

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY**  
**VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM**  
**VIRGINIA SAFETY AND HEALTH CODES BOARD**

16 VAC 25-210, NOIRA (Notice of Intended Regulatory Action)  
Heat Illness Prevention Standard

NOIRA 30 Day Comment Period: May 10, 2021 to June 9, 2021

**REGULATORY TOWNHALL COMMENTS**

98769 Bob 5/26/2021 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98769>

does this control the business or the people?

SEE RESPONSE TO COMMENT 98905

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98870 Scott 5/27/2021 <https://townhall.virginia.gov/L/viewcomments.cfm?commentid=98870>

This is another example of regulation in search of a problem. As a small auto repair/ gas station owner we do not need more costly, ineffective, burdensome regulations that will harm our businesses. In the summer it gets hot. Due to COVID we now meet a great number of our customers outside in the parking lot. We repair tires, head lights and wipers while people wait ... outside. We road test vehicles. We maintain our grass, plant flowers and decorate to make the neighborhood beautiful. When people have trouble with the gas pumps we our employees help them. We pump gas for our handicapped & elderly customers. All of these activities would be prohibited or limited to 15 minutes per hour which is not a sustainable business model. This is extremely short sighted and nonsensical example of beauracatic overreach and should be opposed by every business and politician in the state. Scott

SEE RESPONSE TO COMMENT 98905

Whether a proposed regulation will be considered and, if so, its content has yet to be decided as of July 30, 2021. The commenter seems to be confused when they state that outisde activities would be limited to 15 minutes. To the knowledge of the Department, no such requirement exists anywhere in the country.

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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98871 Bill Ragland 5/27/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98871>

Heat. Why do I need more regulation in my business. We are proud of our employees the work they do and the skill they do it with. I don't need the government imposing regulations to reduce productivity raise costs and hinder my business. We go to great lengths to care for each and every employee. It seems to me that you are concerned with burdening and creating hardship. Government oversight is useless. Use your time to help my business

SEE RESPONSE TO COMMENT 98905

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98873 Daniel Chahel 5/27/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98873>

Unreasonable, unnecessary, and unfair. Many of the concerns that have been stated are already being addressed by businesses in this field. We have air conditioned areas (snackshops or showrooms) that employees can cool off if they feel they need to. Water is of course readily available. We have commercial fans in our service bays to aid in ventilation.

This is not an industry where employees can realistically take 15 minute breaks every hour because often times they are working on complex repairs that require extended periods of concentration and focus to complete. You will directly be hurting the compensation of employees who have trained over years (sometimes decades) to be in a position to maximize their time and skillset.

Some of the suggestions seem predicated on unfair assumptions about soda usage, alcohol, caffeine, and obesity. Those are private matters and it is unfair to shift the burden on the employer to address these aspects of an employees' lifestyle.

Lastly, this past year has been one of the most challenging times for small businesses. For those of us that made it through this incredibly stressful time, we respectfully but firmly ask that you please do not make it even harder to survive going forward. More restrictions and regulations are not needed, especially right now.

SEE RESPONSE TO COMMENT 98905

The commenter seems to be confused when they state that a burden would be placed on employers address private aspects of an employee's lifestyle (soda usage, caffeine, alcohol, obesity, etc). To the knowledge of the Department no current heat illness prevention standard requires an employer to inquire into an employee's personal habits. However, it may be considered of value to point out to employees during training on any such standard that if you have certain medical conditions or engage in certain activities, you could be at an increased risk to suffer from heat illness and you should take appropriate precautions.

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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98875 Tim Cook 5/27/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98875>

Unfair. This an over reach violation of employee and employer

SEE RESPONSE TO COMMENT 98905

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98898 RVA Hospitality 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98898>

Doli heat illness prevention. As a restaurant owner, why do I feel like this is aimed at construction type jobs and that we are going to be caught up as collateral damage? Over reaching legislation that isn't worded well will have unintended consequences for our industry. I will not speak for the other industries that may be affected, but would like to see something written that protects or even exempts us from this legislation. I cannot time each minute that a server is on the patio as opposed to being in the dining room and would need to, if I am reading this correctly.

SEE RESPONSE TO COMMENT 98905

With regard to the commenter's request for an exemption from any standard for his industry, the Department and Board have a long history in adoption of standards and regulations of assuring that similarly situated employees and employers exposed to the same or even more serious hazards or job tasks, regardless of industry, should all be provided the same basic level of safety and health protections.

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

Some commenters were under the impression that the Standard was being proposed as legislation to the General Assembly. That is incorrect. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(5) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

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98905 Cristeena G. Naser 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98905>

Heat Illness. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing. Thank you for consideration of protecting the people who make our food available to us.

#### **DEPARTMENT RESPONSE**

Whether a proposed regulation will be considered and, if so, its content has yet to be decided as of July 30, 2021. The Notice of Intended Regulatory Action (NOIRA) provides that the VOSH Program intends to

conduct a review of existing federal and state regulations as well as national consensus standards and guidelines designed to protect employees from heat illness hazards. The proposal would address indoor and outdoor heat illness hazards experienced by similarly situated employees in all industries covered by VOSH jurisdiction.

Issues to be analyzed for inclusion in any proposed regulation include, but are not limited to:

- Definitions of appropriate terms
- Employer requirement to monitor indoor and outdoor temperatures
- Temperature action levels tied to the type of clothing being worn by the employee
- Acclimatization procedures
- Access to potable drinking water, and electrolytes as needed
- Cool down rest periods with access to shade or a climate controlled environment at certain temperature action levels
- Prohibiting employees from being ordered back to work until any signs or symptoms of heat illness have abated
- Additional communication, observation, monitoring requirements, first aid, and emergency response requirements at certain temperature trigger levels
- An exception to the requirements of the regulation for “incidental exposure” which exists when an employee is not required to perform a work activity outdoors for more than 15 minutes in any 60 minute period
- Written heat illness prevent plan
- Employee and supervisory training on heat illness hazards and preventative measures in a language the employee and supervisor understands

98906 Sheila Kryston 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98906>

Regulation on Heat Illness. The following message was developed by VICPP and having lived on a farm, and understanding the physical burden of farm labor I totally agree with the need for regulation and work standards

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98907 Marlene Dakita 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98907>

Protections from Heat Illness. Just as you drafted and approved the Emergency OSHA Standard for COVID-19, now please develop strong standards and regulations for addressing conditions to prevent

heat-related illnesses to protect workers, such as farmworkers, landscapers, constructions workers, and indoor workers who labor in excessively hot conditions. The standards should address access to water, breaks, training and air conditioning in employer-provided housing.

If society wants the services of these essential workers, we need to provide humane standards and regulations for them.

Thank you.

SEE RESPONSE TO COMMENT 98905

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98908 Jennie L. Waering 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98908>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98909 Ginge Sivigny 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98909>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98912 Jacqueline H. Dwyer 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98912>

Heat Illness Prevention. I appreciate your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing. I remember working over 20 years in the air-conditioned office of a local company with a large manufacturing area, and on hot summer days in the mid to upper 90s, the factory was a furnace. I never understood how the people who worked in that area could survive working for hours like that. Just walking through it briefly left me feeling very tired, lethargic and uncomfortable. It certainly was not a healthy situation.

SEE RESPONSE TO COMMENT 98905

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98913 Glynis A Barber 6/2/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98913>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98914 Mary Keene 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98914>

HEAT ILLNESS. Please develop strong standards/regulations for addressing heat illness to protect farmworkers & other at-risk workers. The regulation should outline standards for access to water, breaks, training & air conditioning in employer provided housing. I would also recommend having access to sunscreen SPF 50 or higher, insect repellants, & a simple graphics fact sheet like the CDC's on how to spot heat stroke & heat exhaustion to post in various locations, in Spanish as well. I saw the inside of the old Kroger Bakery before it closed, when it was located on 5th St., Roanoke, VA back in the late 70s/early 80s by an employee who said his job was "throwing pans", & was told due to bread needing to rise, no AC was allowed. Even the few windows were blacked out. I didn't ask if they were sealed up, so those types of workers need standards/regulations as well.

SEE RESPONSE TO COMMENT 98905

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98915 David H Teschner 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98915>

Please extend ETS permanently to protect front line workers. They deserve it and we need them.

Please follow through with guidelines to protect workers, especially those who work outside, from heat illness by being sure they get plenty of water and time breaks from the heat. Thank you.

SEE RESPONSE TO COMMENT 98905

With regard to the commenter's request to please extend ETS permanently to protect front line workers, the Department assumes the commenter is referring to the Emergency Temporary Standard (ETS) on COVID-19, 16VAC25-220. A Final Permanent Standard on COVID-19 was adopted by the Board and became effective on January 27, 2021. Outreach, training and education materials can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>.

In addition, federal OSHA adopted an Emergency Temporary Standard for healthcare support and healthcare services which the Board adopted on June 29, 2021 with an effective date of August 2, 2021, <https://www.doli.virginia.gov/emergency-temporary-standard-interim-final-rule/>.

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98916 Charles Swadley 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98916>

Heat illness prevention. I have worked in extreme heat when I was younger and know how it can impact you.

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98918 Lou Fisher 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98918>

Heat illness protections. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and any other at-risk workers. This regulation should outline standards for access to water, breaks, training, and air-conditioning in employer provided housing.

I see this as a basic right of workers. Thank you in advance for your serious consideration.

SEE RESPONSE TO COMMENT 98905

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98919 Jo Marie Griesgraber 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98919>

Protection of workers from heat distress and illness. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning provided by the employer.

P.S. Years ago I worker in California with the United Farm Workers. At 5 am it was already so hot I could scarcely breathe.

SEE RESPONSE TO COMMENT 98905

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98920 Allison Peterson 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98920>

Support regarding Heat Related Illness. Dear Board Members,

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The

regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

This would demonstrate your humanity to all workers in Virginia. Thank you!

SEE RESPONSE TO COMMENT 98905

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98921 Our Lady Queen of Peace Catholic Church 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98921>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

Please always remember that it was not the wealthy people that kept our country running during the pandemic, it was those essential workers like construction, water, gas and farmers that kept us going. They deserve adequate support to continue their jobs.

SEE RESPONSE TO COMMENT 98905

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98922 Saarah Wiles 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98922>

Thank you for all of your leadership protecting our workers. I'm writing to ask your support for another set of protections. We desperately need a strong set of standards and regulations to protect farmworkers, landscapers, contractors, and other at-risk workers from heat illness. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98923 Ann Hess 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98923>

Protect our essential workers. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

I am also concerned about other climate related conditions, some workers must work in cold conditions, for long periods increasing their exposure to crippling arthritis.

As mother of 2 sons who were required to work through COVID, but NOT given protection in their work with the public through enforcement by their employers requiring physical protection of distance or



masks. Both had to use unpaid time to receive the vaccination and juggle child care and home schooling.

It is time to think of employment as part of LIFE and structure work to allow employees to be real people in a community.

Thank you for your attention to the welfare of all people.

SEE RESPONSE TO COMMENT 98905

With regard to the commenter's concerns about work in cold conditions, the Notice of Intended Regulatory Action (NOIRA) does not currently contemplate addressing cold weather working conditions, but the commenter's concerns will be presented to the Board.

With regard to the commenter's concerns about workplace protections for COVID-19, a Final Permanent Standard on COVID-19 was adopted by the Board and became effective on January 27, 2021. Outreach, training and education materials can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>. In addition, federal OSHA adopted an Emergency Temporary Standard for healthcare support and healthcare services which the Board adopted on June 29, 2021 with an effective date of August 2, 2021, <https://www.doli.virginia.gov/emergency-temporary-standard-interim-final-rule/>.

Finally, employees have the right to file workplace complaints with the Virginia Occupational Safety and Health (VOSH) program about safety and health hazards they are exposed to:

<https://www.doli.virginia.gov/vosh-programs/how-to-file-a-vosh-complaint/>

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98924 Tara Casey 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98924>

Please issue regulations to address heat illness. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98926 Mary Helen Sullivan 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98926>

Proposed NOIRA. I am grateful to know that you created the emergency COVID-19 standard. I would also be very grateful if you were to develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing. If professional soccer games can build in water breaks for athletes during especially hot weather, surely the state government can mandate that employers take such sensible measures to prevent illness--and even death--from elevated temperatures.

SEE RESPONSE TO COMMENT 98905

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98928 Rea Howarth 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98928>

Preventing Heat Stroke Among Agricultural and Indoor Workers. Thank you for considering the adoption of work rules that will help protect agricultural workers and those working in unsafe indoor commercial settings. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, shaded cooling stations, training, and air-conditioning in employer-provided housing.

PS: Thank you for your leadership on creating the emergency COVID-19 standard.

SEE RESPONSE TO COMMENT 98905

With regard to the commenter's reference to the Department's ETS on COVID-19, a Final Permanent Standard on COVID-19 was adopted by the Board and became effective on January 27, 2021. Outreach, training and education materials can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>.

In addition, federal OSHA adopted an Emergency Temporary Standard for healthcare support and healthcare services which the Board adopted on June 29, 2021 with an effective date of August 2, 2021, <https://www.doli.virginia.gov/emergency-temporary-standard-interim-final-rule/>.

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98929 Kimberly Emery 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98929>

Regulations to Prevent Heat Stress. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulations should, at a minimum, outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

As the effects of climate change continue to contribute to a warming world, these regulations are more critical than ever.

SEE RESPONSE TO COMMENT 98905

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98932 Addie Peterson 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98932>

Heat Illness. Thank you for your leadership in creating the emergency COVID-19 standard. This is a request that you please develop strong standards and regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulations should outline standards for access to water, breaks, training, and air-conditioning in employer provided housing.

98933 Celanese Corporation 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98933>

Celanese Corporation's Comments on Notice of Intended Regulatory Action on Heat Illness Prevention

On behalf of Celanese Corporation (“Celanese”), we are submitting comments in response to the Virginia Department of Labor and Industry’s Safety and Health Codes Board (“Board’s”) Notice of Intended Regulatory Action (“NOIRA”) to adopt a regulation on Heat Illness Prevention. Celanese is deeply committed to the safety of its workers and particularly concerned with worker health, safety, and well-being during hot days in Virginia. Celanese therefore supports workplace safety policies that ensure feasible action, which are based on sound science, and are not unnecessarily complex or difficult to implement. With that said, Celanese supports the Board’s proposal to provide a standard on heat illness prevention, but does have concerns over the intended scope, feasibility, complexity, and ambiguities in the proposed regulatory language.

The proposed Heat Illness Prevention Standard does not have a clear scope.

The Board’s rulemaking documents convey that it is considering a “comprehensive regulation to address employee exposure to heat illness hazards during indoor and outdoor work activities in all industries under the jurisdiction of the Virginia State Plan for occupational safety and health.” But the NOIRA and associated documents focus on heat illness issues associated with mainly outdoor work. To avoid confusion, the Board should ensure any regulation on heat illness prevention identifies the scope and application of the requirements. This can be accomplished through adding a “scope” or “applicability” section directly in the regulation text. As indoor and outdoor environments also pose different potential exposure to heat illness hazards, the Board should ensure the regulation clarifies when preventive measures may differ for indoor or outdoor environments. That said, because multiple definitions could impose unnecessarily burdensome obligations on employers or create confusion, the Board should ensure the scope and application of the regulation does not lead to employers having to develop or implement different “plans” or “programs” to manage heat illness issues.

The proposed Heat Illness Prevention Standard should be based on sound scientific information and data.

The Board’s rulemaking documents convey that the regulation will be set up to achieve the highest degree of health and safety protection for employees, while still heeding the latest available scientific data. In evaluating preventive measures that will be required by the standard, we urge you to rely on the best available scientific evidence on identification and prevention of heat illnesses. This approach would ensure both the most effective methods for identifying potential heat illness and appropriateness of controls. The Board should specifically consider information, data, and recommendations from the National Institute for Occupational Safety and Health, as well as research and data collected in public health studies and research.

The proposed Heat Illness Prevention Standard requirements for written programs and controls should be flexible enough to accommodate incorporation into employers' already established programs or health and safety initiatives, without requiring new or separate program efforts.

Employers balance many competing regulatory compliance obligations, including the need for many programs, plans, policies, and procedures under federal, state, and local laws. The Board should therefore implement a regulation that achieves its goal of protecting worker health and safety while still being flexible enough to avoid imposing new or added obligations on employers to complete unnecessary duplication of effort purely administrative steps. Employers should, for example, be able to incorporate heat illness hazard identification processes and controls into their current health and safety programs and initiatives without having to develop separate or unique "programs" or written "plans." In addition, because the procedure for assessing heat hazards is more like a "process" than a plan, employers should be able to use their current hazard identification processes to identify, evaluate, and respond to heat illness hazards, rather than developing a new set of procedures or operations to deal specifically with heat illnesses.

The proposed Heat Illness Prevention Standard should not unreasonably expand employers' obligations to control of employees' personal health and medical conditions, or require employers to make fit-for-duty determinations.

The Board's rulemaking documents contemplate specific rules for managing heat illness, including potential management of employees' personal risk factors that could contribute to heat illness and some considerations for return to work following an employee's exhibition of heat illness symptoms. While employers need to be aware of the personal risk factors that can contribute to heat illness as well as the signs and symptoms of heat illness to ensure identification of heat illness occurrence and appropriate emergency response—any Heat Illness Standard adopted should not put employers in a position to act as a medical professional or advisor to employees. Employers should, as a result, not be responsible for managing their employees' personal health or medical conditions, counseling employees on personal risk factors, or deciding on when an employee should return to work following symptoms of heat illness. Rather, employers should only be responsible for educating workers on the risk factors that can contribute to heat illnesses and injuries, including personal risk factors, identifying potential heat illness symptoms, and ensuring appropriate emergency response. Further, employers should be able to rely on designated medical or healthcare professionals to determine when it is safe to bring an employee back to work rather than rely on the employee's statements or assertions of ability to return following a heat illness incident.

The proposed Heat Illness Prevention Standard should sufficiently direct employers on identification of heat illness hazards, occurrence of heat illness, and selection of appropriate controls, including engineering controls and personal protective equipment.

As the proposed Heat Illness Prevention Standard has applicability to diverse operations, the Board should ensure regulation text sufficiently details steps, analytical processes, and measures to identify and evaluate heat illness hazards. This would include detailed enough instructions to employers on measures for evaluating temperatures and relative humidity; temperatures and factors at which engineering controls are required, if feasible; and options for employers to use alternative controls like personal protective equipment ("PPE"). The regulation text should also have flexibility for employers in evaluating and responding to heat illness hazards so as to address their specific work operations and

needs. For example, some employers may be able to use engineering controls, such as outside cooling units for some fixed outdoor environments, but be unable to use outside cooling units for mobile or constantly shifting outdoor work. Employers should also be allowed to follow recommendations on engineering controls, administrative controls, and required PPE from local public health authorities or employees' personal medical providers.

In addition, the Heat Illness Prevention Standard should identify appropriate methods for responding to and managing heat-related emergencies. More specifically, the standard should be clear on heat illness symptoms, when there has been a heat-related emergency, and the expected level of emergency response. To avoid confusion and also align with industry best practices, we recommend that the Board use federal OSHA's guidance for "Preparing for and Responding to Heat-Related Emergencies," which has a chart for employers to use advising on when a worker may be experiencing heat stroke, exhaustion, cramps, rash, or a medical emergency and directs on the appropriate emergency response, in development of the standard. See <https://www.osha.gov/heat/heat-index/heat-emergencies>. The standard should also detail objective steps employers should follow when removing or bringing an employee back to work that are not based on an employee's singular symptoms or consideration for the surrounding circumstances. Employers should not, for example, need to treat all potential symptoms of heat illness, such as vomiting or fatigue, as a heat illness case requiring emergency treatment or medical clearance for the employees to return to work. Rather, employers should be able to use the evidence reasonably and readily available along with present circumstances to take appropriate action to remove employees from work where necessary, ensure appropriate first aid or medical response as detailed in federal OSHA's guidance, and return the employees to work.

The Board should ensure that employers are given time to comply with new requirements.

The Board's rulemaking documents convey the potential for a complex standard and regulations with many new regulatory compliance, including considerations for a written plan, development of new procedures, establishment of new or differing engineering controls, and extensive training for management and employees. It will take time for employers to review their compliance obligations under the standard, develop responsive programs, implement new or added controls, and develop and implement training. The Board should also know that training for an employer is unlikely to be as easy as developing a single PowerPoint presentation and rolling out to an entire employee population at a single time. Employers may, in fact, need to develop many training materials (e.g., supervisor level training, affected employee training, training for specific hazards and controls, and awareness training) and roll out in phases or to multiple shifts and departments. The Board should therefore ensure employers have clear and adequate notice of the new requirements as well as time to implement (i.e., minimum of 90 days).

We appreciate the opportunity to provide this input and your thoughtful and serious consideration to our input and recommendations. To discuss this subject more, please contact me at your convenience.

SEE RESPONSE TO COMMENT 98905

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98936 Samantha Ahdoot, MD 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98936>

Worker heat protections are needed. Heat is a rising threat to workers in Virginia, placing them at risk of illness or even death. Nationally, between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.<sup>1</sup> Statistics have shown that farmworkers are twenty (20) times more likely than workers in other industries to die of heat illness.<sup>2</sup> These numbers are most likely severe underestimates for a variety of factors. In Virginia, men accounted for 70% of visits to emergency departments and urgent care centers for heat-related illnesses during July heat events of 2019 and 2020. About 70% of those visits were in people 20-60 years old<sup>3</sup> and it reasonable to assume that a percentage of these visits were work-related. This is supported by research done by the Science Museum of Virginia and the Virginia Office of Emergency Medical Services demonstrating that over 14% of summertime heat-related illnesses responded to by ambulance in Richmond from 2016-2018 were work-related. With rising temperatures associated with climate change, it is increasingly important to protect workers from heat with common sense regulations including access to water, training, breaks in cool areas and emergency preparedness plans.

Letter from Sidney Wolfe, M.D., Founder and Senior Advisor, Public Citizen's Health Research Group, to Loren Sweatt, Acting Asst. Sec. of Labor for Occupational Safety and Health, Dept. of Labor 8-9 (July 17, 2018), [https://citizenvox.org/wp-content/uploads/2018/07/180717\\_Petition-to-OSHA-on-Heat-Stress-Signed\\_FINAL.pdf](https://citizenvox.org/wp-content/uploads/2018/07/180717_Petition-to-OSHA-on-Heat-Stress-Signed_FINAL.pdf) (last accessed June 2, 2021).

Center for Disease Control, Morbidity and Mortality Weekly Report, Heat Related Deaths Among Crop Workers -United States, 1992-2006 (June 20, 2008), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5724a1.htm> (last accessed June 3, 2021).

<https://www.vdh.virginia.gov/surveillance-and-investigation/syndromic-surveillance/weather-surveillance/> (last accessed June 3, 2021)

SEE RESPONSE TO COMMENT 98905

Whether a proposed regulation will be considered and, if so, its content has yet to be decided as of July 30, 2021.

The Noticed of Intended Regulatory Action (NOIRA) provides that the VOSH Program intends to conduct a review of existing federal and state regulations as well as national consensus standards and guidelines designed to protect employees from heat illness hazards. The proposal would address indoor and outdoor heat illness hazards experienced by similarly situated employees in all industries covered by VOSH jurisdiction.

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98937 Ruth E Stewart 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98937>

Policy re: Heat Illness. This is a great idea. Va. does experience very hot/humid weather during certain times of the year. The people who have to work outside in the heat and elderly who might not have air conditioning suffer. Let us acknowledge the situation and do something about it.

SEE RESPONSE TO COMMENT 98905

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98938 Anonymous 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98938>

Heat Illness Prevention. Avoid medications that produce adverse effects while in sun.

Stay hydrated--drink plenty of water.

Wear light-weight, loose fitting clothing; wear sunglasses to protect eyes; wear wide-brim hats.

Take frequent breaks when experiencing adverse reaction to the sun.

Have supervisors provide cooling stations placed at various locations

SEE RESPONSE TO COMMENT 98905

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98940 John Richard 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98940>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98941 Emily Little 6/3/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98941>

Protect at Risk Workers from Heat. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98942 John Peterson 6/4/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98942>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98944 Madeline Helbraun

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98944>

Heat illness regulations for outdoor workers. Excessive heat is a serious health threat for farmers and others who must toil in our hot/humid environment. Please develop strong standards to protect these workers. These need to address access to water, breaks, training and employer provided housing. We are counting on you to help improve these conditions. Thank you.

SEE RESPONSE TO COMMENT 98905

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98945 Leigh Eicher

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98945>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98946 RSH

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98946>

Heat Illness. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers, landscapers, day laborers, and other at-risk workers. The regulation should outline standards for access to water and shade, breaks, training, and air-conditioning in employer provided housing. You and I wouldn't subject ourselves to the dangers of heat illness, and others shouldn't have to either. Heat illness kills thousands of people each year. Please take action to enact proven measures to protect vulnerable workers. Thank you.

SEE RESPONSE TO COMMENT 98905

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98949 Ed Kringer

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98949>

Heat Stress Standards for Workers. As you did for the Covid-19 standards, please create strong standards addressing heat stress/illness so we can protect our 'outside' workers in our hot, humid summers. These standards need to address access to work breaks, water, training, and cooling. Thanks

SEE RESPONSE TO COMMENT 98905

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98952 Maria Clymer Kurtz

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98952>



Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98953 John Mulhausen, Ph.D., CIH, CSP, FAIHA 6/4/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98953>

AIHA Support for Heat Illness Prevention Standard. AIHA, headquartered in Virginia and representing more than 200 occupational and environmental health and safety professionals in the Commonwealth strongly supports Virginia's intent to develop and adopt a standard "to reduce/eliminate employee injuries, illnesses, and fatalities due to exposure to excessive heat at indoor and outdoor places of work." [1] Each year, hundreds of workers die and thousands more suffer injuries from occupational exposure to heat illness. [2],[3] Despite this, neither the U.S. Occupational Safety and Health Administration (OSHA) nor the Virginia Occupational Safety and Health (VOSH) program have a standard that specifically addresses heat stress. Action is urgently needed to help prevent more fatalities and injuries.

AIHA recommends the following components be detailed in the standard:

- Reference to established and recognized alert/exposure limits
- Provisions for personal protective equipment, rest, water, and shade
- Reference to surveillance and medical testing
- Administrative controls such as training and the posting of heat stress warning notices
- Provisions for whistleblower protections

#### Conclusion and Next Steps

AIHA looks forward to working with VOSH on this rulemaking and other actions to help protect all workers from occupational hazards. If you have any questions on these comments or other matters, please contact Mark Ames at [mames@aiha.org](mailto:mames@aiha.org) or (703) 846-0730.

Sincerely,

John Mulhausen, Ph.D., CIH, CSP, FAIHA

President. AIHA

About AIHA

AIHA is the association for scientists and professionals committed to preserving and ensuring occupational and environmental health and safety in the workplace and community. Founded in 1939, we support our members with our expertise, networks, comprehensive education programs, and other products and services that help them maintain the highest professional and competency standards.

More than half of AIHA's nearly 8,500 members are Certified Industrial Hygienists and many hold other professional designations. AIHA serves as a resource for those employed across the public and private sectors as well as to the communities in which they work. For more information, please visit [www.aiha.org](http://www.aiha.org).

[1]

[https://townhall.virginia.gov/L/GetFile.cfm?File=92\5501\8926\AgencyStatement\\_DOLI\\_8926\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=92\5501\8926\AgencyStatement_DOLI_8926_v1.pdf)

[2] <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6136a6.htm>

[3] <https://www.citizen.org/wp-content/uploads/2439.pdf>, page 5

SEE RESPONSE TO COMMENT 98905

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98954 Sarah White (candidate for Delegate in Falls Church, VA) 6/5/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98954>

Concerns over outdoor employee regulations. I am concerned at how the proposed regulations could inadvertently affect our restaurants that have outdoor dining. Though our servers do go onto the patio they are also frequently inside. It seems like this legislation could be put out broadly in a way that would be difficult for our management to track and comply. We really just want to follow the rules, so please make sure that the rules makes sense for any businesses affected.

SEE RESPONSE TO COMMENT 98905

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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98956 Mary Barhydt 6/6/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98956>

Setting standards to address heat on the job. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer provided housing.

SEE RESPONSE TO COMMENT 98905

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98958 Jerome A. Paulson, MD, FAAP 6/7/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98958>

Heat illness prevention regulations are reasonable and necessary. The Commonwealth of Virginia should enact heat protection regulations for outdoor workers. There are a number of types of workers who are at risk for heat-related illness - agricultural workers, construction workers, landscape workers and others who are required to be outside for long periods of time.

Certain situations lead to higher risk of heat-related illness. People working in direct sunlight are at higher risk of heat related illness because working in direct sunlight can add up to 15 degrees to the heat index. Perform prolonged or strenuous work also increases the risk of heat related illness, as does wearing heavy protective clothing or impermeable suits.

Heat related illness can be very serious requiring hospitalization and, occasionally leading to death. Some of the more serious complication of heat related illness include muscle destruction and kidney damage.

The Bureau of Labor Statistics reported for the years of 2015 and 2016 there were 100 nonfatal injuries and illnesses and 6 fatalities in Virginia for workers caused by heat injuries but it is recognized that this number is under reported. The Virginia Department of Health data indicate that hundreds of Virginians are seen in emergency rooms every summer. Not all of these visits will be from workers; nevertheless, worker heat protection should be a priority for the Commonwealth.

SEE RESPONSE TO COMMENT 98905

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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98959 Bob Kitchen, MD 6/7/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98959>

It is very encouraging to see that Virginia is moving to join three other states to protect our workers from the dangers of extreme heat. The text of the NOIRA very completely outlines the medical conditions, from heat rash to the potentially fatal heat stroke, that can impact the Commonwealth's workers.

Two California cases illustrate the danger of extreme heat on workers.

- A 17 y/o woman was tying grape vines at a farm in May of 2008 when the temperature soared above 95 degrees. The nearest water cooler was a 10-minute walk away and the break given to workers did not allow them time to go and get water and then return. She collapsed from the extreme heat and on arrival at the hospital she was in a coma and her body temperature topped 108 degrees. She died two days later.

- A 53 y/o gentleman came to America in July of 2004 to join his son working in the fields. 5 days later, after a 10-hour workday picking grapes in the 105 degree sun, he collapsed from heatstroke. The crew's supervisor did not recognize the signs of heat stroke and told his son to drive his father home. In the car his father began foaming at the mouth and then went limp. The son immediately headed to the closest hospital. By the time they reached their destination his father had died.

Very simple measures from scheduled water breaks, close access to water and shade, and training of both workers and supervisors in recognizing the signs and symptoms of heat illness can protect our workers. Let us take these steps to prevent Virginia from experiencing cases such as those described above.

SEE RESPONSE TO COMMENT 98905

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98960 Eve Schwartz 6/7/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98960>

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop equally strong standards/regulations for addressing heat illness to protect farmworkers, construction workers, landscape workers, and other at-risk professionals. The regulation should outline standards for access to water, breaks, training so that workers can recognize the symptoms of heat illness in themselves and their colleagues, and air-conditioning in employer-provided housing. Most of us avoid working outdoors in mid-July or August because we can't stand the heat, so it is appropriate to provide standards to assure that these workers are protected.

Exploitation is always wrong. Lack of regulations which would permit exploitation to happen is always bad public policy. Please write standards that will protect those with outdoors work from heat illness.

SEE RESPONSE TO COMMENT 98905

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98961 Bruce Burton 6/7/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98961>

NOIRA Regarding Heat Illness in At-Risk Workers. It is my understanding that the Virginia Safety and Health Codes Board intends to develop a standard to help protect workers who are at risk of heat illnesses such as heat exhaustion and heat stroke. I write to applaud your efforts and to respectfully suggest such a standard should provide workers with easy access to drinking water and air conditioning; frequent breaks; and significant training regarding working in hot conditions.

It's no secret that a southern state like Virginia is hot in the summer; on many days dangerously so. Climate change promises to exacerbate this situation for workers whose occupation requires them to work outdoors. I ask the Board to develop a strong standard that will protect Virginia's workers.

SEE RESPONSE TO COMMENT 98905

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98965 Anonymous 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98965>

I am concerned about the effects of rising temperatures on the health of Virginians. The risk of heat illness is particularly high for those working in extreme heat. I support the development of strong standards for heat illness as a method to protect the health of outdoor workers by requiring access to water, breaks in cool areas and training of workers and supervisors in recognizing and treating heat illness.

SEE RESPONSE TO COMMENT 98905

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98966 Marcia Geyer

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98966>

Requiring the proposed protections from heat illnesses for outdoor workers. A study of Emergency Room admissions to the UVA Health System showed that heat waves increase ALL categories of illnesses, not just the illnesses directly related to overheating.

Climate change increasingly makes heat waves last longer, be more intense, and cause more serious health effects.

Please enact the proposed mandatory protections from heat illnesses for outdoor workers in Virginia. The Golden Rule clearly applies to this increasingly important situation: Do unto others as you would have them do to you.

SEE RESPONSE TO COMMENT 98905

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98967 Homan Wai 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98967>

According to research conducted by Andreas D Flouris and colleagues at the University of Thessaly, nearly one third of the world's populations is regularly exposed to conditions that exceed human thermoregulatory capacity, which can lead to dramatic increases in illness and death.<sup>1</sup> Although this information can be difficult to digest, measurable action must be made in Virginia to ensure the health of its society. Workers can be at high risk of heat stress in a myriad of environments, including both indoor and outdoor settings. Anytime workers are exposed to hot temperatures, and especially when they are performing strenuous tasks in these conditions, excessive heat must be a key consideration.<sup>2</sup> Flouris and colleagues results demonstrated that individuals working in heat stress conditions were roughly four times more likely to experience heat strain throughout of after their shifts when compared to individuals working in thermoneutral conditions.<sup>1</sup> They also have a higher prevalence of acute kidney injury, a serious condition that can lead to chronic kidney disease. Illnesses influenced by heat stress, like chronic kidney disease, can carry with them substantial socioeconomic burdens and public health outcomes.<sup>1&3</sup>

Flouris, Andreas D., Petros C. Dinas, Leonidas G. Ioannou, Lars Nybo, George Havenith, Glen P. Kenny, and Tord Kjellstrom. "Workers' health and productivity under occupational heat strain: a systematic review and meta-analysis." *The Lancet Planetary Health* 2, no. 12 (2018): e521-e531.

Brenda Jacklitsch et al., Dept. of Health and Human Serv., Criteria For A Recommend Standard: Occupational Exposure to Heat and Hot Environments 33 (2016), <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf> (last accessed June 2, 2021).

Lameire, Norbert H., Arvind Bagga, Dinna Cruz, Jan De Maeseneer, Zoltan Endre, John A. Kellum, Kathleen D. Liu et al. "Acute kidney injury: an increasing global concern." *The Lancet* 382, no. 9887 (2013): 170-179.

SEE RESPONSE TO COMMENT 98905

Thank you for providing a link to research on the issue.

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98968 Lucy Parks 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98968>

Heat Stress Regulations are Necessary. There is no comprehensive federal or Virginia standard protecting workers against heat stress. Without protections, Virginia's workers are at risk of severe illness or death. Heat kills more Americans than any other weather-related hazard.[1] Heat illnesses occur when the total heat load exceeds what the body can handle while maintaining normal functions.[2] Workers are at risk of heat stress in both outdoor work and indoor work, particularly when engaged in strenuous activities or with inadequate air conditioning.[3] Even when heat illness is not a problem, productivity can suffer.[4] Between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.[5]

There are various types of heat illness.[6] Heat syncope occurs when someone has been standing for a long time or gets up suddenly having been sitting or lying down; it causes symptoms like dizziness or fainting.[7] Heat rash, from excessive sweating, causes pimples and/or blisters.[8] Heat cramps are caused by sweating when the person's salt levels get too low; symptoms include cramps and spasms in muscles.[9] Rhabdomyolysis occurs with prolonged physical activity and causes rapid degradation of muscle tissues and acute injury to the kidneys.[10] Heat exhaustion occurs when the body has lost excessive amounts of water and salt.[11] Symptoms include "headache, nausea, dizziness, weakness, irritability, thirst, heavy sweating, elevated body temperature, or decreased urination." [12] When not treated properly and quickly enough, heat exhaustion can lead to heat stroke, at which point the body can no longer produce sweat or control the internal temperature.[13] Heat stroke symptoms include "confusion, slurred speech, hot and dry skin or profuse sweating, seizures, and loss of consciousness (coma)," as well as death.[14]

Although data shows high numbers of injuries and deaths from heat stress, these numbers are likely substantially lower than the true numbers.[15] First, the data comes from Form 300 Logs, which are not required for employers not covered by OSHA and only require reporting if the injury or illness is sufficiently severe.[16] Form 300 Logs are notoriously incomplete as employers underreport to avoid liability.[17] Medical providers have also reported that employers have asked them to provide only enough treatment to not reach the reporting threshold.[18] Employees underreport fearing retaliation and because of employer-sponsored incentive programs where workers get rewards for lack of injuries.[19] Undocumented workers are especially afraid of reporting, fearing deportation.[20] Workers may also not report because they cannot afford to miss work.[21] Heat stress symptoms can be mistaken for symptoms of other illnesses, causing misdiagnoses. Finally, heat stress makes workers more prone to accidents, which may be attributed as the sole cause of injury or death.[22] All in all, millions of workers are at risk. See comment link to Townhall for footnotes

SEE RESPONSE TO COMMENT 98905

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98969 Ross Snare 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98969>

Continue to Review or Oppose Heat Illness Prevention Standards. The Prince William Chamber of Commerce has a number of concerns in regards to the DOLI regulations when it comes to the Heat Illness Prevention and its impacts on businesses. Many of the changes that are being proposed are common sense and are in practice by many, if not all businesses that are operating in Virginia. Things like providing water and air flow ventilation, cool down/rest periods among others are already being implemented by businesses.

These proposed regulations will also hurt not only the businesses, but the customers they serve and their employees. Forcing and requiring 15 minute break each hour will hurt business' bottom line, impact the employee's ability to complete the job and only raise the cost of labor for the customer. Asking for employees to divulge their personal health information also goes against their ability to keep that information private and personal.

Due to the concerns listed above, and a multitude of other concerns, we ask that this either be set aside for further consideration or opposed all together.

SEE RESPONSE TO COMMENT 98905

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SEE RESPONSE TO COMMENT 98873

98970 Lou Spencer 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98970>

UA Local 5 Plumbers and Gasfitters supports the Heat Illness Prevention Standard. UA Local 5 Plumbers and Gasfitters supports the proposed action underway to adopt and enact the Virginia Heat and illness Standard.

SEE RESPONSE TO COMMENT 98905

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98976 George Wallace 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98976>

Oppose. These regulations need to be tailored to individual industries. These regulations may be fair for farmers but they are completely unreasonable when it comes to my industry --- auto repair. Please don't make broad assumptions about every industry.

We are hanging on by a thread. This is not the time to add more costs to employers. In my industry all of the issues can be addressed by having areas that are air conditioned, which employees can take breaks in as they see fit.

SEE RESPONSE TO COMMENT 98905

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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98977 Cora Roelofs

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98977>

Heat Stress Standard. It is essential that Virginia adopt a heat illness protection standard to save the lives of diverse workers in the Commonwealth. My research has shown that in the absence of a standard, employers maybe unaware or insufficiently concerned about the risk to their employees from the heat, resulting in completely preventable deaths. My article: "Without Warning: Worker Deaths from Heat 2014-2016" (<https://journals.sagepub.com/doi/10.1177/1048291118777874>) analyzed OSHA records to determine salient features of these deaths in order to identify critical preventive action. I found that deaths occurred at lower temperatures than would be predicted, to younger workers, and that several deaths took place during training exercises or on the first day of work. These deaths included emergency responders and other public servants. "Acclimatization" is more than a physiological response -- it is also a behavioral adaptation that includes knowing that it is ok to express to an employer that the heat is getting to you without fearing reprisal, having co-workers who know and care about your well-being, and knowing where water and shade are. This type of "acclimatization" comes from employer commitment to protecting workers from heat and their awareness that their employees may have different underlying conditions, such as chronic disease, overweight, lack of sleep, and use of prescription medications and/or energy drinks that make them more vulnerable to heat. Many of these important factors are also described in NIOSH's Criteria for a Recommended Standard: Occupational Exposure to Hot Environments (<https://www.cdc.gov/niosh/docs/2016-106/default.html>). While it may or may not be feasible for Virginia to adopt NIOSH's Heat-Rest algorithm, and may instead model your standard after California's "action temperature" model (<https://www.dir.ca.gov/dosh/heatillnessinfo.html>), employers can undertake feasible and effective solutions that can have dramatic life-saving impacts. Thank you for your attention to this critical issue.

Cora Roelofs, ScD

<https://www.uml.edu/engineering/biomedical/faculty/roelofs-cora.aspx>

SEE RESPONSE TO COMMENT 98905

Thank you for providing a link to research on the issue.

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98979 Joe Kouten 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98979>

Government Over Reach. This is not a problem, as a small business we need to keep our employees and take care of them specially in today's world when government pays them to stay home. We do not need additional burdens place on us! It is hard enough keeping staffed!

SEE RESPONSE TO COMMENT 98905

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98980 Anonymous 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98980>



We do not need any more burdensome regulations. We already provide drinking water, cooling fans/ventilation in our service bays

If employee feels sick he/her doesn't have to work. It's not practical to offer a 15 min break each hour, how would we get any cars serviced or repaired, especially if customer is waiting, a lot of times they take a break while waiting on parts being delivered

This is getting into the employees privacy, it's hard enough to conduct an interview when trying to hire someone. This is not a one size fits all type of policy, our business and industry addresses these issues and we provide a safe environment for them to work in. This not good for small businesses.

SEE RESPONSE TO COMMENT 98905

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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98981 Ray Bowes 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98981>

Heat. We do not need this.

SEE RESPONSE TO COMMENT 98905

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98982 Virginia Forestry Association 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98982>

Thank you for the opportunity to provide comments on the Department of Labor & Industry (DOLI) Safety and Health Codes Board Notice of Intended Regulatory Action (NOIRA) for Heat Illness Prevention Standard, 16VAC25-210.

While the Virginia Forestry Association (VFA) appreciates DOLI's solicitation of comments during its NOIRA process, the lack of a definitive proposed employer requirements make providing feedback difficult. Certainly any regulation or standard will have impacts on employers, particularly small family-owned businesses, throughout Virginia's forestry and forest products community. VFA reserves comment on prospective impacts until a detailed regulatory proposal can be analyzed thoroughly.

Based on the 2015 BLS data ("Work injuries in the heat in 2015") cited by DOLI in its background document, the Commonwealth would not seem to have work injuries at a rate that is greater than states with similar climatology. Further, the difference of illness rates between the two states studied that have state heat-illness prevention standards (California and Washington) and Virginia are statistically insignificant (<https://www.bls.gov/opub/ted/2017/work-injuries-in-the-heat-in-2015.htm>).

VFA strongly supports VOSH renewing its emphasis on OSHA's Heat Illness Prevention Campaign. We would encourage the Department to utilize its limited resources to work with employers in providing resources to educate workers on how to remain safe from in high temperatures during the summer

months. Further diverting critical resources away from increasing safety education and awareness is ill-advised.

Finally, it is our hope that the board will weigh stakeholder feedback and updated data from verifiable sources before determining if a heat illness prevention standard is necessary to prevent heat-related injuries. As this process moves forward, we request that a representative from the Virginia Forestry Association, as well as representatives from the Virginia Farm Bureau and Virginia Agribusiness Council, be included in any work group or panel that DOLI forms, to represent the forestry, agriculture, and agribusiness industries - the largest combined industry sector in the Commonwealth.

SEE RESPONSE TO COMMENT 98905

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98983 Gary Eavers 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98983>

Heat Regulations. The auto repair industry is challenging to retain quality employees and, thus, is expensive. Adding more regulations or requiring formal plans would add more costs to many businesses that are already struggling to make ends meet. We have invested in air conditioning our break areas and water cooled fans for our shop workers. Any worker not feeling well is taken off the job immediately.

SEE RESPONSE TO COMMENT 98905

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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98984 Associated General Contractors of Virginia 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98984>

Concerns about Additional Virginia Regulations on Heat. On behalf of the Associated General Contractors of Virginia (AGCVA), Virginia's largest and most influential construction trade organization, we submit the following comments on NOIRA on Heat Illness Prevention Standard [16 VAC 25 ? 210], which will make Virginia an outlier state with regards to a standard above and beyond current federal Occupational Safety and Health Administration (OSHA) regulations.

The construction industry takes the safety and health of its workers seriously. These businesses use guidance from OSHA to develop safety protocols and procedures with regards to the prevention of heat related illnesses (<https://www.osha.gov/heat/heat-index>). Currently, employers can use this federal guidance to create protocols that address the specific threats given location, job type, season, and other unique factors to protect employees. AGCVA has concerns that a one-size-fits-all approach will harm employer's ability to specifically develop regulations to protect employees from heat related illnesses.

Further, AGCVA has concerns about how this standard aligns with current OSHA enforcement of employee safety. Through its general duty clause, OSHA can cite employers for not protecting workers from extreme heat. As evidenced by the tens of thousands of annual inspections and millions paid in penalties, OSHA uses this authority to protect workers. Will employers in Virginia be subjected to a

double standard of federal and state enforcement? Will the regulations be consistent, or will businesses be required to interpret and comply with potentially conflicting regulations?

AGCVA and the members we represent are an industry with a concerted effort focused on the safety and health of its workforce. From owners to those swinging a hammer on a jobsite, we are a community focused on contributing to building Virginia, making a good living, and protecting our family and community. We appreciate the opportunity to submit these comments and would welcome any follow-up questions.

SEE RESPONSE TO COMMENT 98905

On use of the "General Duty Clause," the Notice of Intended Regulatory Action (NOIRA) provides the following information on the use and limitations of it:

Va. Code §40.1-51(a), otherwise known as the "general duty clause" (the Virginia equivalent to §5(a)(1) of the OSH Act of 1970), provides that:

"It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees...."

While Congress intended that the primary method of compliance and enforcement under the OSH Act of 1970 would be through the adoption of occupational safety and health standards, it also provided the general duty clause as an enforcement tool that could be used in the absence of an OSHA (or VOSH) regulation.

Federal case law has established that the general duty clause can be used to address "serious" recognized hazards to which employees are exposed through reference to such things as national consensus standards, manufacturer's requirements, or an employer's safety and health rules.

However, there are limitations to use of the general duty clause that make it problematic to enforce and result in its infrequent use. The recent 2019 decision of the Occupational Safety and Health Review Commission's (OSHRC) in *Secretary of Labor v. A. H. Strugill Roofing, Inc.*, demonstrates the complexities and difficulties of establishing a heat illness general duty "recognized hazard" and accompanying violation in a case where an employee of a roofing contractor collapsed and later died with a diagnosis of heat stroke where the employee's core body temperature was determined to be 105.4°F.

As is evident from the wording of the general duty statute, it does not directly address the issue of heat illness hazards. While preferable to no enforcement tool at all, the general duty clause does not provide either the regulated community, employees, or the VOSH Program with substantive and consistent requirements on how to reduce or eliminate heat illness hazards.

Other problems with the use of the general duty clause include the inability to use it to enforce any national consensus standard, manufacturer's requirements or employer safety and health rules which use "should" or "may" language; and the inability to cite other-than-serious general duty violations because the statutory language specifies that the hazard be one that is "causing or likely to cause death or serious physical harm."

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98985 Bill Ragland 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98985>

Doli Heat. Well as usual, this looks like legislation to support a political agenda. People have been working in the heat forever. It seems employees and employers have managed it quite well. Stop blaming global warming . Common sense generally prevails of government oversight and their agendas. Stop trying to keep people from working. Tree.

SEE RESPONSE TO COMMENT 98905

Some commenters were under the impression that the Standard was being proposed as legislation to the General Assembly. That is incorrect. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(5) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

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98986 Virginia Clinicians for Climate Action 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98986>

Protect Workers Against Heat Illness. Workers must be protected from the serious risks of heat stress. Heat kills more workers than any other health related hazard.<sup>1</sup> Workers currently have no enforceable protections against heat stress either federally or in the Commonwealth of Virginia. This lack of protection puts the health of Virginians at risk each day from heat exposure, including heat exhaustion, heat stroke, and even death. Between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.<sup>2</sup>

The Commonwealth must step up and protect its workers by enacting legislation to protect against both heat and cold stress. These protections include appropriate acclimatization, interval breaks, regular access to water, ADA protections, and climate preparedness plans.

1. Georges C. Benjamin, Killer Climate: More Americans Are Dying From Extreme Heat, The Hill (Sep. 12, 2019), <https://thehill.com/opinion/energy-environment/461126-killer-climate-extreme-heat-kills-more-americans-than-any-other> (last accessed June 2, 2021).
2. Letter from Sidney Wolfe, M.D., Founder and Senior Advisor, Public Citizen's Health Research Group, to Loren Sweatt, Acting Asst. Sec. of Labor for Occupational Safety and Health, Dept. of Labor 8-9 (July 17, 2018), [https://citizenvox.org/wp-content/uploads/2018/07/180717\\_Petition-to-OSHA-on-Heat-Stress-Signed\\_FINAL.pdf](https://citizenvox.org/wp-content/uploads/2018/07/180717_Petition-to-OSHA-on-Heat-Stress-Signed_FINAL.pdf) (last accessed June 2, 2021).

SEE RESPONSE TO COMMENT 98905

Thank you for providing a link to research on the issue.

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98987 Anonymous 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98987>

NO on 16VAC25-210. The business environment in the Commonwealth of Virginia is deteriorating due to increased regulations like this. We don't need the state to regulate us any further than we are now. I am against this proposed regulation and I resent the fact that the state only notified me by mail today when to opportunity for comment closes tomorrow

SEE RESPONSE TO COMMENT 98905

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98988 Ashley Kenneth, President & CEO 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98988>

The Commonwealth Institute for Fiscal Analysis (TCI) submits the following comments in response to NOIRA the Virginia Department of Labor and Industry/Safety and Health Codes Board published in the Virginia Register on May 10, 2021 (16 VAC 25-210).

TCI works to advance racial and economic justice in Virginia by advocating for public policies that are designed in partnership with people most impacted, and shaped by credible, accessible fiscal and policy research. As part of that mission, we believe that workers in Virginia deserve strong, comprehensive, and enforceable protections from the dangers posed by heat stress. We offer the following background information and recommendations as the Safety and Health Codes Board considers new standards to help prevent worker injuries, illnesses, and fatalities due to excessive heat at places of work.

#### Heat Stress Protections Are Essential for Workers

According to analysis of data from the Bureau of Labor Statistics (BLS) from 1992 through 2016, exposure to excessive heat killed 783 workers in the United States and seriously injured nearly 70,000 more. But for a variety of reasons, these figures almost certainly understate the number of injuries and fatalities each year. For example, federal law generally does not require farms with fewer than 11 workers to report heat-related events, even though agricultural workers are at significant risk of heat-related illness. Workers are also likely to underreport injuries and illness on account of retaliation concerns and, in cases where the individual is an undocumented worker, fear of deportation. The National Institute for Occupational Safety and Health estimates that for every 1,000 workers, at least two workers are at risk of heat stress, although that figure is higher in certain at-risk occupations (e.g., agriculture, construction, etc.)

#### A Lack of Enforceable Protections Against Heat Stress Puts Virginia's Workers At Risk

Virginia workers currently have no comprehensive, enforceable protections against heat stress under federal law or state law. Given the danger that workers in the Commonwealth face, Virginia should not wait for possible future action on this issue by Congress or OSHA and should move forward with strong state-level protections. In taking this step, Virginia would not be an outlier. Indeed, several other states across the country—from Washington to Minnesota—have successfully developed their own heat-stress standards. Similarly, a new law in Maryland that passed in 2020 directs the state to promulgate new heat-stress regulations by October 2022.

#### Clear and Comprehensive Standards Will Benefit Virginia's Workers and Employers

As the Safety and Health Codes Board considers the scope of any new heat-stress standards, TCI highlights the following priority areas (not intended as an exhaustive list of the key issues):

**Acclimatization:** Acclimatization, or the gradual adaptation to higher temperatures, is necessary to help people withstand exposure to heat. Acclimatization is particularly important for new workers who are adjusting to a hot work environment. NIOSH recommends limiting heat exposure for unacclimatized workers and requiring employer acclimatization plans for new and returning workers.

**Access to Water:** In 2021, the Virginia General Assembly passed a resolution recognizing that access to clean, potable, and affordable water is a necessary human right. Water is also critical to help mitigate heat stress and NIOSH recommends that a person involved in “moderate work activities” drink eight ounces of water every fifteen to twenty minutes.

**Breaks:** Workers should be guaranteed regularly-scheduled breaks of appropriate length, depending on workplace temperature and worker activity level.

**Protections Against Cold Stress:** While heat and cold stress are on opposite ends of the temperature spectrum, both should be addressed by the Safety and Health Codes Board to protect the most workers in Virginia.

**Training & Preparation Plans:** All workers and supervisors who work in areas where there is a likelihood of heat-related illness should be trained on specific measures to manage the risks and respond appropriately to heat stress symptoms and emergencies.

Thank you for the opportunity to submit comments on this proposed rulemaking. Feel free to contact me with questions or requests for information.

SEE RESPONSE TO COMMENT 98905

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98989 Jess Gabbay 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98989>

Virginia cannot wait for OSHA or Congress to take possible future action. There is no comprehensive federal or Virginia standard protecting workers against heat stress. Without protections, Virginia’s workers are at risk of severe illness or death. Heat kills more Americans than any other weather-related hazard.[i] Heat illnesses occur when the total heat load exceeds what the body can handle while maintaining normal functions.[ii] Workers are at risk of heat stress in both outdoor work and indoor work, particularly when engaged in strenuous activities or with inadequate air conditioning.[iii] Even when heat illness is not a problem, productivity can suffer.[iv] Between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.[v]

There are various types of heat illness.[vi] Heat syncope occurs when someone has been standing for a long time or gets up suddenly having been sitting or lying down; it causes symptoms like dizziness or fainting.[vii] Heat rash, from excessive sweating, causes pimples and/or blisters.[viii] Heat cramps are caused by sweating when the person’s salt levels get too low; symptoms include cramps and spasms in muscles.[ix] Rhabdomyolysis occurs with prolonged physical activity and causes rapid degradation of muscle tissues and acute injury to the kidneys.[x] Heat exhaustion occurs when the body has lost

excessive amounts of water and salt.[xi] Symptoms include “headache, nausea, dizziness, weakness, irritability, thirst, heavy sweating, elevated body temperature, or decreased urination.”[xii] When not treated properly and quickly enough, heat exhaustion can lead to heat stroke, at which point the body can no longer produce sweat or control the internal temperature.[xiii] Heat stroke symptoms include “confusion, slurred speech, hot and dry skin or profuse sweating, seizures, and loss of consciousness (coma),” as well as death.[xiv]

Although data shows high numbers of injuries and deaths from heat stress, these numbers are likely substantially lower than the true numbers.[xv] First, the data comes from Form 300 Logs, which are not required for employers not covered by OSHA and only require reporting if the injury or illness is sufficiently severe.[xvi] Form 300 Logs are notoriously incomplete as employers underreport to avoid liability.[xvii] Medical providers have also reported that employers have asked them to provide only enough treatment to not reach the reporting threshold.[xviii] Employees underreport fearing retaliation and because of employer-sponsored incentive programs where workers get rewards for lack of injuries.[xix] Undocumented workers are especially afraid of reporting, fearing deportation.[xx] Workers may also not report because they cannot afford to miss work.[xxi] Heat stress symptoms can be mistaken for symptoms of other illnesses, causing misdiagnoses. Finally, heat stress makes workers more prone to accidents, which may be attributed as the sole cause of injury or death.[xxii] All in all, millions of workers are at risk.

Virginia cannot wait for OSHA or Congress to take possible future action. OSHA has shown no willingness to promulgate heat stress protections. In 2011, Public Citizen, Farmworker Justice, Radio and Machine Workers of America, and Dr. Thomas Bernard petitioned OSHA to issue an Emergency Temporary Standard and begin the rulemaking process for a permanent standard.[xxiii] OSHA denied the petition.[xxiv] In 2018, Public Citizen, Farmworker Justice, United Farm Workers, Drs. Eula Bingham and David Michaels (both former OSHA directors), Ellen Widess (former CalOSHA director), Dr. Marc Schenker, 131 organizations, and 89 individuals petitioned OSHA again for a permanent standard.[xxv] OSHA has never replied to this petition. This second petition included the 2016 recommendations from NIOSH.[xxvi] NIOSH first issued heat stress recommendations in 1972 in the early days of OSHA’s and NIOSH,[xxvii] but OSHA has never promulgated any standards. By contrast, California, Washington, and Minnesota have enacted their own standards.[xxviii] In 2020, Maryland enacted a law requiring MOSH to promulgate protections by October 2022.[xxix] Each of these states, state-plan states like Virginia, have shown that waiting for OSHA is insufficient when it comes to protecting workers.

OSHA’s dereliction of its duties is further illustrated by the COVID-19 pandemic, to which OSHA has utterly failed to respond.[xxx] Not only has OSHA conducted substantially fewer inspections than normal, despite more complaints,[xxxi] it has not issued an Emergency Temporary Standard (ETS). President Biden issued an Executive Order on his first day in office ordering OSHA to issue an ETS, should the agency determine one necessary, by March 15, 2021.[xxxii] OSHA did not send anything to the OMB until April 26, 2021,[xxxiii] more than a month late.[xxxiv] If OSHA does not act in a timely fashion under presidential orders, it stands to reason they will also not act timely without one.

Indeed, knowing that Virginia could not wait for OSHA to act against COVID-19, this very board enacted the country’s first COVID-19 ETS and later permanent standards.[xxxv] These standards are a perfect illustration of how Virginia can and should go beyond federal OSHA and proactively protect Virginian

workers. Of note, the Safety and Health Codes Board (“the Board”) unanimously voted to push the current NOIRA forward, showing that they know the importance of these standards.

Finally, although a bill was introduced in Congress for federal protections, [xxxvi] even if it passes, the process will be lengthy. The bill does not require a proposed standard until 2 years after the bill’s enactment, and the final standard would not be required until 42 months after enactment.[xxxvii] Virginia would then have six months from the effective date of the standard to adopt the same or an equivalent standard, assuming that is required.[xxxviii] Thus, even if the bill passes, Virginians would not be protected for at least 4 years from the date of enactment. This is grossly insufficient to protect workers’ lives that are in danger now.

The Board Should Explore Options to the Maximum Extent Possible.

OSHA’s use of the general duty clause has proven insufficient and illustrated why specific standards are essential. As the Board conducts its investigation, it should cast a wide net to ensure maximum and sufficient coverage.

Workers can currently only seek protection from employers’ failure to protect them from heat stress through the general duty clause,[xxxix] which requires employers to “furnish to each of [their] employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees.”[xl] Though hazards can be “recognized” by common-sense, it is much harder to show the existence of a hazard not covered by regulations.[xli] The agency must also show that there was a condition that “exposed employees to a ‘significant risk’ of harm that “was ‘causing or likely to cause death or serious physical harm.’”[xlii] As such, the general duty clause is rarely used—indeed in 2018, OSHA only used the general duty clause in 1.5% of their citations.[xliii]

Even when the general duty clause is used, the agency may not be able to enforce a citation; in a series of cases in front of the Occupational Safety and Health Review Commission in 2020, the administrative law judge reviewed citations under the general duty clause issued against the United States Postal Service for failure to provide sufficient protections against heat stress.[xliv] OSHA had relied on heat index levels created by the National Weather Service.[xlv] In deciding to give the chart less weight, the judge found that there had been no evidence regarding the scientific basis for the chart’s categorization, even though the reliability of the calculations were not in dispute.[xlvi] The judge also noted that determining when the heat reached the threshold of high heat was not clear, specifically acknowledged that one cause for this difficulty is the lack of a heat stress standard,[xlvii],[xlviii] and thereby reversed the citations.[xlix],[l]

Because specific, clear standards will result in better compliance and protections, the Board should investigate as expansively as possible to include all feasible requirements. The standards the Board should adopt are not burdensome, but common sense, basic decency measures that many employers already provide; the standards would simply ensure that all employers are meeting their employees’ basic needs. Furthermore, because heat illness reduces productivity,[li] these standards help employers, too.

Although the following is not an exhaustive list, the Board should consider the following:

Acclimatization



Acclimatization—the gradual adaptation to high temperatures—is necessary to help tolerating exposure to high heat.[lii] NIOSH recommends limiting heat exposure for unacclimatized workers, and for acclimatized workers if the temperatures are higher than those for which they are acclimatized.[liii] Additionally, employers should have a plan for acclimatization.[liv]

#### Provision of water and electrolytes

Water—provided by the employer—is essential to mitigate heat stress; one should drink 8 ounces of water every 15 to 20 minutes.[lv] If a worker has been working for more than 2 hours, she should be provided water and electrolytes.[lvi] Because, as discussed infra, workers may have incentives to not stop for water, the Board should consider how to ensure workers take advantage of water breaks.[lvii]

#### Breaks

Breaks in cool, shady areas are necessary.[lviii] Taking breaks helps slow down the accumulation of heat.[lix] The frequency and length of the break workers need depends on the total heat load, but in general should range from 15 to 45 minutes per hour.[lx] As with water, how to ensure workers take advantage of breaks should be considered.[lxi]

#### Protections against both heat and cold stress

Workers can be at risk of cold stress from overly cold environments, both inside and outside.[lxii] Like heat stress, cold stress can lead to death.[lxiii] Many cold stress prevention measures mirror those for heat stress.[lxiv] Although heat and cold stress are on two opposite ends of the temperature spectrum, both should be addressed to be most efficient and protect the most workers.

#### Training

Workers can best protect themselves and their coworkers when properly trained about risks and prevention measures.[lxv] Train-the-trainer programs are useful because they reinforce the material through teaching workers how to teach their coworkers.[lxvi]

#### Creation of preparedness plans

Employers should have an emergency plan—that workers know—to use in the event of heat illness.[lxvii] This includes how to communicate an emergency and what to do (e.g., where to take the worker, who to call, how to cool the worker down, etc.).[lxviii]

#### Provision of air conditioning in employer provided housing

Because of acclimatization, it is important for workers to have a cool environment at home; To allow workers to recover from the heat adequately, employers who provide housing should also provide air conditioners.

#### Ensuring compliance with ADA protections

Some risk factors are tied to the individual's health factors.[lxx] The employer should be sure not to violate any employee's rights under the Americans with Disabilities Act in determining risk factors.

#### Considerations for piece rates and points systems

Other considerations may impact an employee stopping to get water or take a break; for example, many farmworkers are paid on a piece-rate system, being paid more for picking more.[lxxi] If they take a break, they get paid less. There are reports of workers wearing diapers to not have to stop for bathroom breaks.[lxxii] To combat this, California requires employers to calculate the piece rate excluding the break time and then use that rate to calculate the rest time rate.[lxxiii] Similarly, many workers in factories are subject to a system wherein they receive points or warnings for so-called infractions, which can include break times.[lxxiv] These workers may be wary of taking breaks. The Board should keep these countervailing interests in mind and create ways to ensure workers receive the benefits of the standards.

SEE RESPONSE TO COMMENT 98905

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98990 VA Transportation Construction Alliance 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98990>

VTCA Comments on Notice of Intended Regulatory Action - Heat Illness Prevention. The Virginia Transportation Construction Alliance represents more than 300 transportation contractor, aggregate producers, consultant engineers, suppliers and service providers who design, build, and maintain Virginia's transportation network. On behalf of our members, we are pleased to submit comments related the Virginia Safety and Health Codes Board Notice of Intended Regulatory Action (NOIRA) to initiate the regulatory process to a adopt regulation applicable to Heat Illness Prevention.

VTCA's members place protection of their employees, our most valuable resource, as a top priority through extensive safety programs, requirements, and adherence to proven existing regulatory standards. To successfully achieve the Board's objective to reduce/eliminate employee injuries, illnesses, and fatalities due to heat illnesses we strongly recommend that:

- the proposed regulations be specific and applicable to the covered industry as well as specific work activities. Road construction and the aggregate mining industry consist of specialized work environments. Providing effective protection of our workers require the application of preventive measures tailored to the specific activities found on our jobsites.
- new standards be based on existing, proven protection standards in the road construction industry.
- final regulations should be based on sound scientific information, data and real-life experience.
- safety is a heavily regulated element within the highway/road construction industry and the aggregate mining industry. New regulations intended to address heat exposure risks should be consistent with and complement existing federal, state, and local regulatory requirements.

Given the breadth and importance of our industry to Virginia's economy and the direct impact this Rulemaking will have on our member's employees and operations we look forward to working closely with the Regulatory Advisory Panel to address improvements to heat illness safety.

SEE RESPONSE TO COMMENT 98905

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98991 Kristine 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?commentid=98991>

I urge the Board to develop standards addressing heat illness to protect farmworkers, landscapers, construction workers and other workers at risk from dangerous heat in Virginia. They play a vital role in the state's economy, and must be protected. Unlike those of us who work indoors and can avoid being outside in extreme heat and humidity, these workers have no choice if they want to earn a livelihood. Please ensure the heat illness regulations you create include workers' access to water, sufficient breaks (especially in shade when possible), safe training, and air conditioning in employer-provided housing. Thank you for making Virginia safer for our workers, especially those who must work outdoors or in extremely hot indoor situations. I sincerely appreciate your leadership on creating the emergency COVID-19 safeguards for workers and hope you will act with the same diligence and empathy on behalf of workers at risk from the heat.

SEE RESPONSE TO COMMENT 98905

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98993 Charlie Marcotte

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98993>

Additional regulations, Heat. My name is Charlie Marcotte, I am the owner of American Pride Automotive with four service locations in Hampton Roads. We have been in business for over 25 years and have always made our team our number one priority.

I am against additional regulations such as what is proposed in DOLI 8926. Additional regulations, when not needed within an industry, simply open up opportunities for disciplinary action that may not be needed and the possibility for abuse by opportunists. Even in the case of false claims, the costs associated with a solid defense can be immense and even put a good business in terrible jeopardy.

SEE RESPONSE TO COMMENT 98905

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98994 Ronda McCarthy, MD, MPH, FACOEM

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98994>

My name is Ronda McCarthy, MD, MPH. As an occupational medicine physician, I have treated too many workers for heat-related illnesses, which are completely preventable, and I would like to share my professional experience in support of a Virginia Heat Stress Standard to protect workers against excessive heat.

I believe a Heat Stress Standard will protect the health and lives of countless workers. Moreover, employers will benefit from decreased costs from injuries and illness and will experience increased productivity from their workers.

I worked as the medical director of a employee health clinic, where I treated municipal workers, many with outdoor heat exposure. Ironically, since the municipality did not fall under OSHA, I was allowed to implement a heat stress awareness program for their outdoor workers.

I used information from OSHA's Technical Manual and NIOSH's Criteria for a Standard: Occupational Exposure to Heat and Hot Environments to create their Heat Stress Awareness Program (HSAP). This

program included supervisor and worker training, first aid and emergency response procedures, acclimatization plan and medical monitoring to determine fitness for duty prior to work in heat.

I worked with two faculty members from University of Pennsylvania Health System, Dr. Judith Green-McKenzie, and Dr. Fran Shofer to retrospectively analyzed the data collected from the Heat Stress Awareness Program. The data was analyzed in support of NIOSH's newly released 2016 revisions. The study data revealed two salient points relevant recommendations for a Heat Stress Standard: workers' compensation costs went down by 50% per heat-related illness, and the total number of heat-related cases decreased after implementation of the Heat Stress Awareness Program.

There are two possible reasons for this reduction in workers' compensation cost. Both an increased awareness of the signs and symptoms of heat-related illness, as well as an understanding of when to seek medical attention may have allowed for earlier intervention, leading to lower workers' compensation costs. Decreased costs reflect the reality of less severe health effects from this harmful and potentially fatal illness. Over the course of the Heat Stress Awareness Program, the frequency of heat-related illnesses decreased per year, and by the last two years, there were no reported heat-related illnesses during the hot season for the exposed municipal workers. Please refer to Figure 1.

This heat-related illness prevention program, consisting of simple and inexpensive measures, appears effective and potentially lifesaving.

In light of this research, and as an occupational medicine physician with over 20 years of experience supervising workers exposed to hot environments, it is my expert opinion that enacting a Virginia Heat Stress Standard that includes employee and supervisor training, acclimatization program, emergency response procedures, and medical monitoring will protect the lives and health of workers and benefit employers by increasing worker productivity and decreasing accident, injury and illness costs.

SEE RESPONSE TO COMMENT 98905

Thank you for providing information about research on the issue.

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98995 Nicholas Snow, MD 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98995>

As a physician, it is important to protect the health of workers in our Commonwealth. Workers currently do not have enforceable protections against heat stress at a federal or in many areas, like the Commonwealth of Virginia, a local level. This lack of regulation puts workers at daily risk of harm. In fact, heat kills more people than any other weather-related hazard.<sup>1</sup> Virginia does not have time to wait for Federal OSHA to act. Many organizations have petitioned in vain for OSHA to follow its duty to protect workers and produce workers' heat stress standards.<sup>2</sup> Heat stress protection is vital for ensuring the health and productivity of the Commonwealth's workers. Thus, to protect workers, the Safety and Health Codes Board must explore the possible options available to them and consider their potential impact. In particular, it is very important they consider providing regular access to water and breaks, preparedness plans, ADA protections, and acclimation protocols, among other possibilities.

FN: Georges C. Benjamin, Killer Climate: More Americans Are Dying From Extreme Heat, The Hill (Sep. 12, 2019), <https://thehill.com/opinion/energy-environment/461126-killer-climate-extreme-heat-kills-more-americans-than-any-other> (last accessed June 2, 2021).

Letter from Dr. David Michaels, Ph.D, M.P.H., to Sidney Wolfe, Director, Public Health Citizen’s Research Group 1 (Jun. 7, 2012), <https://www.citizen.org/wp-content/uploads/migration/denial-of-heat-stress-petition.pdf> (last accessed June 2, 2021).

SEE RESPONSE TO COMMENT 98905

Thank you for providing information about research on the issue.

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98996 Thalia Hernandez 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98996>

OSHA’s use of the general duty clause has proven insufficient and illustrated why specific standards are essential. As the Board conducts its investigation, it should cast a wide net to ensure maximum and sufficient coverage.

Workers can currently only seek protection from employers’ failure to protect them from heat stress through the general duty clause,[1] which requires employers to “furnish to each of [their] employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees.”[2] Though hazards can be “recognized” by common-sense, it is much harder to show the existence of a hazard not covered by regulations.[3] The agency must also show that there was a condition that “exposed employees to a ‘significant risk’ of harm that “was ‘causing or likely to cause death or serious physical harm.’”[4] As such, the general duty clause is rarely used—indeed in 2018, OSHA only used the general duty clause in 1.5% of their citations.[5]

Even when the general duty clause is used, the agency may not be able to enforce a citation; in a series of cases in front of the Occupational Safety and Health Review Commission in 2020, the administrative law judge reviewed citations under the general duty clause issued against the United States Postal Service for failure to provide sufficient protections against heat stress.[6] OSHA had relied on heat index levels created by the National Weather Service.[7] In deciding to give the chart less weight, the judge found that there had been no evidence regarding the scientific basis for the chart’s categorization, even though the reliability of the calculations were not in dispute.[8] The judge also noted that determining when the heat reached the threshold of high heat was not clear, specifically acknowledged that one cause for this difficulty is the lack of a heat stress standard,[9],[10] and thereby reversed the citations.[11],[12]

Because specific, clear standards will result in better compliance and protections, the Board should investigate as expansively as possible to include all feasible requirements. The standards the Board should adopt are not burdensome, but common sense, basic decency measures that many employers already provide; the standards would simply ensure that all employers are meeting their employees’ basic needs. Furthermore, because heat illness reduces productivity,[13] these standards help employers, too.

Although the following is not an exhaustive list, the Board should consider the following:

- Acclimatization

Acclimatization—the gradual adaptation to high temperatures—is necessary to help tolerating exposure to high heat.[14] NIOSH recommends limiting heat exposure for unacclimatized workers, and for acclimatized workers if the temperatures are higher than those for which they are acclimatized.[15] Additionally, employers should have a plan for acclimatization.[16]

- Provision of water and electrolytes

Water—provided by the employer—is essential to mitigate heat stress; one should drink 8 ounces of water every 15 to 20 minutes.[17] If a worker has been working for more than 2 hours, she should be provided water and electrolytes.[18] Because, as discussed infra, workers may have incentives to not stop for water, the Board should consider how to ensure workers take advantage of water breaks.[19]

- Breaks

Breaks in cool, shady areas are necessary.[20] Taking breaks helps slow down the accumulation of heat.[21] The frequency and length of the break workers need depends on the total heat load, but in general should range from 15 to 45 minutes per hour.[22] As with water, how to ensure workers take advantage of breaks should be considered.[23]

- Protections against both heat and cold stress

Workers can be at risk of cold stress from overly cold environments, both inside and outside.[24] Like heat stress, cold stress can lead to death.[25] Many cold stress prevention measures mirror those for heat stress.[26] Although heat and cold stress are on two opposite ends of the temperature spectrum, both should be addressed to be most efficient and protect the most workers.

- Training

Workers can best protect themselves and their coworkers when properly trained about risks and prevention measures.[27] Train-the-trainer programs are useful because they reinforce the material through teaching workers how to teach their coworkers.[28]

- Creation of preparedness plans

Employers should have an emergency plan—that workers know—to use in the event of heat illness.[29] This includes how to communicate an emergency and what to do (e.g., where to take the worker, who to call, how to cool the worker down, etc.).[30]

- Provision of air conditioning in employer provided housing

Because of acclimatization, it is important for workers to have a cool environment at home; To allow workers to recover from the heat adequately, employers who provide housing should also provide air conditioners.

- Ensuring compliance with ADA protections

Some risk factors are tied to the individual's health factors.[32] The employer should be sure not to violate any employee's rights under the Americans with Disabilities Act in determining risk factors.

- Considerations for piece rates and points systems

Other considerations may impact an employee stopping to get water or take a break; for example, many farmworkers are paid on a piece-rate system, being paid more for picking more.[33] If they take a break, they get paid less. There are reports of workers wearing diapers to not have to stop for bathroom breaks.[34] To combat this, California requires employers to calculate the piece rate excluding the break time and then use that rate to calculate the rest time rate.[35] Similarly, many workers in factories are subject to a system wherein they receive points or warnings for so-called infractions, which can include break times.[36] These workers may be wary of taking breaks. The Board should keep these countervailing interests in mind and create ways to ensure workers receive the benefits of the standards. See Townhall link for footnotes.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

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98997 Kathleen Price 6/8/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98997>

Heat Protection for Outdoor Workers. As a physician I have seen people suffering from heat illness, which can be very dangerous and even fatal. With rising temperatures this is becoming more dangerous than ever. Outdoor workers are at particular risk . Because of this we need to enact regulations to protect them, such as cooling breaks , access to water, and training about preventing heat illness for both employees and employers.

SEE RESPONSE TO COMMENT 98905

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98998 Yolance Whitaker 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=98998>

There is no comprehensive federal or Virginia standard protecting workers against heat stress. Without protections, Virginia's workers are at risk of severe illness or death. Heat kills more Americans than any other weather-related hazard.[1] Heat illnesses occur when the total heat load exceeds what the body can handle while maintaining normal functions.[2] Workers are at risk of heat stress in both outdoor work and indoor work, particularly when engaged in strenuous activities or with inadequate air conditioning.[3] Even when heat illness is not a problem, productivity can suffer.[4] Between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.[5]

There are various types of heat illness.[6] Heat syncope occurs when someone has been standing for a long time or gets up suddenly having been sitting or lying down; it causes symptoms like dizziness or fainting.[7] Heat rash, from excessive sweating, causes pimples and/or blisters.[8] Heat cramps are caused by sweating when the person's salt levels get too low; symptoms include cramps and spasms in

muscles.[9] Rhabdomyolysis occurs with prolonged physical activity and causes rapid degradation of muscle tissues and acute injury to the kidneys.[10] Heat exhaustion occurs when the body has lost excessive amounts of water and salt.[11] Symptoms include “headache, nausea, dizziness, weakness, irritability, thirst, heavy sweating, elevated body temperature, or decreased urination.”[12] When not treated properly and quickly enough, heat exhaustion can lead to heat stroke, at which point the body can no longer produce sweat or control the internal temperature.[13] Heat stroke symptoms include “confusion, slurred speech, hot and dry skin or profuse sweating, seizures, and loss of consciousness (coma),” as well as death.[14]

Although data shows high numbers of injuries and deaths from heat stress, these numbers are likely substantially lower than the true numbers.[15] First, the data comes from Form 300 Logs, which are not required for employers not covered by OSHA and only require reporting if the injury or illness is sufficiently severe.[16] Form 300 Logs are notoriously incomplete as employers underreport to avoid liability.[17] Medical providers have also reported that employers have asked them to provide only enough treatment to not reach the reporting threshold.[18] Employees underreport fearing retaliation and because of employer-sponsored incentive programs where workers get rewards for lack of injuries.[19] Undocumented workers are especially afraid of reporting, fearing deportation.[20] Workers may also not report because they cannot afford to miss work.[21] Heat stress symptoms can be mistaken for symptoms of other illnesses, causing misdiagnoses. Finally, heat stress makes workers more prone to accidents, which may be attributed as the sole cause of injury or death.[22] All in all, millions of workers are at risk. See Townhall link for footnotes.

SEE RESPONSE TO COMMENT 98905

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99001 Paul Berry 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99001>

Supporting Heat Stress Standards in VA. The Virginia Latino Advisory Board (VLAB) is a body of gubernatorial appointees designated by the Code of Virginia to advise Virginia's governors on matters related to the Latino community in the Commonwealth. Numbering 845,000 residents, or 10% of Virginia's population, Latinos are overrepresented in low-wage jobs, especially those which rely on migrant farm labor. Agribusiness as a whole relies on Latino workers for a sizable portion of its workforce.

In 2020 VLAB, myself presiding over the board, saw to it that heat stress provisions were an urgent policy change that Governor Northam should address legislatively or through executive action. We will again be making the same recommendation in 2021 and I encourage any state government agency with authority in the process to recommend the same conclusion and take appropriate action.

SEE RESPONSE TO COMMENT 98905

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99002 Rachel McFarland 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99002>



There is no comprehensive federal or Virginia standard protecting workers against heat stress. Without protections, Virginia's workers are at risk of severe illness or death. Heat kills more Americans than any other weather-related hazard.[1] Heat illnesses occur when the total heat load exceeds what the body can handle while maintaining normal functions.[2] Workers are at risk of heat stress in both outdoor work and indoor work, particularly when engaged in strenuous activities or with inadequate air conditioning.[3] Even when heat illness is not a problem, productivity can suffer.[4] Between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.[5]

There are various types of heat illness.[6] Heat syncope occurs when someone has been standing for a long time or gets up suddenly having been sitting or lying down; it causes symptoms like dizziness or fainting.[7] Heat rash, from excessive sweating, causes pimples and/or blisters.[8] Heat cramps are caused by sweating when the person's salt levels get too low; symptoms include cramps and spasms in muscles.[9] Rhabdomyolysis occurs with prolonged physical activity and causes rapid degradation of muscle tissues and acute injury to the kidneys.[10] Heat exhaustion occurs when the body has lost excessive amounts of water and salt.[11] Symptoms include "headache, nausea, dizziness, weakness, irritability, thirst, heavy sweating, elevated body temperature, or decreased urination." [12] When not treated properly and quickly enough, heat exhaustion can lead to heat stroke, at which point the body can no longer produce sweat or control the internal temperature.[13] Heat stroke symptoms include "confusion, slurred speech, hot and dry skin or profuse sweating, seizures, and loss of consciousness (coma)," as well as death.[14]

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Virginia Cannot Rely on Federal OSHA or Congress to Fill the Gap.

Virginia cannot wait for OSHA or Congress to take possible future action. OSHA has shown no willingness to promulgate heat stress protections. In 2011, Public Citizen, Farmworker Justice, Radio and Machine Workers of America, and Dr. Thomas Bernard petitioned OSHA to issue an Emergency Temporary Standard and begin the rulemaking process for a permanent standard.[23] OSHA denied the petition.[24] In 2018, Public Citizen, Farmworker Justice, United Farm Workers, Drs. Eula Bingham and David Michaels (both former OSHA directors), Ellen Widess (former CalOSHA director), Dr. Marc Schenker, 131 organizations, and 89 individuals petitioned OSHA again for a permanent standard.[25] OSHA has never replied to this petition. This second petition included the 2016 recommendations from NIOSH.[26] NIOSH first issued heat stress recommendations in 1972 in the early days of OSHA's and NIOSH,[27] but OSHA has never promulgated any standards. By contrast, California, Washington, and

Minnesota have enacted their own standards.[28] In 2020, Maryland enacted a law requiring MOSH to promulgate protections by October 2022.[29] Each of these states, state-plan states like Virginia, have shown that waiting for OSHA is insufficient when it comes to protecting workers.

OSHA's dereliction of its duties is further illustrated by the COVID-19 pandemic, to which OSHA has utterly failed to respond.[30] Not only has OSHA conducted substantially fewer inspections than normal, despite more complaints,[31] it has not issued an Emergency Temporary Standard (ETS). President Biden issued an Executive Order on his first day in office ordering OSHA to issue an ETS, should the agency determine one necessary, by March 15, 2021.[32] OSHA did not send anything to the OMB until April 26, 2021,[33] more than a month late.[34] If OSHA does not act in a timely fashion under presidential orders, it stands to reason they will also not act timely without one.

Indeed, knowing that Virginia could not wait for OSHA to act against COVID-19, this very board enacted the country's first COVID-19 ETS and later permanent standards.[35] These standards are a perfect illustration of how Virginia can and should go beyond federal OSHA and proactively protect Virginian workers. Of note, the Safety and Health Codes Board ("the Board") unanimously voted to push the current NOIRA forward, showing that they know the importance of these standards.

Finally, although a bill was introduced in Congress for federal protections, [36] even if it passes, the process will be lengthy. The bill does not require a proposed standard until 2 years after the bill's enactment, and the final standard would not be required until 42 months after enactment.[37] Virginia would then have six months from the effective date of the standard to adopt the same or an equivalent standard, assuming that is required.[38] Thus, even if the bill passes, Virginians would not be protected for at least 4 years from the date of enactment. This is grossly insufficient to protect workers' lives that are in danger now.

The Board Should Explore Options to the Maximum Extent Possible.

OSHA's use of the general duty clause has proven insufficient and illustrated why specific standards are essential. As the Board conducts its investigation, it should cast a wide net to ensure maximum and sufficient coverage.

Workers can currently only seek protection from employers' failure to protect them from heat stress through the general duty clause,[39] which requires employers to "furnish to each of [their] employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to [their] employees." [40] Though hazards can be "recognized" by common-sense, it is much harder to show the existence of a hazard not covered by regulations.[41] The agency must also show that there was a condition that "exposed employees to a 'significant risk' of harm that "was 'causing or likely to cause death or serious physical harm.'" [42] As such, the general duty clause is rarely used—indeed in 2018, OSHA only used the general duty clause in 1.5% of their citations.[43]

Even when the general duty clause is used, the agency may not be able to enforce a citation; in a series of cases in front of the Occupational Safety and Health Review Commission in 2020, the administrative law judge reviewed citations under the general duty clause issued against the United States Postal Service for failure to provide sufficient protections against heat stress.[44] OSHA had relied on heat index levels created by the National Weather Service.[45] In deciding to give the chart

less weight, the judge found that there had been no evidence regarding the scientific basis for the chart's categorization, even though the reliability of the calculations were not in dispute.[46] The judge also noted that determining when the heat reached the threshold of high heat was not clear, specifically acknowledged that one cause for this difficulty is the lack of a heat stress standard,[47],[48] and thereby reversed the citations.[49],[50]

Because specific, clear standards will result in better compliance and protections, the Board should investigate as expansively as possible to include all feasible requirements. The standards the Board should adopt are not burdensome, but common sense, basic decency measures that many employers already provide; the standards would simply ensure that all employers are meeting their employees' basic needs. Furthermore, because heat illness reduces productivity,[51] these standards help employers, too.

Although the following is not an exhaustive list, the Board should consider the following:

- Acclimatization - the gradual adaptation to high temperatures—is necessary to help tolerating exposure to high heat.[52] NIOSH recommends limiting heat exposure for unacclimatized workers, and for acclimatized workers if the temperatures are higher than those for which they are acclimatized.[53] Additionally, employers should have a plan for acclimatization.[54]

- Provision of water and electrolytes

Water—provided by the employer—is essential to mitigate heat stress; one should drink 8 ounces of water every 15 to 20 minutes.[55] If a worker has been working for more than 2 hours, she should be provided water and electrolytes.[56] Because, as discussed infra, workers may have incentives to not stop for water, the Board should consider how to ensure workers take advantage of water breaks.[57]

- Breaks in cool, shady areas are necessary.[58] Taking breaks helps slow down the accumulation of heat.[59] The frequency and length of the break workers need depends on the total heat load, but in general should range from 15 to 45 minutes per hour.[60] As with water, how to ensure workers take advantage of breaks should be considered.[61]

- Protections against both heat and cold stress

Workers can be at risk of cold stress from overly cold environments, both inside and outside.[62] Like heat stress, cold stress can lead to death.[63] Many cold stress prevention measures mirror those for heat stress.[64] Although heat and cold stress are on two opposite ends of the temperature spectrum, both should be addressed to be most efficient and protect the most workers.

- Training: Workers can best protect themselves and their coworkers when properly trained about risks and prevention measures.[65] Train-the-trainer programs are useful because they reinforce the material through teaching workers how to teach their coworkers.[66]

- Creation of preparedness plans: Employers should have an emergency plan—that workers know—to use in the event of heat illness.[67] This includes how to communicate an emergency and what to do (e.g., where to take the worker, who to call, how to cool the worker down, etc.).[68]

- Provision of air conditioning in employer provided housing

Because of acclimatization, it is important for workers to have a cool environment at home;[69] To allow workers to recover from the heat adequately, employers who provide housing should also provide air conditioners.

- Ensuring compliance with ADA protections

Some risk factors are tied to the individual's health factors.[70] The employer should be sure not to violate any employee's rights under the Americans with Disabilities Act in determining risk factors.

- Considerations for piece rates and points systems

Other considerations may impact an employee stopping to get water or take a break; for example, many farmworkers are paid on a piece-rate system, being paid more for picking more.[71] If they take a break, they get paid less. There are reports of workers wearing diapers to not have to stop for bathroom breaks.[72] To combat this, California requires employers to calculate the piece rate excluding the break time and then use that rate to calculate the rest time rate.[73] Similarly, many workers in factories are subject to a system wherein they receive points or warnings for so-called infractions, which can include break times.[74] These workers may be wary of taking breaks. The Board should keep these countervailing interests in mind and create ways to ensure workers receive the benefits of the standards. See Townhall link for Footnotes

SEE RESPONSE TO COMMENT 98905

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99003 Delmarva Chicken Association (DCA) 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99003>

Dear Mr. Withrow:

Thank you for the opportunity to comment on the Notice of Intended Regulatory Action for the Heat Illness Prevention Standard. The Delmarva Chicken Association (DCA) is the 1,600-member trade association representing the chicken growers, companies and allied businesses in Delaware, the Eastern Shore of Maryland and the Eastern Shore of Virginia. In particular, we have two chicken company members in Accomack county that employ thousands of Virginia residents and contract with more than 60 growers.

DCA is very interested in the process as raising and harvesting chickens is a 24-7 job, no matter the weather. The chicken community is committed to protecting our employees from any harsh working conditions and already has a number of best management practices in place. We have concerns of any Virginia-specific regulations that might conflict with any guidance from OSHA, creating a patchwork of state standards. All employers already have the responsibility of the general duty clause that is in place to provide employees with a safe workplace.

DCA does not fully understand the need for the time and resources that will be used to adopt additional regulations, but we look forward to following the work of the Regulatory Advisory Panel as this process moves forward.

SEE RESPONSE TO COMMENT 98905

99004 Doris Crouse-Mays 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99004>

Support Heat Illness Prevention Standard, 16VAC25-210. The Virginia AFL-CIO is pleased that the Virginia Department of Labor and Industry and Safety and Health Codes Board is moving forward with the first step to issue a rule to protect workers from heat illness.

With this action, Virginia is positioned to become the fourth state to ensure workers are protected from dangerously hot working conditions—showing their commitment to protecting working people.

These other states have effective standards in place that the Virginia standard can be based on.

The general duty clause has not been sufficient to protect workers from heat illness.

In 2019, the Occupational Safety and Health Review Commission overturned a federal OSHA general duty clause citation after a roofer died from heat illness. (See the Secretary of Labor v. A.H. Sturgill Roofing, Inc. case)

As we transition into summer, we are reminded of the extreme temperatures in Virginia and the toll they take on working people. Heat illnesses can occur in outdoor or indoor workplaces when workers are not provided adequate water, rest periods, shade, and cool air. Excessive heat exposure causes serious medical conditions, such as heat stroke, heat exhaustion, fainting, heat rash, heat cramps, and muscle breakdown among workers—and can even lead to death.

Workers who are new to working in extreme temperatures are at even higher risk of heat illness and death. Heat can also contribute to other injuries due to slippery sweat, fogging personal protective equipment, dizziness, and hot tools. Preventing overexposure to heat is simple when employers have a plan.

Employers must be required to assess the temperature and working conditions and use proven control measures to prevent heat illnesses. Controls that must be required include:

- o Measuring temperature and humidity
- o Provide clean drinking water
- o Provide frequent rest periods in shaded or cooler areas
- o Provide clothing that doesn't hold in body heat
- o Accumulate workers to working in the heat by gradually increasing the workload.
- o Train workers on heat illness
- o Monitor workers for signs of heat illness

Heat illness is prevented when employers develop and implement plans adaptable for their workplaces.

We Virginia AFL-CIO strongly supports Virginia's efforts to move forward with developing and issuing a standard to protect workers from heat illness and will continue engaging in the rulemaking process to ensure Virginia has a strong, comprehensive standard to protect workers from heat illness.

SEE RESPONSE TO COMMENT 98905

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99005 Juanita Constible 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99005>

The Natural Resources Defense Council (NRDC), which has more than 24,000 supporters in Virginia, strongly supports the intent of the Safety and Health Codes Board to develop an enforceable occupational heat standard.

Heat-related health harms are entirely preventable. And yet from 2011 to 2018, at least 13 workers in Virginia died due to excessive heat and another 620 missed work for heat-related illnesses and injuries.[1] Without specific, enforceable protections, these threats to Virginia workers will continue to grow as temperatures rise due to climate change.[2] Richmond, for example, experienced an average of 9 days with a heat index of 100°F or more from 1971 to 2000; by the 2036 to 2065 period, that number could soar to 48 days per year.[3]

Extreme heat also hurts worker productivity. Nationally, the service, manufacturing, agricultural, and construction sectors lost at least 2 billion potential work hours in 2019 due to heat.[4] Heat-related losses in work hours across the country were an average of 63 percent higher from 2015 to 2019 than from 1990 to 1994.[5]

We recommend including the following minimum elements in the heat safety standard:

- Protections for outdoor workers and indoor workers. Examples of indoor environments without adequate cooling or ventilation can include meatpacking plants, public schools, warehouses, kitchens, and many more.
- Provisions to ensure workers have adequate rest breaks and access to clean drinking water, appropriate bathroom facilities (to encourage workers to properly hydrate), and shaded or other cool spaces.
- Regular training in multiple languages for managers and workers.
- Acclimatization procedures for new and returning workers and new exposures to heat.
- Detailed requirements for heat-health first aid and emergency response plans. The latter is particularly important in isolated rural areas.
- Mechanisms to ensure piece-rate workers—who may work through unsafe heat to maximize their pay—get the full benefits of the standard.
- Whistleblower protections to ensure workers can report unsafe conditions without fear of reprisal.

NRDC appreciates the Board's leadership on heat stress, particularly given the lack of timely action by the federal Occupational Safety and Health Administration (OSHA). Despite two citizen petitions[6] and

multiple revisions of science-based heat stress recommendations from the National Institute for Occupational Safety and Health,[7] OSHA has failed to develop a federal standard. Maryland[8] and Oregon[9] recently recognized the need to fill the gap for workers in their states by starting their own occupational heat rulemakings, joining just three other states with such protections (California, Minnesota, and Washington). Virginia’s development of the first emergency temporary standard for COVID-19 in the United States [10] demonstrates that it, too, is committed to proactively keeping workers healthy and safe—rather than waiting for the federal government to act.

We look forward to future engagement in this commonsense effort to protect Virginia workers from extreme heat.

Juanita Constible, MSc, Senior Climate & Health Advocate NRDC

Teniope Adewumi-Gunn, PhD, Climate Change & Worker Health Science Fellow NRDC

SEE RESPONSE TO COMMENT 98905

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99007 Virginia, Maryland & Delaware Association of Electric Cooperatives

6/9/2021 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99007>

Virginia’s electric distribution cooperatives (“Virginia’s Electric Cooperatives” or the “Cooperatives”) are grateful to be consulted regarding, and have an opportunity to comment on, the Notice of Intended Regulatory Action (“NOIRA”) regarding heat illness. Certainly, heat illness has been a concern of Virginia’s General Assembly for at least the past few years, if not longer, and we are pleased to report that Virginia’s Electric Cooperatives have comprehensive safety programs in place that work to educate workers on heat illness symptoms, and to prevent and treat heat illness when it occurs. In fact, the electric utility industry as a whole is conspicuous for its absence of fatalities across the electric line worker job category, both in the 2008-2014 OSHA fatality list and the 1999-present VOSH fatality list.

The Cooperatives are comprehensively regulated in this area by the federal Rural Utilities Service, a federal government agency that prescribes, in this area, various operational safety standards (or their equivalents) by which the Cooperatives must abide. Heat illness is part of this comprehensive safety program, which includes everything from arc flashes to blood borne pathogens. Job briefings are a part of our safety culture, and during periods of extreme heat, each employee is reminded during the regular briefing on awareness and how to react. The Association of Electric Cooperatives also provides safety and training services to the Cooperatives on heat illness, among other topics. We are also willing to lend our support and experience to the Regulatory Advisory Panel that is being established on this topic and have submitted a request in that regard to DOLI’s Jay Withrow.

For decades since their founding, electric utilities have been the standard-bearers for safe workplace conduct, and the Cooperatives’ occupational safety programs are inspected annually as part of the Rural Electric Safety Achievement Program, or RESAP. Each Co-op in Virginia is RESAP-certified to meet these high standards.

We respectfully ask that the Department and the Board not doubly regulate us in this area, where we already have responsibility through the RESAP program and to a federal agency. We ask that

an exemption be placed into any proposed regulation that exempts employers with preexisting heat illness training, prevention, and treatment programs—especially when those programs are required and guided by federal regulation.

Safety is part of our culture—part of everything we do as electric cooperatives. Our own industry safety regimen as mandated by other applicable state and federal law must take precedence over any DOLI standard. We have recently experienced the difficulty that can result from duplicative safety regimens competing with one another in a single workplace; we urge the Board not to impose this on us again. Thank you for your kind attention to this matter and consideration of these comments, and if you have any questions, please do not hesitate to contact me.

SEE RESPONSE TO COMMENT 98905

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99009 Amanda Silcox 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99009>

Support heat stress standards in VA! There is no comprehensive federal or Virginia standard protecting workers against heat stress. Without protections, Virginia’s workers are at risk of severe illness or death. Heat kills more Americans than any other weather-related hazard.[1] Heat illnesses occur when the total heat load exceeds what the body can handle while maintaining normal functions.[2] Workers are at risk of heat stress in both outdoor work and indoor work, particularly when engaged in strenuous activities or with inadequate air conditioning.[3] Even when heat illness is not a problem, productivity can suffer.[4] Between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.[5]

Virginia cannot wait for OSHA or Congress to take possible future action. OSHA has shown no willingness to promulgate heat stress protections. Please support the heat stress standards.

SEE RESPONSE TO COMMENT 98905

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99010 Robert

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99010>

Heat Illness. This is absolutely a solution looking for a problem. I am in the auto repair business and we always look out for our employees. OSHA already has regulations to address workplace safety issues. The last thing we need is to create more regulations when sufficient regulations already exist. Please do not pass another burden on small businesses, the backbone of our economy. Politicians always claim to look out for small business, but rarely do.

SEE RESPONSE TO COMMENT 98905

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99013 Narissa Turner

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99013>



Protecting Virginia workers in a changing climate. Protecting vulnerable populations must be a priority in our changing climate. I am concerned about the effects of rising temperatures on the health of Virginians. The risk of heat illness is particularly high for those working in extreme heat. I support the development of strong standards for heat illness as a method to protect the health of outdoor workers by requiring access to water, breaks in cool areas and training of workers and supervisors in recognizing and treating heat illness.

SEE RESPONSE TO COMMENT 98905

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99014 JON LAWSON

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99014>

Comprehensive Regulation Does Not Fit. While the protection of workers from heat related illness should be emphasized in an employer's health and safety program, the requirements included in this proposal could be easily implemented as a best management practice or regulatory point of emphasis instead of over-arching regulation.

Federal OSHA guidelines, campaigns, and technical information already exist to provide a framework for reducing or eliminating heat-related stress in the workplace without the need for state mandates. Virginia's natural gas industry has a proven health and safety record that includes regular Heat Stress training for its employees and these Best Practices should be recognized in lieu of a one size fits all regulatory approach that may make compliance difficult or unattainable for some employers and/or industries.

Diverse work environments, independent workers without direct daily supervision, and the worker's own poor personal judgements or actions (even after being trained) present unavoidable issues that the language of this proposed regulation subjects Virginia's industry to repercussions.

Due to the diverse work environments, industries, and fitness of employees, it is feared an over-arching regulation may have unintended consequences. Those employees that are in poor physical condition, aged, and pregnant should not be discriminated against yet this proposal could potentially keep these workers from performing their jobs. The heat related fatalities in Virginia relate to only a few industries; therefore an over-arching regulation is unfounded. DOLI-VOSH can make this an area of emphasis and enforce under the general duty clause, as needed in these industries.

Heat acclimation is a scientifically-based process. However, individual acclimation cannot be gauged or known immediately, this puts an undue obligation on employers or the employee to declare when an employee is properly acclimated.

Tolerance and acclimation can also be related to employee's personal fitness and choices. Medical conditions, off-duty alcohol consumption and obesity are leading indicators for susceptibility to heat illness that employers will not be able to control.

Please consider that due to the individualized nature of heat illness, comprehensive regulation does not fit in this case.

It would be more prudent for VOSH to review existing regulation internally and then make points of emphasis for the Commonwealth. An analysis of heat related illness incidents, by industry, within the

Commonwealth should be undertaken prior to any regulatory action and would likely point to the fact that a new, over-arching regulation is not needed.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

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99017 Robert Melvin, Dir. Of Govt Affairs

6/9/2021 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99017>

On behalf of the Virginia Restaurant, Lodging & Travel Association I would like to take a moment to share with you our comments related NOIRA on Heat Illness Prevention Standard [16 VAC – 210]. The hospitality and tourism community takes the health and safety of its workforce seriously; however, we have serious reservations with some of the items under consideration by the Health and Safety Codes Board.

While it appears the intent of the proposed standard is to focus on agriculture, and construction industries, we have concerns that the structure of this measure could adversely impact restaurants, campgrounds, hotels, and attractions. After reviewing the agency background document, it appears that no heat illness fatalities have occurred at restaurants, campgrounds, hotels, or amusements and attractions. So, we would suggest limiting this measure to industries like agriculture and construction.

As you may know, during the COVID-19 pandemic outdoor dining has become a crucial part of restaurant operations. Servers will frequently work both indoor and outdoor spaces during a shift, and some of the concepts in this document could be difficult to comply with for restaurants and their staff. For example, the proposed 15 minute break requirement will harm servers who receive pay based on tips who work both indoor and outdoor spaces.

After reviewing the agency background documents on the heat illness prevention standards it mentions the use of Personal Protective Equipment (PPE) is considered an external risk factor for heat-related illness. Unfortunately, the Department of Labor and Industry (DOLI) standards on COVID-19 require that customer facing employees must wear face coverings, including PPE. It's our interpretation that existing DOLI regulations currently in place for COVID-19 mitigation are a heat-related illness risk factor. Therefore, the board may want to consider repealing those COVID-19 standards.

In addition, Virginia law already requires employers furnish safe employment and a place of employment free from recognized hazards. Therefore, this proposal appears to be superfluous.

For the reasons stated above, we urge you to not implement these standards, or limit their application to the agriculture and construction industry.

We appreciate your time and consideration of our request.

SEE RESPONSE TO COMMENT 98905

The Final Permanent Standard for COVID-19, 16VAC25-220 requires employers to provide and employees in customer facing positions to wear a face covering. If the employer is concerned that

employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

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99018 Eunice Salcedo, Health & Safety Specialist, AFSCME 6/9/2021  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99018>

The American Federation of State, County and Municipal Employees (AFSCME) strongly supports a heat illness prevention standard for indoor and outdoor work activities in Virginia. We urge the Safety and Health Codes Boards and Department of Labor and Industry to consider our recommendations when developing the proposed standard.

AFSCME District Council 20 members are on the front lines, keeping our communities running in Virginia and the District of Columbia. They and other public service workers are hard at work in all-weather conditions providing emergency services, health care, transportation, sanitation, public safety and other essential services. Indoor work activities, just like outdoor work activities, pose a risk of heat stress hazards. Indoor work activities such as working in a poorly ventilated spaces during heat wave, cleaning in a building that is normally vacated during the summertime and working in a basement next to an aging boiler are all worker scenarios our members face. Many of these workers are exposed to hot environments in which they are at risk of heat illnesses or death. They need the adequate and enforceable worker protections to do their job safely.

Currently, neither the federal Occupational Safety and Health Administration (OSHA) nor the Virginia Occupational Safety and Health (VOSH) Program has promulgated comprehensive heat illness regulations. Without protections, Virginia's workers are at risk of severe illness or death. Workers are at risk of heat stress in both outdoor work and indoor work, particularly when engaged in strenuous activities or with inadequate ventilation. Because OSHA has not issued a heat standard, it must use its general duty clause to enforce employers' obligations to provide a safe and healthy workplace with respect to these issues. There are significant limitations to the general duty clause, however, that make it difficult to enforce and result in its infrequent use. In 2019, the Occupational Safety and Health Review Commission's (OSHRC) decided in the Secretary of Labor v. A. H. Strugill Roofing, Inc., that the Secretary failed to establish the existence of a heat stress hazard using the general duty clause. As a result, the heat stress citation was overturned. Using the general duty clause leaves the burden of proof on OSHA. Despite the severity of heat hazards, the commission's decision demonstrates the difficulties of enforcing and establishing a heat stress citation without a specific standard.

VOSH should review OSHA state plans with state regulations designed to protect workers from heat stress hazards. California, Minnesota and Washington have adopted protections that must be implemented when workers are exposed to hot environments: California and Washington protect outdoor workers, and Minnesota's standard protects indoor workers. Further, Maryland recently

enacted a law requiring Maryland Occupational Safety and Health to promulgate protections by October 2022. Because the Cal/OSHA heat illness prevention standard is the most comprehensive, we strongly suggest that it be used as the foundation of the proposed standard.

Many employers do not have a heat illness prevention program. Among those with programs, many lack basic elements such as hydration, shaded rest areas, rest breaks and acclimatization protocols. AFSCME strongly recommends that the VOSH standard for a heat illness prevention program include the components described below. Some of these recommendations are drawn from the National Institute for Occupational Safety and Health (NIOSH) Criteria for a Recommended Standard: Occupational Exposure to Hot Environments. In that guidance, NIOSH sets Recommended Exposure Limits (REL) for acclimatized workers and Recommended Alert Limits (RAL) for unacclimatized workers. Those recommendations are intended to provide limits of heat stress to reduce workers' risks of incurring heat-related illnesses.

#### Written Control Plan.

Employers should establish, implement and maintain a written heat illness prevention plan. The written elements of the plan should include:

The hazard assessment.

Workplace control measures for each operation or work area in which occupational exposure occurs. These measures should include applicable engineering and work practice controls and personal protective equipment.

The plan should be reviewed and updated whenever necessary to reflect new or modified tasks and procedures that affect occupational exposure and new or revised employee positions with occupational exposure.

#### Worker Participation.

Workers should be involved in every step of the process. Workers know where the hazards are in their workplaces and how to reduce or eliminate them. Employers should develop and implement a plan for participation by workers and their authorized representatives.

#### Hazard Assessment.

The employer should conduct a workplace-specific identification of all interactions, areas, activities, processes and equipment that could potentially expose employees to heat hazards. The determination should include but is not limited to the job tasks being undertaken; the work environment (indoors or outdoors); and work that's conducted in a non-fixed setting where the employer does not completely control the work environment.

#### Workplace Controls.

Employers should develop and implement procedures for the use of engineering and administrative controls and PPE, including:

**Mandatory Breaks:** Rest breaks away from the hot environment should range in duration from 15 to 45 minutes per hour, depending on the workplace temperature and worker activity level.

Shade: In outdoor environments, employers must provide access to sufficient areas of shade during the rest breaks.

Hydration: Workers must be given access, at no cost, to water in quantities sufficient to maintain adequate levels of hydration at varying levels of heat (the baseline is one cup of cool water per 15 to 20 minutes), as well as electrolytes if workers are sweating for more than two hours.

Heat acclimatization plan: The failure to support acclimatization appears to be a common deficiency and the factor most clearly associated with death. Employers need to provide time to acclimatize for workers absent from the job for more than a few days, new employees and those working outdoors during an extreme heat event or heat wave. Employers must ensure that all workers acclimatize to hot environments by gradually increasing duration of work in the hot environment. All workers must be gradually acclimatized to the work. Full acclimatization might take up to 14 days or longer to attain, depending on individual or environmental factors.

Exposure monitoring: Employers must monitor both environmental heat exposure and employee workloads to ensure that no worker is exposed to heat stress at or above the RAL/REL.

Heat Alert Program: A written Heat Alert Program should be developed and implemented whenever the National Weather Service or other competent weather service forecasts that a heat wave is likely to occur the following day or days.

Signs and Training: All workers and supervisors who work in areas where there is a reasonable likelihood of heat illness must be trained on measures to prevent and mitigate the risk. Employees must be trained in a language they understand.

Personal protective equipment (PPE): At all times when total heat stress load reaches the threshold, employers must provide PPE such as water-cooled garments, air-cooled garments or cooling vests to protect workers from heat-related illness.

Recordkeeping.

The employer should establish and maintain an accurate record of any heat illness or injury and the environmental and work conditions at the time of the illness or injury. Recordkeeping is vital since the signs and symptoms of heat stress are often misdiagnosed and underreported.

Whistleblower Protections.

The plan should include a robust whistleblower protection provision to help ensure compliance with the standard's provisions.

AFSCME urges VOSH to consider our recommendations described above in promulgating a proposed standard. We appreciate this opportunity to share our views and look forward to working with VOSH on our shared goal of protecting workers against heat stress hazards in the workplace.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

99019 Kathy Desmond 6/9/2021

<https://townhall.virginia.gov/L/viewcomments.cfm?commentid=99019>

Adopt Heat Stress Standards. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing and workplaces.

SEE RESPONSE TO COMMENT 98905

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99020 Cristeena G. Naser 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99020>

Heat Illness Protection for Workers. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99021 Marie Stella 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99021>

"Heat Stress Standards. We are seeing the results of sound Covid emergency policies. Thank you. We need your leadership again in developing sound policies to address heat illness to protect our farmworkers and other at risk workers, that include breaks, access to water, education on heat effects, etc.

SEE RESPONSE TO COMMENT 98905

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99022 Martha Martin 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99022>

Please help workers exposed to high temperatures outdoors and indoors. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations related to heat-caused illness to protect farmworkers, construction workers, and other at-risk workers. The regulations should outline standards for access to water, breaks, and training, as well as air-conditioning in employer-provided housing. I have watched construction workers in our new development installing black shingles on days in the high 90s (while I could barely stand to be outdoors). Please help!

SEE RESPONSE TO COMMENT 98905

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99023 Kim Della Puca 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99023>

Heat Relief Measures. We own an 9 bay Automotive Repair shop and our employees are very important to us. For this reason, we already have heat relief measures in place such as a shop exhaust fan, floor fans, as well as individual swamp coolers . We also provide company paid refrigerated water, gatorade and popsicles. We have 2 separate restrooms, one for customers, and one for technicians, both of which are climate controlled. They also have access to the only other climate controlled space in the building, which is the office/customer waiting room, if they feel the need to. We feel that there is no need for government mandate to do this, as we are already doing everything we can to ensure our employees are happy and productive.

However, mandating a 15 minute break every hour, is not only unnecessary, but will kill production, especially for technicians who get paid based on flat rate, (labor hour, not floor hour) which would result in a 2.25 hour loss of pay PER DAY. Not to mention this would limit the amount of customers we could service in a day AND prolong their wait times unnecessarily.

SEE RESPONSE TO COMMENT 98905

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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99024 Janet Curtis 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99024>

Heat-related work conditions. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99025 Ellie Syverud 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99025>

Heat effects on outdoor workers. I am concerned about the effects of rising temperatures on the health of Virginians. The risk of heat illness is particularly high for those working in extreme heat. I support the development of strong standards for heat illness as a method to protect the health of outdoor workers by requiring access to water, breaks in cool areas and training of workers and supervisors in recognizing and treating heat illness.

SEE RESPONSE TO COMMENT 98905

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99026 Charlene Yang 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99026>

Heat Illness safety precautions for outdoor workers. I am concerned about the effects of rising temperatures on the health of Virginians. The risk of heat illness is particularly high for those working in extreme heat. I support the development of strong standards for heat illness as a method to protect the health of outdoor workers by requiring access to water, breaks in cool areas and training of workers and supervisors in recognizing and treating heat illness.

SEE RESPONSE TO COMMENT 98905

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99027 Stephen and Diana Ruth 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99027>

Strong standards/regulations for addressing heat illness to protect farmworkers and others at risk. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99028 Manuel Gago 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99028>

Protect Virginia Workers / Protejan a los Trabajadores de Virginia. There is no comprehensive federal or Virginia standard protecting workers against heat stress. Without protections, Virginia's workers are at risk of severe illness or death. Heat kills more Americans than any other weather-related hazard.[1] Heat illnesses occur when the total heat load exceeds what the body can handle while maintaining normal functions.[2] Workers are at risk of heat stress in both outdoor work and indoor work, particularly when engaged in strenuous activities or with inadequate air conditioning.[3] Even when heat illness is not a problem, productivity can suffer.[4] Between 1992 and 2016, at least 783 workers died of heat stress and 69,374 workers were seriously injured.[5]

There are various types of heat illness.[6] Heat syncope occurs when someone has been standing for a long time or gets up suddenly having been sitting or lying down; it causes symptoms like dizziness or fainting.[7] Heat rash, from excessive sweating, causes pimples and/or blisters.[8] Heat cramps are caused by sweating when the person's salt levels get too low; symptoms include cramps and spasms in muscles.[9] Rhabdomyolysis occurs with prolonged physical activity and causes rapid degradation of muscle tissues and acute injury to the kidneys.[10] Heat exhaustion occurs when the body has lost excessive amounts of water and salt.[11] Symptoms include "headache, nausea, dizziness, weakness, irritability, thirst, heavy sweating, elevated body temperature, or decreased urination." [12] When not treated properly and quickly enough, heat exhaustion can lead to heat stroke, at which point the body can no longer produce sweat or control the internal temperature.[13] Heat stroke symptoms include



“confusion, slurred speech, hot and dry skin or profuse sweating, seizures, and loss of consciousness (coma),” as well as death.[14]

Although data shows high numbers of injuries and deaths from heat stress, these numbers are likely substantially lower than the true numbers.[15] First, the data comes from Form 300 Logs, which are not required for employers not covered by OSHA and only require reporting if the injury or illness is sufficiently severe.[16] Form 300 Logs are notoriously incomplete as employers underreport to avoid liability.[17] Medical providers have also reported that employers have asked them to provide only enough treatment to not reach the reporting threshold.[18] Employees underreport fearing retaliation and because of employer-sponsored incentive programs where workers get rewards for lack of injuries.[19] Undocumented workers are especially afraid of reporting, fearing deportation.[20] Workers may also not report because they cannot afford to miss work.[21] Heat stress symptoms can be mistaken for symptoms of other illnesses, causing misdiagnoses. Finally, heat stress makes workers more prone to accidents, which may be attributed as the sole cause of injury or death.[22] All in all, millions of workers are at risk. See Townhall link for footnotes.

SEE RESPONSE TO COMMENT 98905

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99030 Anonymous 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99030>

Protect Workers from Excessive Hear. Please protect workers' health by preventing their exposure to excessive heat. Workers deserve humane treatment. Thank you.

SEE RESPONSE TO COMMENT 98905

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99031 Emily Lopynski 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99031>

Strong regulations needed. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99033 Anonymous 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99033>

If heat is the problem the golf courses should shut down every hour. If the maintenance people working have to stop due to heat then the golfers who are usually smoking and drinking which effect hydration should stop playing every hour for 15 minutes also.

SEE RESPONSE TO COMMENT 98905

Occupational safety and health standards only apply to employees and employer, not members of the general public.

There are a number of different reasons for having a stricter standard for employees than patrons/customers, regardless of the industry.

First, the OSH Act of 1970 and Virginia laws, standards and regulations require employers to provide a safe and health workplace to employees. While providing for and enforcing workplace safety and health requirements indirectly benefits members of the general public, the primary focus of those laws is employee safety and health.

Second, customers or patrons are at a business voluntarily while employees are required to be there in order to keep their jobs. Customers can “assume the risk” of being potentially exposed to heat illness, while no employee should be required or permitted to do so.

Third, customers can limit the length of their exposure to heat illness hazards at a particular business, while employees are required to be present for the full period of their work shift. It is appropriate to have stricter heat illness prevention requirements for employees who are potentially exposed to the hazard for an 8 hour or 10 hour or 12 hour shift, depending on the industry, as opposed to a customer or patron who can limit their exposure simply by being selective about where they go and for how long.

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99034 Tonya Osinkosky 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99034>

Heat Stress Protections. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99035 Iris Figueroa,

Farmworker Justice Director of Economic and Environmental Justice

6/9/2021 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99035>

Farmworker Justice submits these comments in response to the Virginia Department of Labor and Industry’s Notice of Intent of Regulatory Action to begin the process of creating heat stress standards to protect Virginia’s workers. Because heat related illness poses an increasing risk to agricultural workers, Farmworker Justice supports the proposed action and encourages the state to implement strong, enforceable standards.

Farmworker Justice (FJ) is a national organization, based in Washington, DC that seeks to empower farmworkers and their families to improve their immigration status, living and working conditions, occupational safety and health, and access to health care. As a national organization, FJ

knows firsthand that states must step in where the federal government has abdicated its responsibility to the nation's workers. Although both Congress and the Occupational Safety and Health Administration (OSHA) have long been aware of the serious hazards posed by high heat, neither institution has chosen to take action. In fact, FJ and other organizations have repeatedly petitioned OSHA to implement a permanent standard to protect workers from heat related illness,[1] but OSHA has declined to act.[2] Similarly, Congress has heard testimony multiple times over the past decade about the dangers posed by high heat.[3] Nonetheless, landmark legislation to require OSHA to create heat stress standards have failed to move out of committee.[4]

While the federal government drags its feet, the men and women who harvest our food continue to suffer. Heat is the most immediate lethal danger to agricultural workers.[5] It can cause workers to feel nauseous, dizzy, and weak.[6] When these symptoms are ignored, a person may begin to have a seizure, and their organs may begin to break down, leading to a coma and even death.[7] Even when a worker survives the workday and returns home, the danger has not passed. Heat and dehydration wreak havoc on a person's kidneys. Studies show that farmworkers who are exposed to high heat without sufficient rest and water breaks face an increased long-term risk of deadly kidney injury.[8] As climate change leads to increasing temperatures, the consequences of inaction will only worsen.

Despite these acute dangers, many workers are not provided simple protection such as water, rest, and shade. Farmworkers often worry that they may experience discrimination or retaliation from their employer if they complain about their conditions. The threat is even worse for undocumented workers, who live under the constant fear of deportation. When workers are paid on a piece-rate basis, where their wages are determined by the amount they harvest, they often cannot afford to take a rest or water break. Without legal protection from excessive heat exposure, farmworkers are susceptible to severe health issues and abuse from their employers.

Virginia's proposal to become the newest state with a heat stress standard is an important step in the right direction and an opportunity to learn from other states' successes and failures. In order to address the unique vulnerability of farmworkers, Virginia must ensure that any standard implemented includes strong enforcement and anti-retaliation components so that workers are empowered to report violations and assert their rights. Without strong enforcement and anti-retaliation protections, workers will continue to face the same dangers regardless of a regulation's language. Similarly, the standard must require that safety training and information are provided to workers in a language and format that they understand. A study of the efficacy of California's heat stress standard found that even when employers complied with the state's requirements, workers often lacked a sufficient understanding of the risks and the necessary preventative measures.[9] The study's authors attributed this shortcoming, in part, to workers' low education levels. Virginia should consult with community-based organizations to create accessible materials in English, Spanish, and other languages spoken by Virginia's farmworkers.

Farmworker Justice commends Virginia for taking action to protect the state's workers from increasing heat. We encourage the state to continue being a leader in worker safety by ensuring that the standards are enforceable and effective. See Townhall link for footnotes

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SEE RESPONSE TO COMMENT 98905

99036 Michele Andersen 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99036>

Regulations for at-risk workers. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99037 S T 6/9/2021 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99037>

Government controlling workers ability to make money and make life choices. I want to start by saying we pay attention to the heat, our employees, watch out for heat related issues, supply filtered cold water, gatorade, evaporative cooling fans and building fans to move hot air out. They are mostly in the shade. They can stop and get a drink or rest anytime they need to.

Our techs also get a production bonus, making them stop due to regulation will effect their ability to make money.

During the summer if there are 15 minute breaks ever hour does this:

Count as lunch breaks?

Are they allowed to use their phone or is that considered personal time?

Is this the time they are allowed to use the bathroom?

Do they have to sit there, drink water and stare at the wall?

Do we have to do a breathalyzer test at the beginning of the day to account for hydration? (According to the write up smoking and alcohol effect hydration)

Are we supposed to start getting personal medical information for heat related issues? (HIPPA law anyone?)

Do we now control what they eat and drink during hot days to make sure they are properly hydrated? (coffee / soda / energy drinks not allowed ?)

Obviously we want our employees to be healthy, if they fall down, we, nor they can make a living. When we have to stop every hour, customers are going to yell at us.

This outline 16 VAC 25-210 lumped to many industries together, auto repair, golf courses, catering, forest firefighter. Are you going to tell a forest firefighter to stop and take a break in the middle of a fire?

How about regulating office workers out go outside for 15 minutes every hour to get out from in front of the computer and control what they eat due to lack of exercise and heart disease issues?

I was an automotive technician for 13 years before owning a shop, I would have hated this rule for stopping my ability to make a living. I have brought this up to the techs in my shop they do not like it.

We are still trying to make it coming out of corona, another road block is not what we need.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98873

Any proposed standard would take into account the amount of time an employees spent outdoors versus indoors and temperatures in each location.

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99039 Anonymous 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99039>

Heat condition in work environments. It is 2021 and there should be no reason why these major corporations don't have eefficient climate control facilities. It time to stop letting the hoard money and be madated to keep their facilities in a functioning and comfortable working condition. They do expect us workers to spend most of our time at work the least they can do are simple accommodations.

SEE RESPONSE TO COMMENT 98905

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99040 Greg A Garland 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99040>

Thank you for your leadership on the emergency COVID-19 standard. This was a just and compassionate legislative act. Please provide strong standards/regulations to protect farm- workers and all at-risk workers. These would include access to water, breaks, training and air conditioning in employed provided housing. You can make Virginia a better and safer place for workers.

SEE RESPONSE TO COMMENT 98905

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99041 Susan Kuhn 6/9/2021

<https://townhall.virginia.gov/L/viewcomments.cfm?commentid=99041>

Yes to heat regulation to protect farmworkers. Thank you for your leadership and proposing covid-19 safety regulations. that is an excellent precedent for the current need for heat regulations that will protect farm workers, construction workers, and other vulnerable outdoor workers. Ensuring that they have access to water, breaks, medical Care and housing if appropriate provides a baseline of humane treatment that should be the norm and not the exception in Virginia. Your comprehensive attention to this issue will be greatly appreciated.

99042 Linda J. Dillon 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99042>

The need for heat stress protections for workers. I have lived and worked in Virginia for over 45 years, and during the summer the weather is hot, humid, and stressful to work in if you are outside. It seems as though the summers are getting hotter with more days in the 90-100 degree range. Anyone who lives in Virginia is certainly aware of this, and most grateful for the times they can enjoy air conditioning. Unfortunately, those who work outside typically don't have that luxury, but there need to be protections in place to protect their health and safety through the development of standard heat stress protections. I have observed this need first-hand.

In the past, I have helped chaperone groups of teenagers on mission events that involved gleaning. The goal of these events was to collect food left behind in the fields that was missed by harvesters on the first go around. That food would then be donated to food banks and community kitchens to feed the hungry and homeless. After an hour or so, the young folks and even the adults would begin to really feel the hot Virginia sun as the day developed. We encouraged them to remain hydrated and provided water, but we could rarely push these healthy young folks more than a couple of hours once the sun began to climb higher in the sky. They would begin to feel faint and feel the effects of the heat strongly enough that we would pull them out of the fields and into the shade or air-conditioning by noontime. This even included the young athletes who were used to morning, summertime practices. If I had pushed them to continue working even after a brief respite, I fear we would have had more serious health issues. Fortunately, their livelihoods did not depend on how much food they harvested or how much work they had to do in the heat to get a living wage.

So many jobs, but particularly those involving agriculture and farm labor, rely on workers putting in a full day in the fields. Heat stress protections are simply humane and important to the continued smooth functioning of the business of agriculture. Others may be able to offer information about how to do this effectively, but I simply urge the reader or hearer of my words to examine their conscience, remember what Virginia summers are like, and find ways to protect essential workers' health from extreme heat by putting in place reasonable safeguards from heat stress and the conditions it produces. Ultimately this will benefit the businesses that use these workers by ensuring that the work will be done efficiently and in a humane manner, leading to increased productivity. Please find a way to develop and enforce heat stress protection guidelines for workers.

SEE RESPONSE TO COMMENT 98905

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99043 Tom Tracy PhD 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99043>

We have concerns about Virginia developing a heat illness standard apart from OSHA. Thank you for the opportunity to comment on this proposed regulation. Our association represents (1) turf grass professionals who are responsible for sports fields, golf courses, sod farms, commercial and home lawns

and (2) landscapers who are responsible for trees, shrubs, annuals, perennials and non-plant aspects of the outdoor environment. Our membership also includes university and municipal personnel from across the Commonwealth.

We deeply appreciate the concern expressed by legislators, associations, and individuals regarding the dangers of heat stress. We do not seek to minimize their concerns. The health and safety of all persons involved with the turf grass and landscape industry is our prime concern.

Our issue with the proposed regulation is the adoption of a state heat illness standard apart from the adoption of such a standard by OSHA. That being said, when the Regulatory Advisory Panel is created, we ask that a representative from the Virginia Agribusiness Council be appointed to represent the turf and landscape industries.

SEE RESPONSE TO COMMENT 98905

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99044 Dana Connor, UMW 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99044>

Heat Stress. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99045 Anonymous 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99045>

Heat Stress, Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99046 Meredith Gross 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99046>

Heat Stress Standards. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99047 Melanie Smith 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99047>

Protect Workers. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99048 Elizabeth Struthers Malbon 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99048>

Comments on Heat Stress Standards to the Virginia Safety and Health Codes Board

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

Climate change is upon us. It is important to build heat stress protection into the Virginia Safety and Health Codes now before farmworkers and others are at increased risk. Let's not wait for tragedy to take action.

SEE RESPONSE TO COMMENT 98905

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99049 Roy Wilensky 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99049>

Heat Stress. I urge you to develop, and ensure the implementation of, strong standards and regulations to protect farm workers and other at-risk workers from severe heat. These standards should include sufficient drinking water, breaks, and training. They should also include air-conditioning in employer-provided housing. Thank you.

SEE RESPONSE TO COMMENT 98905

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99050 Charlotte Shnaider 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99050>

Stop heat stress for workers. I hope this problem will be addressed as it's very unfair to workers.

SEE RESPONSE TO COMMENT 98905

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99051 Dr. Rachel Levy 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99051>

Strong standards/regulations for addressing heat illness to protect workers needed. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farm workers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99052 Jessica D Wright 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99052>

Manufacturing Workers & Heat Stress

My husband works as a metal mechanic in Norfolk, building parts for Naval Contracts. While he works indoors, the shop has very poor ventilation, and even on mild summer days can become oppressive. My husband also has epilepsy, and had to miss work 2 days during this past weeks heat wave due to heat stress concerns. When the temperature outside passes 90, it can quickly reach upwards of 120 in the shop. This is a real concern for even healthy young people.

SEE RESPONSE TO COMMENT 98905

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99053 Riverly Twardy 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99053>

Please develop regulations addressing heat illness

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

Although these regulations will cover many indoor and outdoor workers, we are most concerned about farmworkers whose working conditions are often particularly dangerous. Submitting comments to this Board will help make Virginia a better and safer place for workers. Thank you again for your help.

SEE RESPONSE TO COMMENT 98905

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99054 Juley Fulcher 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99054>

Public Citizen, a consumer and health advocacy group with more than 16,400 members and supporters in Virginia and more than 500,000 members and supporters nationwide supports the efforts of Virginia

Department of Labor and Industry's Safety and Health Codes Board to implement a Heat Illness Prevention Standard. Implementation of robust workplace heat standard in Virginia is critical for worker protection.

### Heat Stress Is a Significant Risk to Workers

According to the U.S. Bureau of Labor Statistics, from 1992 through 2019, exposure to excessive environmental heat killed 907 U.S. workers and seriously injured 79,584<sup>[1]</sup> – numbers that are in all likelihood vast underestimates due to underreporting.<sup>[2]</sup> Indeed, more than 600,000 Virginians work in outdoor and indoor jobs with heat hazard risks.<sup>[3]</sup>

When a worker is pushed beyond a safe heat exposure, a range of dangerous illnesses may result, including heat exhaustion, heat syncope, rhabdomyolysis, heat stroke and death. In addition to the acute threats of death and illness, these workers are also likely facing long-term health risks. Heat stress exacerbates existing health problems like asthma and heart disease, possibly shortening workers' lives. And when coupled with dehydration, repetitive heat stress can cause depressed kidney function and chronic kidney disease.<sup>[4]</sup>

### Heat Stress is Dramatically Exacerbated by the Climate Crisis

Twenty of the last 21 years were the hottest on record, and extreme high temperatures are projected to increase, as are the frequency, length and intensity of heat waves.<sup>[5]</sup> Heat waves are particularly dangerous, as the combination of both high daytime and nighttime temperatures keeps the body from cooling down during the night, making each successive day of a heat wave more deadly than the one preceding it.<sup>[6]</sup>

The summer of 2020 saw new heat records set throughout the nation, both record high temperatures and record number of days at extreme high temperatures.<sup>[7]</sup> Norfolk and Charlottesville had their hottest summers on record in 2020.<sup>[8]</sup> And Richmond had its second longest streak of daily temperatures more than 90 degrees which lasted 25 days, from July 10 to August 3, 2020.<sup>[9]</sup>

### Protecting Workers from Heat Stress Is a Racial Justice Issue

There is a profound racial injustice component to workplace heat hazard risks. Essential jobs that experience the highest rates of heat illness are disproportionately held by Black and Brown workers. For example, while Latinx workers make up 17.6% of the entire workforce, they make up 65% of farm laborers, graders, and sorters,<sup>[10]</sup> and crop workers die from heat stress at a rate 20 times greater than the rest of the U.S. workforce.<sup>[11]</sup> More than 46% of laborers and freight, stock, and materials movers are Black and Hispanic/Latinx, as are more than 52% of laundry and drycleaning workers, 52% of cooks, and 58% of those working in warehouses and storage.<sup>[12]</sup> While Black Americans only make up 12.1% of the total workforce, they make up 25% of postal workers and 23% of UPS drivers.<sup>[13]</sup> They also make up nearly 28% of sanitation workers nationally and account for well over half the waste material collectors in many areas of the country.<sup>[14]</sup> Grounds maintenance workers are more than 44% Latinx, while roofers are more than 53% Latinx.<sup>[15]</sup> All of these are high heat risk jobs.

### Heat Stress Has Economic Costs – and Workplace Protections Can Mitigate Them

Leaving workers unprotected from heat has significant and damaging economic effects. In high heat, people work less effectively due to diminished ability for physical exertion and for completing mental

tasks. This reduces productivity and income for employers and employees, increases the risk of accidents, and drives up medical expenses.[16] These effects can be seen across a spectrum of economic indicators.

Heat stress has reduced labor capacity by 10 percent over the past few decades.[17] Heat-related injuries and illnesses increase workers' compensation costs and hospital-related expenses.[18] Employers in the U.S. spend \$220 billion every year on injuries and illnesses related to excessive heat.[19]

The good news is that the economic impacts of heat stress can be mitigated by the same protections that mitigate its health impacts. For instance, in 2011 a central Texas municipality implemented a heat illness prevention program for outdoor municipal workers that not only resulted in a significant decrease in heat-related illnesses, but decreased workers' compensation costs by 50% per heat-related illness.[20]

#### Virginia Cannot Wait for OSHA to Develop an Enforceable Heat Standard

OSHA has had detailed recommendations for a heat standard for nearly five decades. The National Institute of Occupational Safety and Health (NIOSH) issued criteria for a recommended heat standard in 1972, which it updated in 1986 and 2016 using the most recent science.[21] In 2011, Public Citizen, Farmworker Justice, Radio and Machine Workers of America, and Dr. Thomas Bernard petitioned OSHA to issue an Emergency Temporary Standard and begin the rulemaking process for a permanent standard.[22] OSHA denied the petition.[23] In 2018, Public Citizen, Farmworker Justice, United Farm Workers, Drs. Eula Bingham and David Michaels (both former OSHA directors), Ellen Widess (former CalOSHA director), Dr. Marc Schenker, 131 organizations, and 89 individuals petitioned OSHA again for a permanent standard.[24] Still, OSHA has not issued a heat standard.

Unable to rely on federal rules, California, Minnesota and Washington have issued heat standards of their own. Maryland[25] and Oregon[26] are in the process of writing standards as well. Virginia should protect its workers by joining those states in enacting a heat illness prevention standard.

Absent a federal standard, OSHA polices heat-related injuries and deaths only by enforcing its "catch all" general duty clause that requires employers to ensure that their workplaces are "free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees." Enforcement is scarce, and it is reactive rather than preventive. According to the Bureau of Labor Statistics, there were 7,030 serious injuries and 92 fatalities attributed to heat exposure on the job in 2018 and 2019.[27] Yet OSHA issued only 59 heat-related violations under the general duty clause.[28] Notably, from 2013 through 2017, California used its heat standard to conduct 50 times more inspections resulting in a heat-related violation than OSHA did nationwide under the general duty clause.[29]

The Occupational Safety and Health Review Commission, an independent federal agency created to adjudicate appeals of OSHA citations and penalties, has held that the general duty clause places a high burden on OSHA to demonstrate that employers failed to provide safe workplaces. On July 15, 2020, the Commission issued decisions in five cases that make it very difficult for OSHA to protect workers from heat stress under the general duty clause. OSHA had issued citations against the U.S. Postal Service for exposing its employees "to recognized hazards of working outside during periods of excessive heat." The

Commission vacated the citations because OSHA provided no guidelines that define what constitutes dangerous levels of heat.[30]

The Commission went out of its way to point out that its findings did not necessarily mean that excessive heat didn't exist in the cases, but rather there were no clear OSHA standards. The Commission went on to say that the lack of a standard on heat stress also made it extremely difficult to make sure employers can recognize the hazard.[31] These Commission findings demonstrate the difficulty in holding employers accountable for failure to protect workers from heat hazards under OSHA's general duty safety requirement.

#### Virginia Must Implement a Strong Workplace Heat Illness Prevention Standard

The Board should adopt commonsense, basic decency measures that protect workers from heat-related illness and death. Many employers already take appropriate measures to protect workers from heat. A standard would simply ensure that all employers are meeting their employees' basic needs.

The Virginia heat illness prevention standard should, at a minimum, include the following elements, based largely on NIOSH's latest (2016) iteration of its criteria for a recommended standard for occupational exposure to heat:[32]

Heat stress thresholds: At NIOSH's recommended exposure limits for acclimatized and unacclimatized workers, employers would be required to initiate robust protective measures. These include: (1) mandatory paid rest breaks in shaded or air-conditioned areas; (2) personal protective equipment (PPE) (e.g., water-cooled garments, air-cooled garments, or cooling vests), and (3) free access to water in quantities sufficient to maintain adequate levels of hydration at varying levels of heat, as well as electrolytes if workers are sweating for more than two hours.

Special consideration must be given to the impact of productivity requirements and incentives in developing protective measures. These systems may discourage employees from stopping to get water or take a break. For example, many farmworkers are paid on a piece-rate system, being paid more for picking more.[33] If they take a break, they get paid less. The same systems may discourage workers from drinking necessary water or force workers to take drastic and inhumane measures like wearing diapers to not have to stop for bathroom breaks.[34] To combat this, California requires employers to calculate the piece rate excluding the break time and then use that rate to calculate the rest time rate.[35] Similarly, many workers in factories are subject to a system wherein they receive points or warnings for so-called infractions, which can include taking too much break time.[36] These workers may be wary of taking breaks. The Board should keep these countervailing interests in mind and create ways to ensure workers receive the benefits of the standards.

Heat acclimatization plan: All workers beginning work in high-heat environments, or who will be working in hotter conditions than usual (e.g., during a heat wave), must be gradually acclimatized to the work over a period of at least 7–14 days.

Exposure monitoring: Employers must monitor both environmental heat exposure and employee workloads to ensure that no worker is exposed to excessive heat stress.

Emergency medical plan: Employers should have clear procedures in the event that a worker develops signs or symptoms of heat illness, including effective communication systems, appropriate on-site care to reduce body temperature, and calling 911 for emergency medical care.

Hazard notification: Employers must post prominent signs, in languages their workers understand, in high-heat areas warning of the dangers of heat stress. Employers must develop a written Heat Alert Program to be implemented whenever the National Weather Service or other authoritative weather service forecasts a heat wave for the coming day or days in order to help improve worker awareness and preparedness.

Worker information and training: All workers and supervisors who work in areas where there is a reasonable likelihood of heat illness must be trained on measures to prevent and mitigate the risk. A written training program must be developed to serve as the basis for this training.

Heat-related recordkeeping: Employers should maintain data on susceptible workers, workplace modifications to mitigate the risk of heat stress, all heat-related injuries and deaths, and all environmental and physiological measurements related to heat.

Whistleblower protections: There must be clear whistleblower protections ensuring that workers will not be punished in any way for reporting what they believe to be a violation of the heat standard. Virginia should have a system in place for anonymous reports of violations.

Air conditioning in employer provided housing: After experiencing heat stress, it is important for the body to cool down overnight. To allow workers to recover from the heat adequately, employers who provide housing should also provide air conditioners. See footnotes in Townhall link

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

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99055 Virginia Interfaith Center for Public Policy 6/9/2021

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99055>

Heat Stress Standards to Protect Workers. Please move forward with legislation to ensure that outdoor and indoor workers are protected from illness-causing excessive heat. Strong standards are needed to protect construction crews, farm laborers and other at-risk workers. We need regulations that outline standards for access to water, breaks, training and air conditioning in employer-provided housing. Thank you for your leadership in protecting workers.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98985

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99056 Margaret V. Lee <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99056>

Heat stress on employees. I worked as a temp for a corporation in Gordonsville that made custom tee shirts by sealing the logos/pictures onto the tees in a huge warehouse. When the temperature rose in

the summer, it was unbearably hot in there. I was an office employee, and know I wouldn't have lasted half a day in that environment. There had to be outside ventilation because of the toxic nature of the work: fusing plastic onto cotton at high temperature through applied pressure. They brought in so-called A/C blowers, but they were ineffective in that heat. Only the young and hardy could do this work. I felt it was asking for a fatality. Things in this factory setting should be changed so the work can be done more safely.

SEE RESPONSE TO COMMENT 98905

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99057 Susie Cambria <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99057>

In support of the development of strong heat stress standards to protect workers. I am writing to urge you to develop strong heat stress standards to protect workers who work in excessively hot conditions.

As a resident of the Northern Neck, I am concerned about the health and well-being of workers who, for a variety of reasons, often work in a number of high-risk fields including agriculture, construction, landscaping, golf course maintenance and support, and other outdoor work, such as at sawmills and using heavy equipment.

In agriculture in particular, time matters and may lead individual workers, a collective of workers, and/or management to push workers, limit breaks and self-care, and otherwise ignore the detrimental and often deadly effects of heat.

As hot as it has been over the years, climate change will likely make the temperature even more challenging in the future. The time is now for the Commonwealth to take proactive and aggressive measures to protect the safety and well-being of workers. As the board detailed in the Notice of Intended Regulatory Action (NOIRA) Agency Background Document, "Neither the Virginia Occupational Safety and Health (VOSH) program nor OSHA (Occupational Safety and Health Administration) has a comprehensive heat illness prevention regulation." (p. 2)

In the background document, the board lists items for possible inclusion. All are appropriate. I would, however, encourage the board to:

Modify the notion to "Written heat illness prevention plan" to include language accessibility, meaning that the document must be translated into languages in which workers are fluent. (p. 5)

Strengthen the notion "Employee and supervisory training on heat illness hazards and preventative measures in a language the employee and supervisor understands" to require trainings take place in languages in which workers/supervisors are fluent. (p. 6)

Incorporate a "feels like" provision rather than something like "High heat procedures when the temperature equals or exceeds 95°F" as California does. (p. 10) [1]

Include a provision for working in direct sunlight. The National Weather Service writes, for example, "IMPORTANT: Heat index values were devised for shady, light wind conditions. Exposure to full sunshine can increase values by up to 15 degrees! Also, strong winds, particularly with very hot, dry air, can be extremely hazardous." ([https://www.weather.gov/arx/heat\\_index](https://www.weather.gov/arx/heat_index))

Again, I urge you to do with heat stress standards what you did with COVID-19 regs. I look forward to participating in the process as it moves forward. See Footnotes in Townhall link

SEE RESPONSE TO COMMENT 98905

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99058 Margaret Rubin <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99058>

Protect workers from excessive heat. It is important for Virginia workers to be protected from excessive heat. People die and suffer permanent health issues from extreme heat and the Virginia government should protect workers.

SEE RESPONSE TO COMMENT 98905

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99059 Carol E Thompson-Nelson  
<https://townhall.virginia.gov/L/viewcomments.cfm?commentid=99059>

I believe that Virginia's workers need emergency regulations to ensure their safety in the workplace. Thank you for your leadership on creating the emergency COVID-19 standard.

Please develop strong standards / regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99060 Steve Sallman, Director of Health, Safety and Environment  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99060>

These comments are submitted on behalf of the members of the USW. We commend and we thank the Virginia Department of Labor and Industry (VDLI) and Safety and Health Codes Board for taking the first step to issue a standard to protect workers from heat illness as well as the opportunity to comment on the Notice of Intended Regulatory Action (NOIRA).

#### Heat Stress Protections are Essential to Protect Working People in Virginia

Neither Federal OSHA or the Virginia Occupational Safety and Health (VOSH) Program have a comprehensive standard protecting workers against heat stress. This puts Virginia's workers at risk of reduced productivity, but more importantly, injuries, disease, or worse yet, death when exposed to heat stress hazards with both outdoor and indoor work.

The USW has experienced fatalities involving heat-related exposures. USW members' exposures occur in some of the following industries: Atomic, Chemical, Energy and Utilities, Glass, Manufacturing, Metals (Steel, Aluminum, etc.), Oil and Petroleum, Paper and Forestry, Plastics, Pottery, Rubber and Tires. Our

members have experienced heat stroke, heat exhaustion, heat cramps, heat syncope (fainting and dizziness), heat rash and rhabdomyolysis (muscle breakdown). Some cases have even required oral and intravenous (IV) fluid therapy. One member's mental status was altered and the employer mistakenly interpreted this as impairment from a controlled substance, but a trained in-plant emergency responder recognized the symptoms and helped our member get the urgent care needed.

#### Virginia Cannot Wait on Federal OSHA

The VDLI and VOSH Program cannot wait for OSHA or Congress to take possible future actions in protecting workers against heat stress. Virginia took the correct steps in not waiting for Federal OSHA to act against COVID-19 and enacted the country's first COVID-19 Emergency Temporary Standard and later a permanent standard. The actions of VDLI and VOSH says volumes of how Virginia can go beyond OSHA to protect Virginia's workers. Additionally, the Safety and Health Codes Board unanimously voted to push the current NOIRA forward, showing they know the importance of these standards.

The Safety and Health Codes Board Must Consider all Options to the Maximum Extent to Protect Workers. The Safety and Health Codes Board should consider the following:

A written Heat Illness Prevention Program with a designated person to oversee the Heat Illness Prevention Program that includes employees and their representatives' participation.

Identify hazards and the controls needed to eliminate and reduce exposures.

Engineering Controls: Air-conditioning, increased ventilation, fans in accordance with sound industrial hygiene principles, providing heat-absorbing shielding or barriers, heat reflective shields to redirect radiant heat, insulating hot surfaces, and eliminate/reduce steam leaks, wet floors, or humidity.

Provide adequate amounts of cool, potable water and electrolytes near the work area and encourage workers to drink frequently

Provide paid breaks

Provide shade.

Institute a heat acclimatization plan for workers.

Implement a heat alert program whenever the weather service forecasts that a heat wave is likely to occur.

Limit time in the heat and/or increase recovery time spent in a cool environment.

Modified work demands.

Increase the number of workers per task.

Provide and use special tools (i.e., tools intended to minimize manual strain).

Training and procedures for supervisors and workers about heat stress.

Monitoring of signs and symptoms.

Emergency planning and response.



Provide and maintain heat-protective clothing and equipment at no cost to employees. Include training and procedures on the added heat load caused by exertion, clothing, and the personal protective equipment provided.

In conclusion, VDLI and the VOSH Program must protect all workers from the hazards of occupational heat exposure. Applying the hierarchy of controls will prevent reduced productivity, but more importantly, injuries, disease, or worse yet, death for Virginia's workers. We cannot continue to rely on voluntary compliance. We strongly encourage Virginia to move forward with a comprehensive standard to make all workers safer.

SEE RESPONSE TO COMMENT 98905

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99061 Dana Palmer <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99061>

Protect Farm Workers from Heat Stroke. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing. Please help to protect our farm workers!

SEE RESPONSE TO COMMENT 98905

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99062 brian james christoffersen  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99062>

Heat Stress. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99063 Janet Lipscomb <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99063>

Standards for heat exposure and related health risks. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

Although these regulations will cover many indoor and outdoor workers, we are most concerned about farmworkers whose working conditions are often particularly dangerous. Submitting comments to this Board will help make Virginia a better and safer place for workers. Thank you again for your help.

SEE RESPONSE TO COMMENT 98905

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99064 Anonymous <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99064>

Address heat illness. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers, construction workers, and other at-risk workers. The regulation should outline standards for access to water, breaks, training, and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99065 Anonymous <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99065>

Protect Against Heat Stress. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99066 Robin D Mines <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99066>

Heat Illnesses. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99067 Herschell Emery, retired VCU faculty

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99067>

Honoring the Board's pledge to adopt strong heat standards. Your leadership in creating emergency COVID-19 standards helped protect Virginia's workers. Now our farm workers are particularly vulnerable and are relying on you to create standards (training, water breaks, air-conditioning in any provided housing) ample enough to protect them from illness due to excess heat. We owe these workers these protections. Thank you.

SEE RESPONSE TO COMMENT 98905

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99068 Anonymous <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99068>

Protect workers. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-

risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99069 Robert Shields <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99069>

Heat Stress Regulations. Heat stress regulations are very important to the health of any workers exposed to a high heat environment. My experience in the Navy taught me how important heat stress management is to taking care of your people.

Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards / regulations for addressing heat illness to protect farm workers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air conditioning in employer provided housing. We also need serious penalties for employers who violate these standards.

SEE RESPONSE TO COMMENT 98905

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99070 Maggie McCain <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99070>

Support for Regulations Protecting Workers from Heat Stress. This is to express my support of regulations protecting the health and safety of workers from heat stress to be issued by the Virginia Safety and Health Codes Board. Please develop strong and clear standards for prevention of heat related illness for both outdoor and indoor workers, including farmworkers, construction workers, warehouse workers, and other at-risk workers. Regulations should address timely access to water, breaks, air conditioning or other methods of cooling, shelter from heat and sun, first aid, and appropriate modifications to work schedules and dress codes in order to mitigate conditions of extreme heat and exposure, as well as training in these issues. Thank you for your consideration of the well-being of Virginia's workforce.

SEE RESPONSE TO COMMENT 98905

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99071 Joanne R Hutton  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99071>

Heat and Stress Standards for the VA Safety and Health Codes Boards. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99072 Shirin Wertime <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99072>

Protecting outdoor workers from heat stress. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farmworkers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing.

SEE RESPONSE TO COMMENT 98905

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99073 Catherine Saunders  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99073>

Please create heat illness protections for at-risk workers. I appreciate the work your work on the emergency OSHA standards for COVID-19. I support your developing similarly strong regulations to protect farm workers and others at risk of heat illness. Such workers need guaranteed access to water and breaks, and to air conditioning in employer-provided housing. Everyone has the right to work in conditions that preserve their health and safety; these are simple steps to assure safe working conditions in hot weather.

SEE RESPONSE TO COMMENT 98905

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99074 Carolyn Caywood  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99074>

Heat Illness Prevention Standard [under development] [16 VAC 25-210]. I support strong protections for workers at risk of heat-related illness. I have experienced how easily heat exhaustion can creep up on a person. Not only is the illness a risk, but if it affects a person who is operating equipment, dangerous mistakes can result. Prevention is lest costly as well as more humane.

SEE RESPONSE TO COMMENT 98905

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99075 Anonymous signed - Rev. Dr. Anthony L. Fludd  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99075>

Heat Stress Standard /Vice President VICPP. I am encouraging the Virginia Safety and Health Codes Board to adopt strong heat stress standards to protect workers who work in excessively hot conditions.

I am,

Rev. Dr. Anthony L. Fludd

SEE RESPONSE TO COMMENT 98905

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99076 Robert V Poignant, Jr.

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99076>

State needs occupational health heat protections for workers in absence of federal rules. Just two weeks ago, I met a former roofer who is now in the tree removal business because of the greater hazards he experienced in his former job as a roofer.

The extreme heat - even on merely warm days like 75 degrees Fahrenheit - is hazard to roofers in several ways:

- 1 .Loss of water (dehydration) from sweating.
- 2 .Heat induced loss of concentration and balance causing fall injury/death from an elevated structure that may have surface temperatures in excess of 135 degrees and
3. Burn hazards when removing old roofing.

The following suggestions apply to all those working in high temperature/humidity occupations and would include persons putting down asphalt, foundry workers and drivers of delivery trucks.

Rules should require:

1. Employer monitoring of workers for heat stress;
- 2 .Employer provided liquids having necessary salts to re-hydrate workers based upon monitoring;
- 3A. Limit working hours to periods when the heat index (which considers BOTH temperature and humidity) on the job site is below a medically hazardous limit.
- 3B. Hazardous/dangerous heat-humidity charts (heat indices) are readily available and should be posted on the job site along with how to reach the regulatory authority and the nearest medical facility.
4. Where feasible (e.g., cabs of delivery truck drivers) rules should require air conditioning;
5. When not feasible, (foundry work, asphalt laying etc.) requiring a cooled job site enclosure (portable if outdoors) and provide cooled liquids that would replace salts and liquids of the worker.
6. The worker's physician should provide, based upon the heat conditions of the job and medical condition (any heart, diabetes?) of the worker, a certificate to allow the worker to work on that position.

This is by no means a comprehensive listing, but a start.

SEE RESPONSE TO COMMENT 98905

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99077 Lee Anne Williams

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99077>

Heat illness prevention. Thank you for developing strong standards and regulations for addressing heat illness to protect farmworkers and other at-risk workers. Please include regulations that outline standards for access to water, breaks, training and air-conditioning in employer provided housing. As a

society we must provide standards to assure that Virginia is a safe place for workers, especially outdoor workers.

SEE RESPONSE TO COMMENT 98905

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99078 Shelia Porter <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99078>

Heat Stress. Workers who work outside or in non-airconditioned areas, should be better protected from heat stress. There are many reasons, including health issues, such as high blood pressure, heart disease, diabetes and other health issues, that can be further complicated by heat stress and visa versa. There are many regulations for safety reasons for other types of workers. There is no good reason to not have safety regulations for heat stress. Please protect our workers by setting up a standard of safety to protect our fellow Virginians from heat stress.

SEE RESPONSE TO COMMENT 98905

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99079 Patty McGrath <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99079>

Worker Protections against HEAT risks. I applaud your leadership in creating emergency COVID-19 standards.

Now, in recognition of the effects of climate change on our environment, I urge you to develop strong standards/regulations for addressing heat illness, most especially to protect farmworkers and other at-risk workers.

Regulations should provide minimum standards for access to water, breaks, training and air-conditioning in employer-provided housing. The farmworkers, who provide the food we eat, are especially vulnerable working in unhealthy and dangerous conditions.

Thank you for making our area safer and more just for all.

SEE RESPONSE TO COMMENT 98905

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99080 Hannah <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99080>

Please Protect Workers. Thank you for your leadership on creating the emergency COVID-19 standard. Please develop strong standards/regulations for addressing heat illness to protect farm workers and other at-risk workers. The regulation should outline standards for access to water, breaks, training and air-conditioning in employer-provided housing. Everyone deserves safe working conditions, and the state has a moral responsibility to ensure that employers prioritize the well-being of their employees.

SEE RESPONSE TO COMMENT 98905

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99081 Hillary Horn

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=99081>

Heat Stress Standard. Some years ago my husband was working on an outdoor event in Atlanta in the summer and suffered heat exhaustion. It was very scary and we were lucky because a colleague lived nearby and had a swimming pool. He was able to submerge and recover after rehydrating. Had it not been for these measures, his condition would likely have escalated to heat stroke and required medical attention.

Thousands of workers face heat related hazards every day in the Commonwealth and regulations are sorely needed to provide employers with guidelines for preventing serious heat related illnesses. Clearly this is an example of "an ounce of prevention is worth a pound of cure" and there will be huge cost savings when workers will be diverted from hospitalizations caused by heat.

Virginia has become a leader in workplace safety- please issue strong protections for workers who face increasing heat hazards as climate change is causing hotter dryer summers.

SEE RESPONSE TO COMMENT 98905

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## COMMENTS SUBMITTED DIRECT TO DOLI

2021-01 Jonathan R. Williams 6/2/2021 <https://www.doli.virginia.gov/wp-content/uploads/2021/07/VMRCA-Heat-Illness-Letter-6-2-21.pdf>

To Whom It May Concern: On behalf of the Virginia Ready Mixed Concrete Association and our 80 members involved in concrete production and supply in Virginia, we ask that the Commonwealth not pursue regulatory action regarding heat illness prevention.

Our industry takes the safety of our employees very seriously, and we pride ourselves on abiding by the standards set out by both the Virginia (VOSH) and Federal Occupational Safety & Health Administration (OSHA). We feel that additional regulation is unnecessary and could potentially make our work impracticable, as concrete is a perishable product and must be utilized within a certain time frame.

We would be willing to participate in any stakeholder group or study regarding these regulations.

SEE RESPONSE TO COMMENT 98905

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2021-02 Cressinda ("Chris") D. Schlag 6/3/2021 <https://www.doli.virginia.gov/wp-content/uploads/2021/07/Celanese-Heat-Illness-Standard-Comments-.pdf>

On behalf of Celanese Corporation (“Celanese”), we are submitting comments in response to the Virginia Department of Labor and Industry’s Safety and Health Codes Board (“Board’s”) Notice of Intended Regulatory Action (“NOIRA”) to adopt a regulation on Heat Illness Prevention. Celanese is deeply committed to the safety of its workers and particularly concerned with worker health, safety, and well-being during hot days in Virginia. Celanese therefore supports workplace safety policies that ensure feasible action, which are based on sound science, and are not unnecessarily complex or difficult to implement. With that said, Celanese supports the Board’s proposal to provide a standard on heat illness prevention, but does have concerns over the intended scope, feasibility, complexity, and ambiguities in the proposed regulatory language.

- The proposed Heat Illness Prevention Standard does not have a clear scope.

The Board’s rulemaking documents convey that it is considering a “comprehensive regulation to address employee exposure to heat illness hazards during indoor and outdoor work activities in all industries under the jurisdiction of the Virginia State Plan for occupational safety and health.” But the NOIRA and associated documents focus on heat illness issues associated with mainly outdoor work. To avoid confusion, the Board should ensure any regulation on heat illness prevention identifies the scope and application of the requirements. This can be accomplished through adding a “scope” or “applicability” section directly in the regulation text. As indoor and outdoor environments also pose different potential exposure to heat illness hazards, the Board should ensure the regulation clarifies when preventive measures may differ for indoor or outdoor environments. That said, because multiple definitions could impose unnecessarily burdensome obligations on employers or create confusion, the Board should ensure the scope and application of the regulation does not lead to employers having to develop or implement different “plans” or “programs” to manage heat illness issues.



- The proposed Heat Illness Prevention Standard should be based on sound scientific information and data.

The Board's rulemaking documents convey that the regulation will be set up to achieve the highest degree of health and safety protection for employees, while still heeding the latest available scientific data. In evaluating preventive measures that will be required by the standard, we urge you to rely on the best available scientific evidence on identification and prevention of heat illnesses. This approach would ensure both the most effective methods for identifying potential heat illness and appropriateness of controls. The Board should specifically consider information, data, and recommendations from the National Institute for Occupational Safety and Health, as well as research and data collected in public health studies and research.

- The proposed Heat Illness Prevention Standard requirements for written programs and controls should be flexible enough to accommodate incorporation into employers' already established programs or health and safety initiatives, without requiring new or separate program efforts.

Employers balance many competing regulatory compliance obligations, including the need for many programs, plans, policies, and procedures under federal, state, and local laws. The Board should therefore implement a regulation that achieves its goal of protecting worker health and safety while still being flexible enough to avoid imposing new or added obligations on employers to complete unnecessary duplication of effort purely administrative steps. Employers should, for example, be able to incorporate heat illness hazard identification processes and controls into their current health and safety programs and initiatives without having to develop separate or unique "programs" or written "plans." In addition, because the procedure for assessing heat hazards is more like a "process" than a plan, employers should be able to use their current hazard identification processes to identify, evaluate, and respond to heat illness hazards, rather than developing a new set of procedures or operations to deal specifically with heat illnesses.

- The proposed Heat Illness Prevention Standard should not unreasonably expand employers' obligations to control of employees' personal health and medical conditions, or require employers to make fit-for-duty determinations.

The Board's rulemaking documents contemplate specific rules for managing heat illness, including potential management of employees' personal risk factors that could contribute to heat illness and some considerations for return to work following an employee's exhibition of heat illness symptoms.

While employers need to be aware of the personal risk factors that can contribute to heat illness as well as the signs and symptoms of heat illness to ensure identification of heat illness occurrence and appropriate emergency response—any Heat Illness Standard adopted should not put employers in a position to act as a medical professional or advisor to employees. Employers should, as a result, not be responsible for managing their employees' personal health or medical conditions, counseling employees on personal risk factors, or deciding on when an employee should return to work following symptoms of heat illness. Rather, employers should only be responsible for educating workers on the risk factors that can contribute to heat illnesses and injuries, including personal risk factors, identifying potential heat illness symptoms, and ensuring appropriate emergency response. Further, employers should be able to rely on designated medical or healthcare professionals to determine when it is safe to bring an

employee back to work rather than rely on the employee's statements or assertions of ability to return following a heat illness incident.

- The proposed Heat Illness Prevention Standard should sufficiently direct employers on identification of heat illness hazards, occurrence of heat illness, and selection of appropriate controls, including engineering controls and personal protective equipment.

As the proposed Heat Illness Prevention Standard has applicability to diverse operations, the Board should ensure regulation text sufficiently details steps, analytical processes, and measures to identify and evaluate heat illness hazards. This would include detailed enough instructions to employers on measures for evaluating temperatures and relative humidity; temperatures and factors at which engineering controls are required, if feasible; and options for employers to use alternative controls like personal protective equipment ("PPE"). The regulation text should also have flexibility for employers in evaluating and responding to heat illness hazards so as to address their specific work operations and needs. For example, some employers may be able to use engineering controls, such as outside cooling units for some fixed outdoor environments, but be unable to use outside cooling units for mobile or constantly shifting outdoor work. Employers should also be allowed to follow recommendations on engineering controls, administrative controls, and required PPE from local public health authorities or employees' personal medical providers.

In addition, the Heat Illness Prevention Standard should identify appropriate methods for responding to and managing heat-related emergencies. More specifically, the standard should be clear on heat illness symptoms, when there has been a heat-related emergency, and the expected level of emergency response. To avoid confusion and also align with industry best practices, we recommend that the Board use federal OSHA's guidance for "Preparing for and Responding to Heat-Related Emergencies," which has a chart for employers to use advising on when a worker may be experiencing heat stroke, exhaustion, cramps, rash, or a medical emergency and directs on the appropriate emergency response, in development of the standard. See <https://www.osha.gov/heat/heatindex/heat-emergencies>. The standard should also detail objective steps employers should follow when removing or bringing an employee back to work that are not based on an employee's singular symptoms or consideration for the surrounding circumstances. Employers should not, for example, need to treat all potential symptoms of heat illness, such as vomiting or fatigue, as a heat illness case requiring emergency treatment or medical clearance for the employees to return to work. Rather, employers should be able to use the evidence reasonably and readily available along with present circumstances to take appropriate action to remove employees from work where necessary, ensure appropriate first aid or medical response as detailed in federal OSHA's guidance, and return the employees to work.

- The Board should ensure that employers are given time to comply with new requirements.

The Board's rulemaking documents convey the potential for a complex standard and regulations with many new regulatory compliance, including considerations for a written plan, development of new procedures, establishment of new or differing engineering controls, and extensive training for management and employees. It will take time for employers to review their compliance obligations under the standard, develop responsive programs, implement new or added controls, and develop and implement training. The Board should also know that training for an employer is unlikely to be as easy as developing a single PowerPoint presentation and rolling out to an entire employee population at a single time. Employers may, in fact, need to develop many training materials (e.g., supervisor level training,

affected employee training, training for specific hazards and controls, and awareness training) and roll out in phases or to multiple shifts and departments. The Board should therefore ensure employers have clear and adequate notice of the new requirements as well as time to implement (i.e., minimum of 90 days).

We appreciate the opportunity to provide this input and your thoughtful and serious consideration to our input and recommendations. To discuss this subject more, please contact me at your convenience.

SEE RESPONSE TO COMMENT 98905

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2021-03      Hobey Baughn 6/4/2021      <https://www.doli.virginia.gov/wp-content/uploads/2021/06/Virginia-Poultry-Federation-Comments-on-NOIRA-for-Heat-Standard-6-2021.pdf>

I am writing on behalf of Virginia Poultry Federation (VPF) concerning the Department of Labor and Industry's Notice of Intended Regulatory Action (NOIRA) regarding adoption of a heat illness prevention standard.

Virginia's largest agricultural sector, the poultry industry contributes about \$13 billion annually to the Virginia economy; supports the livelihood of some 1,100 family farms; and employs more than 15,000 people. VPF is the statewide trade association representing all sectors of the industry.

Protecting the health and safety of our workforce is a top priority of the poultry industry. The incidence of occupational injuries and illnesses within the poultry sector's slaughter and processing workforce has fallen by 86 percent over the last 25 years and continues to decline according to the 2019 Injury and Illness Report released last year by the Bureau of Labor Statistics. Among the preventative measures implemented by the industry are those which protect workers from heat illness. Poultry operations typically have specific, detailed heat stress management programs.

VPF discourages the Department from adopting a detailed standard ahead of any federal OSHA standard that might be developed. We have concerns about any Virginia-specific regulations that might conflict with any guidance from OSHA, creating a patchwork of state standards.

Virginia employers already have a general duty under the Occupational Safety and Health Act of 1970 to keep their workplaces free from recognized hazards, including heat stress, which cause or are likely to cause death or serious physical harm (the general duty clause). 29 U.S.C. § 654(a)(2) (see Va. Code § 40.1-51.1A- "It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title."). Each of these regulations and statutes is clear and enforceable.

If a Virginia employer failed to take action to protect its workers from heat illness, as recommended in various guidelines to protect workers from such hazards, DOLI's Occupational Safety and Health Division (VOSH) could cite the company for violation of the general duty clause or another existing regulation.

To the extent DOLI determines to move forward with a standard, VPF will be very interested in its content and will participate in the process by weighing in with comments and testimony. We do ask that you include a representative of the broader agricultural industry on any technical or regulatory advisory committees created for this action.

Please let me know if you have any questions or would like any additional information. Thank you for your consideration of our views.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

With regard to the commenter's concern about conflict with a potential OSHA standard adopted in the future, if federal OSHA adopts a comprehensive Heat Illness Prevention Standard, the Board will meet to determine whether it wants to retain any unique Virginia standard or adopt the new OSHA standard.

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2021-04      Gordon Dixon      [https://www.doli.virginia.gov/wp-content/uploads/2021/06/NORIA.VTCA\\_Heat-Illness-2021.pdf](https://www.doli.virginia.gov/wp-content/uploads/2021/06/NORIA.VTCA_Heat-Illness-2021.pdf)

The Virginia Transportation Construction Alliance represents more than 300 transportation contractor, aggregate producers, consultant engineers, suppliers and service providers who design, build, and maintain Virginia's transportation network. On behalf of our members, we are pleased to submit comments related the Virginia Safety and Health Codes Board Notice of Intended Regulatory Action (NOIRA) to initiate the regulatory process to a adopt regulation applicable to Heat Illness Prevention.

VTCA's members place protection of their employees, our most valuable resource, as a top priority through extensive safety programs, requirements, and adherence to proven existing regulatory standards. To successfully achieve the Board's objective to reduce/eliminate employee injuries, illnesses, and fatalities due to heat illnesses we strongly recommend that: the proposed regulations be specific and applicable to the covered industry as well as specific work activities. Road construction and the aggregate mining industry consist of specialized work environments. Providing effective protection of our workers require the application of preventive measures tailored to the specific activities found on our jobsites.

new standards be based on existing, proven protection standards in the road construction industry.

final regulations should be based on sound scientific information, data and real-life experience

safety is a heavily regulated element within the highway/road construction industry and the aggregate mining industry. New regulations intended to address heat exposure risks should be consistent with and complement existing federal, state, and local regulatory requirements.

Request for Participation on Regulatory Advisory Panel.

Given the breadth and importance of our industry to Virginia's economy and the direct impact this Rulemaking will have on our member's business and operations, we ask that VTCA be considered for participation on the Regulatory Advisory Panel that DOLI plans to form.

2021-05      Brandon Robinson      6/8/2021      <https://www.doli.virginia.gov/wp-content/uploads/2021/06/AGCVA-comments-on-Heat-Illness-Prevention-Standard-16-VAC-25-%E2%80%91-210.pdf>

On behalf of the Associated General Contractors of Virginia (AGCVA), Virginia's largest and most influential construction trade organization, we submit the following comments on NOIRA on Heat Illness Prevention Standard [16 VAC 25 - 210], which will make Virginia an outlier state with regards to a standard above and beyond current federal Occupational Safety and Health Administration (OSHA) regulations.

The construction industry takes the safety and health of its workers seriously. These businesses use guidance from OSHA to develop safety protocols and procedures with regards to the prevention of heat related illnesses (<https://www.osha.gov/heat/heat-index>). Currently, employers can use this federal guidance to create protocols that address the specific threats given location, job type, season, and other unique factors to protect employees. AGCVA has concerns that a one-size-fits-all approach will harm employer's ability to specifically develop regulations to protect employees from heat related illnesses.

Further, AGCVA has concerns about how this standard aligns with current OSHA enforcement of employee safety. Through its general duty clause, OSHA can cite employers for not protecting workers from extreme heat. As evidenced by the tens of thousands of annual inspections and millions paid in penalties, OSHA uses this authority to protect workers. Will employers in Virginia be subjected to a double standard of federal and state enforcement? Will the regulations be consistent, or will businesses be required to interpret and comply with potentially conflicting regulations?

AGCVA and the members we represent are an industry with a concerted effort focused on the safety and health of its workforce. From owners to those swinging a hammer on a jobsite, we are a community focused on contributing to building Virginia, making a good living, and protecting our family and community. We appreciate the opportunity to submit these comments and would welcome any follow-up questions.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

With regard to the commenter's concern about Virginia employers being subjected to a double standard of federal and state enforcement of regulations:

As noted by the commenter, OSHA has to use the General Duty Clause because it has not Heat Illness Prevention Standard that can be consistently applied across the country and even within an individual state. The General Duty Clause is used to enforce national consensus standards and employer's own safety and health rules that address heat illness prevention, so employers are not provided clear legal

requirements with which they must comply. Should the Board adopt a Heat Illness Prevention Standard, employers would be clear about such requirements in Virginia.

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2021-06 Kyle J. Shreve 6/9/2021 <https://www.doli.virginia.gov/wp-content/uploads/2021/06/VAC-Comments-Re-Heat-Illness-NOIRA-6-9-21.pdf>

The Virginia Agribusiness Council appreciates this opportunity to comment on the notice of intended regulatory action regarding a possible heat illness prevention standard. The Council is a Richmond-based trade association representing the agriculture and forestry industries. We believe a standard is not necessary at this time and feel the Department already has the necessary authority to protect workers from unsafe working environments in which heat illness and stress may be a threat. Every agribusiness sees the value in their workforce and the need to provide adequate resources to keep them healthy and productive. The specified nature of agribusinesses needs to be taken into account and so the Council has asked to participate in the planned Regulatory Advisory Panel. Given the focus of agriculture in the agency's background document, it is imperative that both the agriculture and the forestry industries are represented in this workgroup.

In the Council's opinion, the Department's background document has not made the case that the heat illness standard is necessary to protect the workforce. The Department cites only 11 workplace investigations over a 22-year period in Virginia. However, no outcome data is presented on those investigations or whether employer negligence was the cause of those incidents. Further, the agency cites data regarding both work-related and non-work-related heat illness injuries and fatalities. Additionally, the Council disagrees with the Department's assumption of undercounting in Bureau of Labor Statistics data regarding agricultural injuries and fatalities as cited in footnote 3 of the background document. Small operations with fewer employees tend to have less land and easier access to shade and water for their employees.

Decisions by the Board to move forward with a standard should be made based on verifiable workplace-related data and not unprovable assumptions.

The Council notes that there is already a potable water requirement and the Department fails to give adequate reason as to why the "general duty" clause of the federal Occupational Safety and Health Act of 1970, requiring the employer to provide a safe working environment, is not a sufficient enforcement mechanism to properly protect employees. Given the relatively few workplace investigations in Virginia over the number of years provided, the Council believes the "general duty" clause should be sufficient for VOSH to protect workers from unsafe working environments. The number of these investigations as compared with other states or other workplace hazards would seem to indicate a specific standard is not necessary. As noted by the Department, the Occupational Safety and Health Administration has not adopted a national standard and we would urge the Board not to adopt a Virginia specific regulation until one is adopted at the federal level.

If the Safety and Health Codes Board chooses to move forward with a standard, the regulation should allow farms and agribusinesses ample time to comply, provide any required training to their employees, and provide reasonable flexibility for compliance.

Heat illness is a serious concern for all agriculture harvesting – and it is taken seriously by farmers and agribusinesses. Many farms and agribusinesses employ family members, neighbors, and friends, and often are worked by the farm owners themselves. The industry largely follows the NIOSH guidelines for the prevention of heat illness and provide training for their permanent employees and seasonal workers. A renewed education effort surrounding OSHA’s Heat Illness Prevention Campaign and build on the efforts already being conducted by the industry. Producers and the agribusinesses they supply often work off these guidelines and create training and standards that are used nationally and internationally throughout the supply chain. The agriculture industry is seasonal in nature and relies on timing to complete planting and harvesting of their crop. If the Board moves forward with a standard, we urge the Board to provide needed flexibility for compliance and the needed time to adjust current training to fit any new requirements.

Thank you for the opportunity to file these comments. It is our hope that the board will consider our suggestions and weigh both stakeholder feedback and relevant verifiable data to determine if current regulations are sufficient or if a heat illness prevention standard is necessary to prevent heat-related-injuries. As the process moves forward, we request a representative from the Council as well as representatives from the Virginia Farm Bureau and Virginia Forestry Association be included in any workgroup or panel the Department forms, to roundly represent the agriculture, agribusiness, and forestry industries – the largest combined industry sector in the Commonwealth.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

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2021-07      Laurie Aldrich    6/9/2021      <https://www.doli.virginia.gov/wp-content/uploads/2021/06/VWA-VVA-Comments-Re-Heat-Illness-Standards.pdf>

On behalf of the Virginia Wine Industry, the Virginia Wineries Association and the Virginia Vineyards Association are writing to provide comment on the notice of intended regulatory action regarding a possible heat illness prevention standard. Our associations represent the winery, cidery, and vineyard industries in the Commonwealth. We do not believe it has been demonstrated that a standard is necessary with the use of the industry’s best practices and the Department’s authority under the “general duty” clause to protect workers from unsafe working environments in which heat illness and stress may be a threat. The industry like so many others, recognize the value in their workforce and the need to provide adequate resources to keep them healthy and productive.

In our opinion, the Department’s background document has not made the case that the heat illness standard is necessary. The Department cites only 11 workplace investigations over a 22-year period in Virginia. However, no outcome data is presented on those investigations or whether employer negligence was the cause of those incidents. Additionally, we take issue with the Department making assumptions of undercounting in Bureau of Labor Statistics data regarding agricultural injuries and fatalities as cited in footnote 3 of the agencies background document. The citation provided is from a petition to the Occupational Safety and Health Administration. Small operations, like ours, with fewer employees tend to have less land to cover and more access to shade and water.

Decisions by the Board should be made based on the data available, and not unverifiable assumptions of a greater danger than exists.

Virginia wineries and vineyards take heat illness very seriously. Many wineries and vineyards employ family members, neighbors, and friends, and often are worked by the owners themselves. A healthy work force means a productive harvest. Here are some of the best practices currently being applied by our industry:

1. Water and cold drinks are always readily available and near workers in coolers. Wet rags are also kept in coolers to be used by workers around necks and under hats.
2. Regular breaks are mandated for the crew (ranging from hourly to every 2 hours depending on the temperature)
3. Shade is provided for the crew during these breaks or as needed, either in an appointed building, cluster of trees, canopy tent on the UTV, or a tent.
4. Lightweight, light colored t-shirts are often provided to wear.
5. A "preshift" meeting is held with the crew, discussing the predicted weather for the day, reminding them to drink water, wear sunblock, and to take breaks as needed. Conversations are translated into Spanish by the crew leader if needed.
6. One person (usually the crew leader) is made responsible for checking with all crew members to make sure they are staying hydrated, not showing any signs of distress, and to force breaks if needed. Also, the crew leader is responsible for determining the lunch stop and when the crew needs to stop for the day based on temperatures and humidity.

The industry follows the NIOSH guidelines for the prevention of heat illness and provides training for their permanent employees and seasonal workers. As noted by the Department, the Occupational Safety and Health Administration has not adopted a national standard and we would urge the Board not to adopt a Virginia-specific regulation until one is adopted at the federal level.

The wine grape industry is seasonal in nature and relies on timing and weather to complete planting, pruning, harvesting, and crushing of their crop. The requirements found in HB 805 of the 2020 General Assembly session were very specific regardless of circumstances or operation and would have created a statutory framework which would have been difficult for our diversified industry to comply.

The Department fails to give adequate reason as to why the "general duty" clause of the federal Occupational Safety and Health Act of 1970 requiring the employer to provide a safe working environment along with the potable water requirement, are not sufficient enforcement mechanisms to properly protect employees. Given the relatively few workplace investigations in Virginia over the number of years provided, we believe the "general duty" clause should be sufficient for VOSH to protect workers from unsafe working environments.

If the Safety and Health Codes Board chooses to move forward with a standard, the specific nature of our industry and other agriculture entities need to be considered therefore, we respectfully request the Virginia Agribusiness Council and the Virginia Farm Bureau be allotted various representatives on the



Regulatory Advisory Panel. Additionally, the regulation should allow ample time to comply, provide any required training to their employees, and provide reasonable flexibility for compliance.

Should any wine or vineyard specific questions arise, we will gladly serve as a resource. Thank you for this opportunity to comment.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

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2021-08 Carol Parker 6/9/2021 <https://www.doli.virginia.gov/wp-content/uploads/2021/06/Carol-Parker-Public-Comment-on-Heat-Illness-NOIRA-6.9.2021.pdf>

I am an occupational health specialist retired from the Federal EPA in the Office Pesticide Programs with over 30 years of experience in regulations and programs developed to protect pesticide handlers and farmworkers. I urge you to implement a Health Illness Prevention Regulation, 16 VAC 25-210.

There is no shortage of support for regulations to insure workers are protected from heat related illness, injury and death. Despite large communication and education programs by OSHA and related to preventing health stress dating back to the 90s by both EPA and OSHA, there still have been 69,374 workers seriously injured and 783 workers who have died from heat stress during that period. This is not enough. Agricultural workers who often do long hours of strenuous work in the heat and humidity are particularly susceptible. These are the people who feed our nation and should be protected.

As you have outlined in your comprehensive and thoughtful regulatory proposal, a heat illness prevention program should include the basics of water, shade breaks and training on what to do in an emergency. Training should be for labor contractors and farm managers, as well as for workers, so the correct measures are done to both prevent and treat heat related illness. CA, WA and MN already have these standards.

EPA already requires agricultural workers and pesticide handlers to be trained by their employers on preventing pesticide related illnesses and what to do in case of an emergency. Heat stress reduction training could be piggybacked on these pesticide safety training requirements. The EPA Agricultural Worker Protection Standard does not exempt small farms (like the OSHA exemption). Training programs are already being done successfully by several farmworker education programs partnering with employers to provide the training (like the Association of Farmworker Opportunity Programs).

On final thought, I think there should be additional research into the impact of piece work and the lack of incentive to stop work to drink water or take rest breaks. Making rest/shade/water breaks mandatory under certain heat conditions should be investigated.

Thank you for taking on this serious issue. I urge that you move forward to protect workers from heat related illness.

SEE RESPONSE TO COMMENT 98984

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2021-09 Wayne Pryor 6/9/2021 <https://www.doli.virginia.gov/wp-content/uploads/2021/06/Comments-of-the-Virginia-Farm-Bureau-Federation-Regarding-a-Potential-He....pdf>

The Virginia Farm Bureau Federation (VFBF) appreciates the opportunity to provide comments on the notice of intended regulatory action regarding a possible statewide heat illness prevention standard. Virginia Farm Bureau is the largest agricultural advocacy organization in the Commonwealth, and represents 35,000+ farmers engaged in nearly every area of agriculture, livestock, and forestry production.

Regardless of farm size, location, or production focus, heat illness prevention is a serious issue, and it is a priority for farms and farm managers. The industry largely follows the NIOSH & OSHA guidelines for the prevention of heat illness and stress, and provide training for both permanent and seasonal workers. Additionally, industry groups have developed guidelines, training, tools, and standards that are used nationally and internationally throughout the supply chain.

Millions of U.S. workers, across dozens of industries, are exposed to heat in their workplaces. Recognizing this diversity and the regulatory challenge it presents, OSHA does not have a specific standard that covers working in hot environments, but instead relies of a General Duty Clause (Section 5[a][1] of the Occupational Safety and Health Act of 1970) that requires employers to provide a place of employment that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.” A workplace free from recognized hazards includes heat illness, and the OSHA Technical Manual Chapter on Heat Stress establishes that OSHA uses WBGT to determine if a heat hazard was present.

Given the general duty clause in place, and the number of federal and industry-driven heat illness best practices, we believe an additional state standard is not necessary to protect workers from unsafe working environments in which heat illness and stress may be a threat.

Thank you for the opportunity to file these comments. It is our hope that the board will consider our suggestions and weigh both stakeholder feedback and relevant data from verifiable sources to determine if current regulations are sufficient, or if a heat illness prevention standard is necessary to prevent heat-related-injuries. As the process moves forward, we request a representative from Virginia Farm Bureau as well as representatives from the Virginia Agribusiness Council and Virginia Forestry Association be included in any workgroup or panel the Department forms, to roundly represent the agriculture, agribusiness, and forestry industries – the largest combined industry sector in the Commonwealth.

SEE RESPONSE TO COMMENT 98905

SEE RESPONSE TO COMMENT 98984

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2021-10 Steve Akridge <https://www.doli.virginia.gov/wp-content/uploads/2021/06/Virginia-Automotive-Association-Letter-to-DOLI-June-2021.pdf>

NOIRA (Notice of Intended Regulatory Action) for the Heat Illness Prevention Standard, 16VAC25-210

As the auto repair and tire industry are specifically listed, we appreciate the opportunity to respond to the proposed regulations with our comments below in red. Our members include retail tire and auto service facilities, which most offer an air conditioned showroom for customers and sales staff, and service bays that are either laid out back to back and have cross wind breezes, and/or offer fans for air flow ventilation. Most of these are small business owners with very limited staff.

Our vendors have facilities that also offer air conditioned areas for customers and sales staff, and warehouses

with ventilation.

Town Hall Agency Background Document Form: TH-01 Pages 5-6

The VOSH Program intends to conduct a review of existing federal and state regulations as well as national consensus standards and guidelines designed to protect employees from heat illness hazards. The proposal would address indoor and outdoor heat illness hazards experienced by similarly situated employees in all industries covered by VOSH jurisdiction.

Issues to be analyzed for possible inclusion in any proposed regulation include, but are not limited to:

- o Definitions of appropriate terms- need more clarity; some of the terms seem vague.
- o Employer requirement to monitor indoor and outdoor temperatures-could be done- hang a thermometer in the shop or warehouse area; but is it necessary?
- o Temperature action levels tied to the type of clothing being worn by the employee-our industry needs specific uniforms to perform automotive related jobs
- o Acclimatization procedures- need more clarity; it is difficult to define how employees are expected to adjust when the temperature rises.
- o Access to potable drinking water, and electrolytes as needed-access to water is fine; electrolytes should not be required. Every business should not be expected to keep Gatoraid, etc. on site.
- o Cool down rest periods with access to shade or a climate controlled environment at certain temperature action levels-cool down rest periods are not realistic. The shop buildings in our industry offers shade, and our employees have access to air conditioned showrooms/breakrooms should they need it.
- o Prohibiting employees from being ordered back to work until any signs or symptoms of heat illness have abated-this is just common sense
- o Additional communication, observation, monitoring requirements, first aid, and emergency response requirements at certain temperature trigger levels- need more clarity; doesn't sound practical. Basic first aid is already available.
- o An exception to the requirements of the regulation for "incidental exposure" which exists when an employee is not required to perform a work activity outdoors for more than 15 minutes in any 60 minute period-having to give a 15 minute break every hour is just not practical. Our shops' ability to get their work done, and return customer's vehicles in a timely manner would be seriously impacted by this, including our employees' ability to earn wages with their skills.

o Written heat illness prevention plan-more unnecessary paperwork for small business owners trying to keep up with regulations previously imposed.

o Employee and supervisory training on heat illness hazards and preventative measures in a language the employee and supervisor understands- more unnecessary paperwork for small business owners trying to keep up with regulations previously imposed.

Heat illness factors to be considered in any proposed regulation include external risk factors, internal risk factors and medical conditions.

Heat-related illness external risk factors generally include, but are not limited to:

o High temperature and humidity- agreed

o Direct sun exposure/no shade-businesses in our industry provide shade

o Radiant heat from the sun or other objects-not applicable to most businesses in our industry

o Limited air movement- most shops are laid out for cross breezes in their service bays; or most provide fans for air movement and ventilation.

o Physical exertion-varying degrees in our industry

o Personal Protective Equipment use (e.g., bulky protective clothing, respirators, etc.)-rarely if ever used in our industry

Heat-related illness internal risk factors generally include, but are not limited to:

o Personal factors of the exposed employee, such as medical conditions, physical fitness, age, sleep, etc.- how is a business owner expected to know this- invasion of privacy if you ask

o Acclimatization-too vague

o Medications (prescription and over the counter)- how is a business owner expected to know this- invasion of privacy if you ask

o Level of hydration, including the presence of caffeine and alcohol- how is a business owner expected to know this- invasion of privacy if you ask

Medical conditions that can contribute include, but are not limited to:

o Diabetes- how is a business owner expected to know this- invasion of privacy if you ask

o Heart disease and high blood pressure- how is a business owner expected to know this- invasion of privacy if you ask

o Obesity- how is a business owner expected to know this- invasion of privacy if you ask

o Thyroid disease- how is a business owner expected to know this- invasion of privacy if you ask

o Infections- how is a business owner expected to know this- invasion of privacy if you ask

o Gastro-intestinal disease- how is a business owner expected to know this- invasion of privacy if you ask

- o Pregnancy- how is a business owner expected to know this- invasion of privacy if you ask
- o Skin problems, including sunburn- how is a business owner expected to know this- invasion of privacy if you ask

Some of the symptoms of heat-related illnesses are non-specific. This means that when a worker is performing physical labor in a warm environment, any unusual symptom can be a sign of overheating. Agreed- must use common sense to be on the look for this.

In closing, the solutions to the heat related issues you have raised, are not a “one size fits all”. In our industry, we have already addressed heat issues; our employees are highly skilled and are well taken care of. We feel it is unfair to include our industry in this category.

Consider the following:

- ☑ The layout of our buildings offers shade.
- ☑ The work area has air ventilation by fans and cross breezes.
- ☑ Our employees have access to air conditioned areas should they need it, and they are encouraged to take a break in this area should they not be feeling well.
- ☑ Water is available to employees.

Because of these reasons, we respectfully request you exempt the automobile repair and tire repair/ replacement industry from these regulations. Thank you for your consideration.

SEE RESPONSE TO COMMENT 98905