



October 30, 2025

The Honorable David Keeling  
Assistant Secretary of Labor  
United States Department of Labor  
Occupational Safety and Health Administration  
200 Constitution Avenue, NW  
Washington, DC 20210

Andrew Levinson  
Director, Directorate of Standards and Guidance  
United States Department of Labor  
Occupational Safety and Health Administration  
200 Constitution Avenue NW, Room N-3718,  
Washington, DC 20210

VIA ELECTRONIC SUBMISSION TO <https://www.regulations.gov/docket/OSHA-2021-0009>

RE: **Post Hearing Responses from Coalition for Workplace Safety Regarding Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings Proposed Rule, Docket (OSHA-2021-0009)**

Dear Assistant Secretary Keeling and Director Levinson:

The Coalition for Workplace Safety (CWS), joined by 81 organizations, presented extensive concerns regarding the Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings standard proposed by the Occupational Safety and Health Administration (OSHA) (Docket No. OSHA-2021-0009) (“proposed heat standard”). The CWS, through outside counsel, Robin Repass of Fisher Phillips LLP, presented argument on the proposed heat standard on June 17, 2025. Our oral argument tracked our written comments provided in January 2025, as well as feedback presented by the CWS during the Small Business Regulatory Enforcement Fairness Act (SBREFA) process on December 20, 2023. *See also* comments presented by the CWS on February 4, 2022, regarding OSHA’s Advance Notice of Proposed Rulemaking on Heat Injury and Illness Prevention in Indoor and Outdoor Settings, 86 Fed. Reg. 59309 (October 27, 2021). We appreciate OSHA’s ongoing consideration of our input, as well as our responses provided below to specific questions directed to CWS during our June 2025 testimony.

## **BACKGROUND and INTRODUCTION**

The CWS is a coalition of trade associations and companies, representing many industries with millions of employees in every state in the nation who are focused on establishing reasonable and responsible workplace safety standards across the country. We are comprised of associations and employers who believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability.

CWS members agree that heat can pose risks to workers in a range of workplaces around the country. However, as discussed during our testimony and prior written comments, we have significant concern with the inflexible, “one-size-fits-all” principles reflected in OSHA’s proposed rule, which do not take geographical and other variables into account.

In addition to our previously expressed position(s), the CWS joins others who have commented on the proposed heat standard in expressing concerns that OSHA’s one-size-fits all approach to the proposed heat standard is contrary to the U.S. Supreme Court’s holding in *National Federation of Independent Business v. Department of Labor*<sup>1</sup> (“NFIB case”). In the NFIB case, the Court reviewed challenges to the Emergency Temporary Standard (“ETS”) related to COVID-19 Vaccination and Testing<sup>2</sup>. In staying the ETS and finding that OSHA lacked the authority to impose the mandate, the Court reasoned that OSHA failed to distinguish between the various industries swept up into the COVID-19 ETS<sup>3</sup>. The Court ultimately held that the agency did not have the authority to use a “blunt instrument ... that draws no distinction based on industry or risk.”<sup>4</sup> The same principle applies here since the proposed rule covers general industry, agriculture, construction, and maritime.

We continue to maintain the position that the proposed rule should be withdrawn for the purpose of significantly revising it for the reasons discussed below. We respectfully request that the rule be substantially modified to create a more flexible approach that will allow employers to tailor their heat illness prevention approach based on their unique work environments, employees’ needs, and tolerances.

## **RESPONSES TO PANEL QUESTIONS PRESENTED DURING JUNE 17, 2025, CWS ARGUMENT**

- (1) Describe any specific alternatives for acclimatization and rest breaks that the CWS would like the agency to consider related to the CWS’s request for more flexibility regarding acclimatization and rest breaks.**

This question is directed to the CWS’s invitation to OSHA to revise the proposed standard considerably to provide a more flexible performance-based approach, as opposed to the rigid acclimatization components, among other requirements, in the proposed rule. As discussed below,

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<sup>1</sup>595 U.S. \_\_\_\_, 142 S.Ct. 661, 211 L.Ed.2d 448 (2022) NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports.

<sup>2</sup>*Id.*

<sup>3</sup> *Id.*

<sup>4</sup>*Id.*

rest breaks should be provided as needed, and not on a fixed schedule. Ultimately, CWS believes that employers and employees can best mitigate heat hazards by creating heat illness protocols that take the needs of employees, their unique workplaces, geographical considerations, and available technology into account.

A key concern expressed by CWS members is with the acclimatization schedules for new employees and returning employees (those employees returning to the worksite after having been away from the job for more than 14 days).<sup>5</sup> Employers are required to acclimatize these employees either by implementing their high-heat procedures for seven days or by imposing a gradual ramp-up schedule limiting the number of hours these employees can work during a one-week period. These rigid acclimatization requirements do not take into account whether any given employee is susceptible to heat illness, and at what point.

The CWS's criticism with an approach that remains rigidly affixed on environmental temperatures is that it ignores the impact of geographical and other factors associated with heat illness. The proposed mandatory rest breaks of 15 minutes at least every two hours is also impractical.<sup>6</sup>

As another CWS member pointed out in its comments, the acclimatization schedule fails to take into account the fact that, in some job types, such as construction, workers are often already acclimatized by working outdoors frequently. In many instances, workers' homes and job sites are in the same geographic location, and workers are already accustomed to the weather at their job site. Requiring these new employees to then undergo a strict acclimatization schedule provides little incremental safety benefit to the employee, while imposing unduly burdensome requirements on the employer.

In addition, the proposed acclimatization schedule for new employees could impact short-term assignments. By the time the new employee has gone through the scheduled acclimatization process, the short-term assignment may already have been completed. Further, the proposed rule's acclimatization schedule for employees returning to work after vacations or from short leaves is impracticable. Every time an employee leaves work for two weeks, they will need to acclimatize. During hot months, this could mean that an employer could have one or hundreds of returning employees that are acclimatizing. The acclimatization requirements would not only hurt returning employees, but also businesses who have a short window to perform critical work.

Applying strict acclimatization requirements to jobsites where workers travel from location to location frequently, such as construction employees, is also problematic. Just because an employee is no longer present on a specific jobsite, then moves to another site within the same geographical area, does not mean that they are suddenly no longer acclimatized to the heat.

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<sup>5</sup>We were also asked during the hearing to elaborate on a survey we conducted to show that the majority of members surveyed indicated that providing mandatory rest breaks of every 15 minutes at least every two hours poses operational challenges. We have provided these illustrations in responses to questions one and three.

<sup>6</sup> Under OSHA's proposal, if the high-heat trigger (heat index of 90°F) is reached, employers must provide mandatory paid rest breaks of 15 minutes at least every two hours (an unpaid meal break may count as a rest break). *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, 89 Fed. Reg. 70698, 70846 (Aug. 30, 2024).

The proposed rule should be revised to allow employers to create workable acclimatization protocols that take the above considerations into account, along with factors commonly associated with heat stress, including temperature, air velocity, humidity, radiant heat, clothing, metabolic rate, work rest schedules, and acclimatization.<sup>7</sup>

To mitigate the above concerns, the CWS urges OSHA to revisit acclimatization requirements and break requirements to allow for more flexibility for employees to take rest breaks as needed, and not on a mandated, fixed, schedule. While the CWS does not advocate for OSHA to model its federal heat standard after any of the state OSHA plan regulations, given that the state plans are based on the unique geographical and other state-specific considerations, the CWS recommends that OSHA review Nevada OSHA's approach, which provides greater flexibility than provided in the proposed federal rule.<sup>8</sup>

Under Nevada's standard<sup>9</sup>, an employer who is required to establish a written safety program pursuant to NRS 618.383<sup>10</sup> shall perform and prepare a one-time, written job hazard analysis (JHA)<sup>11</sup> to assess working conditions that may cause occupational exposure to heat illness. Nevada's regulation does not mandate specific acclimatization requirements that may or may not be necessary. Nevada OSHA mandates breaks to mitigate heat hazards only if an employee shows signs of heat illness.<sup>12</sup> Similarly, guidance accompanying the regulation provides the suggestion that employers should permit employees to take frequent rest and water breaks<sup>13</sup> as needed.

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<sup>7</sup> "It's the Heat – And the Humidity: Critical Factors for Heat Stress Assessment and Prevention," by Robert N. Phalen and Catherine L. Besmar, <https://synergist.aiha.org/202004-heat-and-humidity> (last accessed 10/29/2025).

<sup>8</sup> The CWS also does not endorse what some have called a "reactive enforcement style" by Nevada OSHA, in which some employers and industry groups are concerned that Nevada OSHA is using guidance documents in enforcement actions against employers beyond the elements that are contained in the regulation itself. While the CWS favors language in the Nevada standard providing more flexibility to employers in approaching heat hazards, we do not endorse the use of guidance documents in enforcement actions as neither federal OSHA nor state plan OSHA agencies are permitted to use non-mandatory guidance documents as direct substitutes for enforceable standards or regulations during enforcement actions against employers. Guidance documents are intended to assist employers in interpreting and complying with OSHA standards, rather than imposing binding requirements.

<sup>9</sup> R131-24 [Approved Regulation of the Division of Industrial Relations of the Department of Business and Industry](#), filed 11/15/2024.

<sup>10</sup> Employers with 10 or fewer employees are exempted from establishing a written safety program, unless the employer has employees engaged in the manufacture of explosives. NRS 618.383(8).

<sup>11</sup> The Nevada regulation, in addition to discussing the "one-time" JHA, also includes language reading that the JHA must be performed (a) before a task for a job is undertaken for the first time by an employee of the employer; and (b) whenever a task for a job performed by an employee of the employer materially changes. R131-24AP, §5(1). The CWS does not support these additional requirements, nor does the CWS support language in Nevada's guidance accompanying their heat regulation that would require an employer to perform a new JHA each time an employee undertakes a new task, or whenever a task performed by an employee materially changes, nor does the CWS support Nevada's guidance that "any" change to a task that could increase an employee's exposure to heat will require an entirely new JHA. While our comments here do not take issue with a "one time" JHA to assess whether the hazard of occupational exposure to heat illness exists, we are not advocating that any federal standard mirror the provisions of the Nevada rule that require a new JHA each time an employee is assigned to a new task, or when their tasks materially change.

<sup>12</sup> R131-24AP, §6 (3)(b).

<sup>13</sup> Guidance, at 14(b).

Through this approach, employers have the flexibility to stagger breaks while also being sensitive to permitting employees to take cool-down breaks as needed.

Input from our members reveals that the following approaches provide more flexibility in practice:

- Providing heat hazard awareness training for supervisors and employees to watch for early heat stress signs (cramps, dizziness, confusion);
- Using job hazard analysis to develop acclimatization protocols tailored to the specific worksite(s), with emphasis on the following:
  - Identifying tasks involving heat exposure (direct sunlight, indoor heat sources); and
  - Utilizing personal protective equipment (“PPE”) in outdoor settings where appropriate to mitigate the effects of heat;
- Structuring an acclimatization schedule that takes the geographical location, and the workers’ unique factors (such as whether or not currently acclimatized to the local heat conditions) into account;
- Developing acclimatization programs tailored to the employer’s worksite. One of the construction trade associations involved with CWS reported to us that their members are doing so in the following ways:
  - identifying on the daily pre-task-plan employees that are new or returning from time off and determining whether they were in an area where the heat index was elevated;
  - adjusting work tasks for new and unacclimatized employees;
  - providing higher frequency of rest as needed;
  - visually observing new and unacclimatized employees for potential early symptoms; and
  - offering flexibility as needed, taking into account the nature of the work and specific jobsite condition.

Any acclimatization requirements must allow for flexibility. The CWS urges OSHA to focus on heat hazard awareness training and allow employers to develop self-managed acclimatization protocols tailored to their unique jobsites and the needs of employees for a more tailored approach.

**(2) Please provide suggestions on how OSHA should structure a performance-based standard.**

Federal OSHA regulations form the “floor,” meaning that they set the baseline minimum standards that apply nationwide, while state plans may go beyond federal OSHA’s floor, and establish more stringent rules, which then become a regulatory “ceiling” in their state (though employers are free to and frequently do set additional workplace safety measures that are tailored to their specific industry and circumstances). However, the opposite is occurring regarding OSHA’s proposed heat regulation. The proposed rule contains rigid requirements that will be difficult to impossible for many employers to meet in worksites across the country. This is far from a “baseline” envisioned for federal standards. In order to level-set the balance between federal and

state plan OSHA regulations where heat hazards are concerned, the CWS urges OSHA to re-work the proposed standard to achieve baseline requirements (i.e. achieve effective heat illness mitigation), while equipping employers with a performance-based standard to address their unique situations.

The examples provided above from Nevada OSHA's heat regulation<sup>14</sup> describe ways to address heat hazards from a performance-based perspective. Nevada OSHA's heat illness regulation is primarily a performance-based standard. It requires employers with more than 10 employees to conduct a one-time<sup>15</sup>, written JHA of working conditions that could cause heat illness.<sup>16</sup> This analysis is limited to job classifications where a majority of employees have occupational exposure to heat illness for more than 30 minutes of any 60-minute period, excluding breaks.<sup>17</sup> If the JHA identifies conditions that may cause heat illness, then Nevada employers must create a written safety program that includes measures to mitigate or eliminate the heat illness hazard, including providing a rest break (but without dictating specific timelines) when an employee exhibits signs or symptoms of heat illness.<sup>18</sup> By outlining outcomes that must be achieved (such as identifying and controlling exposure), while allowing employers the flexibility to determine how they will achieve those outcomes, a regulation such as this allows employers to tailor protective measures to their worksite's needs and working conditions.

Several federal OSHA standards, such as the Hazard Communication Standard<sup>19</sup> ("HazCom Standard"), also contain performance-based elements in that they specify outcomes that must be achieved (such as making employees aware of hazards), while not dictating the specific methods for communicating or handling hazards.<sup>20</sup> Federal OSHA provides non-binding

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<sup>14</sup> As noted in response to question 1, above, and in footnotes 8 and 11, the CWS is not advocating that OSHA adopt the Nevada OSHA heat regulation as a basis for the federal standard, nor should federal OSHA do so with any state standard, as each state considered its requirements based on its unique geographies, industries within its borders, and other state-specific considerations. As noted in footnote 11, the Nevada OSHA state plan enforces provisions that CWS members oppose, including, for example, requirements that employers perform a new JHA each time an employee undertakes a new task, or whenever a task performed by an employee materially changes, nor does the CWS support Nevada's guidance that "any" change to a task that could increase an employee's exposure to heat will require the employer to perform a new JHA. The CWS also does not endorse Nevada OSHA's usage of non-binding guidance in enforcement actions. The CWS is referencing Nevada's standard only as an example of a means of achieving a more flexible approach in sections specifically identified here in our post-hearing comments.

<sup>15</sup> See footnote 11, above, regarding concerns expressed by CWS members regarding Nevada OSHA's expansion of their "one-time" assessment requirements.

<sup>16</sup> <https://www.business.nv.gov/news-media/press-releases/2025/industrial-relations/nevada-osh-heat-regulation-enforcement-begins-april-29-2025/> (last accessed 10/29/2025).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 29 CFR 1910.1200.

<sup>20</sup> Other OSHA regulations based on a performance-based framework include the following:

- Process Safety Management of Highly Dangerous Chemicals (29 CFR 1910.119): Employers are required to establish written procedures to maintain the integrity of process equipment, among other requirements. While the PSM regulation sets goals for safety and integrity, it does not prescribe detailed, uniform methods for accomplishing each element; and

guidance documents and other educational materials on a webpage dedicated to the HazCom standards to provide employers with performance-based tools to comply.<sup>21</sup>

The CWS proposes that OSHA withdraw and substantially revise the proposed rule regarding effective heat illness mitigation in work environments where occupational heat hazards have been identified to allow employers to choose the specific engineering, administrative, and other methods from OSHA’s hierarchy of controls to best suit the employer’s circumstances, and needs of their employees. Such an approach would be far more workable, as compared to the current “one-size-fits-all” approach in the current version of the proposed rule that will not fit all work environments.

**(3) Please elaborate on the CWS comment that OSHA should take a more risk-based approach regarding the exemption for short duration exposure, versus just the exemption based on time of exposure.**

This question relates to the CWS’s position in written comments that the exemption available for “short duration” exposure at or above the initial heat trigger at 15 minutes or less in any 60-minute period is excessively limited and will not be applicable to many work environments if tied only to time of exposure versus a risk-based approach. The CWS requests that OSHA empower employers to evaluate additional exposure factors—not just the duration of the exposure—to (1) determine whether the exposure presents risk of heat illness, and (2) adopt appropriate controls (e.g., rest, water, and/or shade) if necessary to mitigate risk. In our original written comments, we provided the following examples to illustrate the extreme limitations of the short duration exemption as drafted, and ways in which the intensity and duration of the exposure should also be considered:

- Consider maintenance personnel who occasionally service equipment outside during the summer. If they are outside for more than 15 minutes in a 60-minute period, then the standard is triggered, even if they are otherwise working in an air-conditioned building for the remainder of the day.
- It is not uncommon for an air-conditioning unit to malfunction, resulting in indoor workplaces becoming hot briefly while the unit is being repaired. All of the requirements of the standard would then apply if the conditions last for more than 15 minutes during a 60-minute period, even if the building’s temperature is brought under the heat trigger for the remainder of the day.
- Many employers utilize delivery drivers with air-conditioned vehicles. Even though the drivers are in their climate-controlled vehicles for the majority of their workday, which would remove them from the application of the proposed rule, the “short duration” exception will not apply when they are outside of the vehicle for more than

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- PPE Standard (29 CFR 1910.132): Employers must assess workplace hazards and provide appropriate PPE. However, they have latitude in selecting the types and styles so long as they adequately protect employees from identified hazards.

<sup>21</sup> <https://www.osha.gov/hazcom>.

15 minutes over a 60-minute period. If a driver also chooses to eat lunch outside for more than 15 minutes during a hot day because they enjoy doing so, then the requirements of the proposed standard arguably would also be triggered.

The above examples provide real-world illustrations for how, instead of approaching the exemption only based on the amount of exposure, OSHA should remove specific temperature triggers and could instead direct employers to assess the actual risk in a performance-based approach, through considering environmental factors (e.g., air temperature, relative heat index, humidity), work intensity and physical demands of the job, and other relevant factors, instead of duration alone. Such a risk-based approach would encourage employers to use evidence, context, and controls suited to their workforce and settings, rather than relying solely on an inflexible time threshold alone tied to a specific temperature trigger.

**(4) How often should the Heat Illness and Injury Prevention Plan (HIIPPs) be updated?**

The CWS recommends that HIIPPs, if and where required, be reviewed as necessary to address any newly identified risks, or newly introduced heat hazards not described in the existing HIIPP. There should not be an additional requirement that the HIIPP be “updated” on a specific cadence. There may be instances when a review of the existing HIIPP reveals that all elements of the plan are still relevant, and effective in controlling exposure to occupational heat hazards. In such instances, the review may be noted and dated, without the necessity of creating an unnecessary update to the plan.

**(5) Regarding the complaint from the CWS about the confusion in the proposed heat standard about the heat safety coordinator, do our members have any alternatives to the heat safety coordinator to suggest?**

A key concern from CWS members regarding the heat safety coordinator (HCP) is that the proposed rule, as written, would likely require an employer to create a new role for the HCP. This is overly burdensome and will create substantial financial burdens for smaller businesses. As we noted in our comments submitted on January 14, 2025, a standard must be economically feasible.<sup>22</sup> The proposed standard does not meet this requirement. OSHA has grossly underestimated compliance costs at only \$3,085 per establishment.<sup>23</sup> The cost of hiring just one additional full-time employee to serve as the HCP would easily total at least twenty times this amount, not including the costs of creating the HIIPP, which are also likely to be significant.

The CWS urges OSHA to consider alternate measures that will not require employers to create additional headcount to carry out the HSC role, while also clarifying that the HSC may do additional job tasks.

There are alternative approaches that OSHA should consider, including designating a competent person for purposes of heat illness monitoring, and training existing personnel to watch for signs of heat illness and engage emergency assistance when needed. This is another example

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<sup>22</sup>*Forging Indus. Ass’n v. Secretary of Labor*, 773 F.2d 1436, 1453 (4<sup>th</sup> Cir. 1985).

<sup>23</sup>*Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, 89 Fed. Reg. 70824, August 30, 2024 (RIN 1218-AD39).

of an opportunity for OSHA to provide more flexibility by revising the prescriptive nature of the HSC requirements in the proposed rule and replacing it with a performance-based method that will allow an employer to effectively monitor its employees for signs of heat illness through methods best suited for the employer's work environment and employee populations.

For a more performance-based approach, employers could rely on OSHA's existing "competent person" framework, and allow employers to designate a "competent person" capable of identifying hazards, and authorize them to take prompt corrective measures to address the hazard, including engaging emergency measures.<sup>24</sup> Rather than dictating the duties of a HSC when triggered by defined heat indexes, as in the proposed rule, the CWS urges OSHA to allow employers to utilize the existing competent person process, and allow employers to equip a competent person regarding heat illness prevention. Applying the "competent person" approach would provide the flexibility requested by employers, while utilizing processes already recognized by OSHA regarding competent person qualifications.

The duties and obligations of the HSC are identical to the definition of a competent person. An OSHA "competent person" is defined as "one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."<sup>25</sup> By way of training and/or experience, a competent person is knowledgeable of applicable standards, is capable of identifying workplace hazards relating to the specific operation and has the authority to correct them.

If a competent person has the knowledge and authority to address risk, the HSC would not need to be a different person, or an entirely separate role. This would be an unreasonable burden for small businesses, particularly since they may have limited staffing and would have to hire a new employee to serve in the role of HSC. The CWS strongly urges OSHA to clarify that employers can designate their competent person to also be the HSC, who can be identified either by name or by position. Utilizing the competent person framework provides an alternative solution to hiring additional personnel. Employers can then train, equip and integrate this responsibility into an existing role as a collateral duty.

Even Cal/OSHA's heat illness regulations, which are considered some of the most stringent of state OSHA plan regulations, do not require employers to create a separate role for the HSC.<sup>26</sup> Instead, Cal/OSHA's monitoring requirements are triggered in their "high heat procedures," and allow the employer to select from the following alternatives to ensure effective employee observation and monitoring:

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<sup>24</sup> See OSHA's webpage regarding competent person requirements: <https://www.osha.gov/competent-person>.

<sup>25</sup> 29 CFR 1926.32(f).

<sup>26</sup> By referencing the Cal/OSHA regulation, the CWS is not advocating that federal OSHA use existing state OSHA plan regulations as a framework for updating the proposed federal heat standard, as each state considered its requirements based on its unique geographies, industries within its borders, and other state-specific considerations. The CWS is referencing Cal/OSHA'S regulation as an example of language allowing a more flexible approach than contained in the proposed federal OSHA rule.

- (A) Supervisor or designee observation of 20 or fewer employees, or
- (B) Mandatory buddy system, or
- (C) Regular communication with sole employee, or
- (D) Other effective means of observation.

Cal. Code Regs. Tit. 8, §3395. In addition, the Cal/OSHA regulation allows employers to designate an employee (including non-supervisor) to call for emergency services, and/or allow employees to call for emergency services when no designated employee is available. *Id.*

The above approaches, whether adopting the “competent person” framework or allowing the employer to identify the best options for effectively monitoring employees for signs of heat illness, provide far more flexibility and choices than the rigid and confusing HSC requirements in the proposed federal heat rule.

**(6) The written comments from the CWS suggested more flexibility in monitoring heat hazards. Please expound on what that should look like, and what a monitoring provision would entail.**

One of our members, involved in driver delivery services, provided context expressed here regarding difficulties that are inherent in the proposed rule regarding monitoring lone workers, such as delivery drivers. Many delivery vehicles use GPS tracking and route monitoring, allowing companies to know a driver’s location in real time. However, these systems do not satisfy the proposed heat standard requirement for two-way communication with lone workers every two hours during high-heat conditions. In practice, and regardless of the use of tracking technology, delivery drivers are unlikely to be continuously exposed to high-heat environments for extended periods. For example, much of their time may be spent inside air-conditioned vehicles, even when the outdoor temperature exceeds the high-heat threshold. Requiring check-ins in these cases would impose a logistical burden and is likely to create unintended safety risks. If a driver is required to check in while enroute, it could distract from safe driving, particularly if the check-in must be interactive rather than passive or automated.

We also understand from our members that most retail locations, as well as some warehouses, utilize air-conditioning or have temperature-controlled rooms for products. There are various methods that employers use in non-climate-controlled spaces to measure temperature and heat index (some of which are required under state plans). For example, retail and wholesale employers utilize a variety of temperature sensors to track ambient conditions. These devices can continuously monitor temperature and humidity and can transmit data in real time. Temperature can also be measured with a thermometer that is freely exposed to the air but shielded from radiant heat sources. By allowing different ways to monitor the temperature, employers are afforded the flexibility to consider their specific environment and determine the best method to ensure a safe work environment.

Finally, CWS members also employ sales associates and store stockers who work alone, but not in high temperatures. As currently drafted, the proposed rule appears to require two-way contact with these employees whenever outdoor temperatures exceed the high-heat threshold — regardless of whether the worker is actually exposed to heat or at risk of heat illness. This could

impose unnecessary burdens on employers without improving worker safety and may dilute focus from those at real risk.

**(7) Oregon’s rule for outdoor work has provisions that allow for the use of cooling technologies, such as vests, water dampened cotton cloth, and other measures. OSHA is interested in hearing what the CWS recommends for circumstances where an employer can demonstrate that providing access to a shaded rest area either isn’t safe (like tower erectors being exposed to a great hazard when climbing down), or that it is not feasible?**

The CWS does not have any member data specific to the Oregon rule for outdoor work. Our understanding of the Oregon rule is that it allows employer to use alternative cooling technologies – such as cooling vests, water-dampened clothing, or similar methods – when providing traditional shade is not safe or feasible for the worksite. This is an example of the type of flexibility that allows employers to provide “fit-for-purpose” solutions that best fit specific worksites, such as mobile crews, remote locations, or areas affected by high wind or equipment constraints where shade structures may be unsafe or impractical.

Frequently Asked Questions<sup>27</sup> regarding Oregon’s consideration of the alternate methods discussed above reference the following scenarios where it may be unsafe or impractical to mandate access to a shaded rest area:

- Erecting shade structures could become hazardous if the wind could blow them into workers or create flying debris risks, especially on an exposed site; and
- Requiring employers to set up shade structures near steep slopes, unstable ground, or excavations where the structure could collapse or tip could also endanger employees, such as those working in proximity to trenches, ravines, and unstable surfaces.

Employers faced with such scenarios as the above are empowered by the Oregon regulation to identify equivalent alternate cooling measures.

**(8) Regarding our references to our preference for a risk-based assessment, such as the type allowed by Nevada’s rule, do we have any examples of how OSHA could employ a risk-based approach, both for the job hazard assessment and how it connects with risk management strategies?**

To clarify the position of the CWS, we are not advocating for the wholesale adoption of Nevada’s heat standard, nor the heat regulations from any other state plan OSHA jurisdictions, as these have been created with unique needs of the state’s industries, employees, and environments in mind. Instead, we have referenced Nevada’s heat rule, along with those of other state OSHA jurisdictions, where we saw examples of more performance-based approaches. We have provided input regarding risk-based strategies in response to questions (1) – (3), above.

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<sup>27</sup> See, e.g., [FAQs for Heat Illness Prevention](#) Re: OAR 437-002-0156 and 437-004-1131 at . 5.

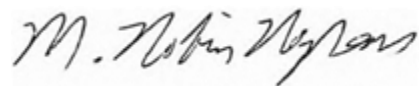
## CONCLUSION

The CWS continues to oppose the creation of a prescriptive “one-size-fits all” approach to heat illness. Without the flexibility to tailor heat illness programs based on an employer’s unique use environments, including geography and employee tolerances, a rigid rule carries the risk of being unduly burdensome and cost prohibitive, while failing to effectively protect workers from the specific hazards that would be identified through a site specific and tailored risk assessment.

We respectfully urge withdrawal of the proposed standard so that it can be significantly revised to reflect a more flexible, performance-based approach. Any standard that OSHA pursues should be substantially modified to allow employers to tailor heat illness prevention programs based on their unique work environments and employees’ needs.

We appreciate the opportunity to provide these comments and welcome the opportunity to continue to engage with the agency as it considers this important issue.

Sincerely,



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