coasts and from north to south, which also supports a different approach. While the Board may look to other states to consider appropriate frameworks for its heat standard, it should not rely on them without careful analysis of whether the solutions those states proposed would be necessary or helpful in the Commonwealth.

For example, the statute delegates the temperature threshold decision to the Board, making it one of the most consequential design choices in this rulemaking. Some stakeholders and the 2021 Virginia draft standard—which the Board ultimately did not advance—suggested an 80-degree heat index as the applicability trigger. In Oregon, Washington and much of California, outdoor work environments may reach that temperature only during the summer months,

¹ CWS's statistical analysis and methodology is available here: <https://voshheatanalysis1.netlify.app/>. Because Virginia does not currently maintain a heat-specific standard, VOSH can only cite employers for heat-related issues under the General Duty Clause. For purposes of its analysis, CWS counted every General Duty Clause citation issued after a heat NEP inspection as a heat-related citation. That methodology may result in an over-count of heat-related citations because some of those General Duty Clause citations could have been issued for reasons other than heat hazards.

² See [DOLI – Virginia Department of Labor and Industry - Safety & Health Hazard Topics](#)

particularly because all three states enjoy lower humidity levels. But in Virginia, that temperature threshold will be reached in more months than not. For example, at a single major station—Richmond International Airport—heat index data for 2025 shows that an 80-degree trigger would have applied to outdoor work from early spring (starting as early as March 3) through October.³

That means that for nearly three-quarters of the year, Virginia employers would need to monitor temperature anomalies and implement controls even for isolated or uncharacteristic hot days in traditionally cooler seasons. In addition, in the summer months, outdoor heat indexes exceed 80 degrees nearly every day in many parts of the state. That would mean near-constant compliance burdens, even for outdoor employees that are acclimatized to those temperatures. Given those geographic realities, the Board should set any threshold on the basis of Virginia-specific analysis rather than adopting another jurisdiction's number by default. An 80-degree heat-index trigger calibrated for the Pacific Northwest should not simply be carried over to the Commonwealth where such temperatures are commonplace, not exceptional, and where the workforce is acclimatized to working in them. Where other states—including humid ones—have used an 80-degree trigger, the Board should examine whether that figure rested on Virginia-comparable analysis or was inherited from earlier state models, rather than treating its adoption elsewhere as evidence that it fits Virginia.⁴

If Virginia ultimately decides on the same 80-degree heat index threshold that other states have adopted, then it should limit the requirements that kick in merely because of occasional exposure to such temperatures. For example, some states require employers to develop heat illness prevention plans if their employees experience 80-degree heat index work environments. But as applied in Virginia, that would require nearly every employer with any outdoor operations to implement a new safety program, even where the likelihood of employee injury is already low. That diverts compliance resources from higher-risk settings where heat controls can do the most to protect workers. The Board should consider limiting any such requirement only to employers whose employees regularly and consistently work in high temperatures.

The Board also should not rely on or adopt the proposed federal OSHA heat illness standard that is unlikely to be enacted in its current form. Federal OSHA has not advanced its proposed heat illness standard since it received significant, negative public feedback throughout 2025. OSHA's latest regulatory agenda indicated that it plans to issue a revised Notice of Proposed Rulemaking ("NPRM") in December 2026, which will likely include significant revisions to the existing proposed rule.⁵

As outlined in CWS's comments to OSHA, the 2024 federal proposal included numerous burdensome elements that would not meaningfully impact employee welfare, including the requirement for a designated heat safety coordinator, detailed heat monitoring requirements, and paid rest breaks during high-heat conditions. A more flexible, performance-based standard would

³ This estimate relies on data from the Iowa Environmental Mesonet. [Iowa Environmental Mesonet](#)

⁴ Since publication of the Board's 2021 rule, Nevada has implemented a more flexible heat illness standard. If the Board intends to borrow language or frameworks from other states, it should add Nevada's standard to the analysis. The Nevada standard was not referenced in the NOIRA.

⁵ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=1218-AD39>

better serve both Virginia workers and Virginia employers. Such a standard will promote consistent compliance and better protect workers across industries, particularly small and mid-size employers who may lack dedicated safety staff but whose employees face the same heat risks.

Any Standard Should Rely on User-Friendly Temperature Monitoring, not Complex Measurements

The Board should adopt a standard that uses easy-to-implement methods and metrics for assessing temperature thresholds. Based on the experience of CWS members in California, the requirement for employers to take regular heat index and globe temperature readings places an undue burden on employers and does not ensure accuracy.⁶ California also requires employers to retain any temperature readings for at least 12 months, which serves no meaningful safety purpose, particularly when such readings do not exceed the relevant temperature thresholds. Even with training and proper equipment, it is not practical to expect laypeople in kitchens, for example, to take precise readings of radiant heat or globe temperatures in particular locations at any given time. Employees and employers would benefit from a standard that creates easy compliance, not complication.

For outdoor work environments, any standard should allow employers to rely on National Weather Service data or other official monitoring services to assess heat index temperatures in a given locality. For indoor work environments, the Board should adopt a simple, ascertainable trigger (such as ambient air temperature) that employers can apply consistently without specialized instrumentation. By taking this approach, Virginia could expect more consistent and predictable compliance and less risk of arbitrary or imprecise enforcement against employers who make good-faith efforts to comply.

CWS Looks Forward to Continued Involvement in the Regulatory Process

CWS understands that the regulatory process is in its early stages. CWS and its members will continue to provide feedback, on-the-ground experiences and assistance to the Board as it works to develop a standard that protects employees and works for Virginia businesses. At this stage, CWS encourages the Board to approach the regulatory process without any bias towards re-implementing its 2021 standard, adopting federal OSHA's likely-to-be-abandoned framework, or following the lead of states with dissimilar geographic and climate characteristics. Virginia employers have demonstrated their ability to protect employees from heat hazards, aided by VOSH's existing guidance and tools, and the Board's standard should reflect that reality.

⁶ California requires employer monitoring of temperatures, including heat index and globe temperatures, for indoor work environments.