



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

**C. Ray Davenport**  
COMMISSIONER

Main Street Centre  
600 East Main Street, Suite 207  
Richmond, Virginia 23219  
PHONE (804) 371-2327  
FAX (804) 371-6524

**DRAFT AGENDA**

**SAFETY AND HEALTH CODES BOARD MEETING**

**In person location:**

**Fairfield Public Library  
1401 N. Laburnum Avenue  
Richmond, Virginia 23223**

**Virtual Access for public participation:**

**\*\*\*\*Refer to the Third and Fourth Pages of Agenda for Instructions on Registering to Make Public Comment and Meeting Access Information\*\*\*\***

**December 3, 2021  
10:00 AM**

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Board Meetings or Public Hearings\*:  
November 11, 2020  
January 5, 2021\*  
January 12, 2021  
January 13, 2021  
June 29, 2021  
August 5, 2021\*  
August 26, 2021
4. Opportunity for the Public to Address the Board on issues pending before the Board today, as well as any other topics that may be of concern to the Board and within its scope of authority.

*This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.*

5. Old Business

6. New Business

a) **TH-02 16 VAC 25-210; Proposed Regulation for Heat Illness Prevention**

*Presenter – Jay Withrow*

b) **Notice of Periodic Review for 2021**

1. **16 VAC 25-20** Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees
2. **16 VAC 25-30** Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporation by Reference 40 CFR 61.140 through 61.156
3. **16 VAC 25-40** Standard for Boiler and Pressure Vessel Operator Certification
4. **16 VAC 25-70** Virginia Confined Space Standard for the Telecommunications Industry
5. **16 VAC 25-97** Reverse Signal Procedures – General Industry – Vehicles/Equipment Not Covered by Existing Standards
6. **16 VAC 25-160** Construction Industry Standard for Sanitation

*Presenter – Princy Doss*

7. Items of Interest from the Department of Labor and Industry

8. Items of Interest from Members of the Board

9. Meeting Adjournment

**PUBLIC PARTICIPATION**

This meeting will be held *in person with the option for the public to attend virtually*.

Members of the public may attend in person or listen to the meeting via the Cisco WebEx platform by using the weblink, access code, and password below, or audio conference only by using the telephone numbers and access code below. Electronic participation capacity is limited and is on a first come, first serve basis due to the capacity of CISCO WebEx technology.

**Agency staff will be following the guidelines set forth by the Fairfield Public Library. As such, a brief health self-screening is required for entry to the library. Face coverings are required for all customers five and older, in all areas of the library, including meeting and study rooms.** In addition, the room will be subject to an occupancy limit of 25 people. Entrance will be on a first come, first serve basis.

**If you wish to make an Oral Public Comment during the “Opportunity for the Public to Address the Board” period of this meeting, you must follow the instructions below:**

- Oral public comments will be received from those persons who have submitted an email to **Princy.Doss@doli.virginia.gov** no later than **12:00 PM (NOON)** on **December 2, 2021**, indicating that they wish to offer either in person or electronic oral comments. Comments may be offered by these individuals when their name is announced by Ms. Doss. Oral comments will be **restricted to 5 minutes** each.
- **For oral comments received electronically:**
  - When logging onto WebEx each person **must provide their full name** during the registration process upon entering the meeting. Do not use the default username as it is imperative that the meeting organizer be able to determine who is in attendance based on their registration name. Failure to follow these specific registration instructions will restrict your ability to participate with oral remarks.
  - If you wish to make an oral comment and will be utilizing the “audio conference only” option to witness the hearing, **you must provide the phone number you will be calling in from in your email to Ms. Doss** so that the administrator will know whom to unmute at the appropriate time.
  - Other important information:
    - All parties will be muted until Ms. Doss announces the name of the person who is next to provide an oral comment.
    - All public participation connections will be muted following the public comment periods.
    - Please login from a location without background noise.

Individuals who offer both in person and virtual comments during the Safety and Health Codes Board Meeting on December 3, 2021 are encouraged to submit a written version of any comments by email to **Princy.Doss@doli.virginia.gov** no later than **5:00 PM** on **December 6, 2021**.

**INSTRUCTIONS FOR ATTENDING THE SHCB MEETING VIRTUALLY:**

**Event address for attendee:**

<https://covaconf.webex.com/covaconf/onstage/g.php?MTID=e3015c7d0b47370f0087bdc2f1ec726f7>

**Event number (access code):** 2427 145 9782

**Event password:** DOLI2021

**To join the audio conference only:**

**Call this number:** 1-517-466-2023 **or US Toll Free** 1-866-692-4530

**Enter this Access Code:** 2427 145 9782

Should any interruption of the electronic broadcast of this meeting occur, please call 804-371-2318 or email **Brian.Jaffe@doli.virginia.gov** to notify the agency. Should any interruption of the electronic broadcast of this meeting occur, the meeting will continue without suspension of the meeting. We will take all possible action to restore public access but cannot guarantee uninterrupted broadcast of the meeting.

FOIA Council Electronic Meetings Public Comment form for submitting feedback on this electronic meeting may be accessed at:

<http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>

**DRAFT**

SAFETY AND HEALTH CODES BOARD  
ELECTRONIC MEETING MINUTES  
Thursday, November 12, 2020

On November 12, 2020, the Safety and Health Codes Board (“Board”) held an electronic meeting pursuant to the budget language as amended by Chapter 1289 of the 2020 Acts of Assembly that states:

Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, the Board held an electronic meeting utilizing **WebEx**.

Notice of the public hearing was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to witness the meeting remotely via **WebEx**. Notice was provided on the Virginia Regulatory Townhall’s website here: <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31594>.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members *physically* assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the meeting.

A recording of the meeting in its entirety is available here: <https://www.doli.virginia.gov/wp-content/uploads/2020/11/SHCB-Regular-Board-meeting-20201112-1500-1.mp4>

**BOARD MEMBERS  
PARTIPATING:**

Mr. Patrick Bolling  
Mr. Jerome Brooks  
Mr. Louis J. Cernak, Jr.  
Mr. John Fulton  
Mr. Phil Glaize  
Ms. Anna Jolly  
Mr. Courtney Malveaux  
Mr. Travis Parsons  
Mr. Kenneth Richardson, II  
Ms. Milagro Rodriguez  
Mr. Charles Stiff, Interim Chair  
Mr. Thomas Thurston

**BOARD MEMBERS ABSENT:** Ms. Tina Hoover  
Mr. Michael Luce

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, & OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director of Consultation  
Ms. Christine Childress, information Security Officer  
Mr. Richard White, IT Project Manager  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Ms. Cristin Bernhardt, Staff Attorney

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic  
Court Reporters

## CALL TO ORDER

Chair Chuck Stiff called the meeting to order at 10:00AM. A quorum was present. Chair Stiff made opening remarks informing the public that this virtual meeting was being held electronically pursuant to the budget language as amended by Chapter 1289 of the 2020 Acts of Assembly.

## APPROVAL OF AGENDA

Chair Stiff asked the Board if there was any discussion on the agenda. There was none. Chair Stiff asked if there was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Approval of Agenda	Yea	Nay	Abstain	Absent	Other
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12			2	

## APPROVAL OF MEETING MINUTES:

Chair Stiff then called for discussion and motion for approval of the following minutes:

- March 5, 2020 Regular Board Meeting
- June 24, 2020 Emergency Electronic Meeting
- June 29, 2020 Continued Emergency Electronic Meeting
- July 7, 2020 Continued Emergency Electronic Meeting
- July 15, 2020 Continued Emergency Electronic Meeting
- September 30, 2020 Electronic Public Hearing

Chair Stiff asked the Board if there was any discussion on the March 5, 2020 minutes. There was none. Chair Stiff asked if there was a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of March 5, 2020 Minutes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Chair Stiff asked the Board if there was any discussion on the June 24, 2020 minutes. There was none. Chair Stiff asked if there was a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of June 24, 2020 Minutes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	



Chair Stiff asked the Board if there was any discussion on the June 29, 2020 minutes. There was none. Chair Stiff asked if there was a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of June 29, 2020 Minutes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Chair Stiff asked the Board if there was any discussion on the July 7, 2020 minutes. There was none. Chair Stiff asked if there was a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of July 7, 2020 Minutes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Chair Stiff asked the Board if there was any discussion on the July 15, 2020 minutes. There was none. Chair Stiff asked if there was a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of July 15, 2020 Minutes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Chair Stiff asked the Board if there was any discussion on the September 30, 2020 public hearing minutes. There was none. Chair Stiff asked if there was a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of Sept 30, 2020 Minutes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

## ELECTION OF OFFICERS

Chair Stiff called for nominations for the next Chair to serve for one year. Board member Parsons nominated Milly Rodriguez to serve as the next Chair. Ms. Rodriguez accepted the nomination. Chair Stiff asked for a motion to elect Ms. Rodriguez Chair. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Motion to Elect Ms. Rodriguez Chair of the Board</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez				1	Connection problem
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>			<b>3</b>	

Chair Stiff called for nominations for the next Vice Chair to serve for one year. Board member Malveaux nominated Chuck Stiff to serve as the next Vice Chair. Chair Stiff asked for other nominations. There were none. Chair Stiff then had a roll call vote. The motion carried.

<b>Motion to Elect Mr. Stiff Vice Chair of the Board</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	Connection problem
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff			1		
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>10</b>		<b>1</b>	<b>3</b>	

Chair Stiff then asked Board member Rodriguez if she wanted to take over the meeting. Board member Rodriguez declined and asked that Chair Stiff continue the meeting if it was agreeable to him.

**OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD**

Chair Stiff called the next item on the agenda, which was the opportunity for the public to address the Board. No one signed up to speak so Chair Stiff moved onto the next item on the agenda.

**OLD BUSINESS**

There was no old business. Chair Stiff moved onto the next item on the agenda.

**NEW BUSINESS**

The first item on the agenda for old business was Occupational Exposure to Beryllium for General Industry, §1910.1024. Chair Stiff recognized Ronald Graham from the Department to present the briefing package.

Mr. Graham presented the summary of the revisions to 1910.1024 that Federal OSHA was making with this final rule. Mr. Graham then made the recommendation to adopt the revisions found in Federal OSHA’s final rule. Chair Stiff asked if there was discussion on the matter. There was none. Chair Stiff asked if there was a motion to accept the recommendation of the Department. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Motion to Accept Dept. recommendation</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff					
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Chair Stiff asked for the next item on the agenda, Occupational Exposure to Beryllium for Construction and Shipyards, §§1915.1024 and 1926.1024. Chair Stiff recognized Ronald Graham from the Department again.

Mr. Graham presented the summary of the revisions to §§1915.1024 and 1926.1024 that Federal OSHA was making with this final rule. Mr. Graham then made the recommendation to adopt the revisions found in Federal OSHA’s final rule. Chair Stiff asked if there was discussion on the matter. There was none. Chair Stiff asked if there was a motion to accept the recommendation of the Department. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Motion to Accept Dept. recommendation</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff					
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Chair Stiff asked for the next item on the agenda, Cranes and Derricks in Construction: §§1926.1400 and 1926.1442. Chair Stiff recognized Marta Fernandes from the Department.

Ms. Fernandes presented the summary of the revisions to §§1926.1400 and 1926.1442 that Federal OSHA was making with this final rule. Ms. Fernandes then made the recommendation to adopt the revisions found in Federal OSHA’s final rule. Chair Stiff asked if there was discussion on the matter. There was none. Chair Stiff asked if there was a motion to accept the recommendation of the Department. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Motion to Accept Dept. recommendation</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				

Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff					
Mr. Thomas A. Thurston	1				
TOTALS	12			2	

Chair Stiff asked for the next item on the agenda, Results of Periodic Review for 2020. Chair Stiff recognized Princy Doss from the Department.

Ms. Doss presented the Department's review of 16 VAC 25-11, Public Participation Guidelines and 16 VAC 25-180, Virginia Field Sanitation Standard, Agriculture. Ms. Doss then made the Department's recommendation to retain the regulations "as is." Chair Stiff asked if there was discussion on the matter. There was none. Chair Stiff asked if there was a motion to accept the recommendation of the Department. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Motion to Accept Dept. recommendation</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff					
Mr. Thomas A. Thurston	1				
TOTALS	12			2	

Chair Stiff then called for a recess from 11:05 to 11:15AM.

Chair Stiff reconvened the meeting at 11:15AM and recognized Jay Withrow from the Department to make a presentation regarding comments received from the public and the

Department's response on the Proposed Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID.

First, Mr. Withrow gave an update on VOSH activities regarding COVID. Then Mr. Withrow gave an overview of the 993 written comments received on Virginia Regulatory Townhall, 33 comments sent directly to the Department and 29 oral comments received during the public hearing.

Board member Malveaux requested statistics from the Department in an effort to determine whether the standard is having an effect.

### **Items of Interest from the Department of Labor and Industry**

Chair Stiff asked for items of interest from the Department of Labor and Industry. Chair Stiff recognized Commissioner Davenport.

Commissioner Davenport discussed the status of the notices of appeal that have been received by the Department. Chair Stiff then recognized Josh Laws from the Attorney General's office. Mr. Laws gave an update on how the litigation was proceeding and gave information on when the Attorney General's office would be filing its response on behalf of the Board and the Agency.

Chair Stiff then recognized Commissioner Davenport again. Commissioner Davenport gave an update on the request for funding for 12 unfunded CSHO positions. It was in the budget; however, this was prior to COVID and the positions were removed at the reconvened session in April 2020.

### **Items of Interest from Members of the Board**

Chair Stiff then asked for items of interest from the Members of the Board. Chair Stiff recognized Board member Parsons. Board member Parsons asked about the status of the heat illness NOIRA that had been put forth by the Board prior to the pandemic.

Mr. Withrow stated the NOIRA was still in the Secretary's office for review and stated nothing could be done by the Board until that review was completed. Mr. Withrow also discussed a letter received by the Department from the Legal Aid Justice Society inquiring about the heat illness standard. That letter was sent to the Secretary's office as well.

Chair Stiff then recognized Board member Jolly. Ms. Jolly congratulated the Department for its hard work.

Ms. Jolly then made remarks of remembrance for Dr. Jan Thomas. Dr. Thomas passed away in August of 2020. Ms. Jolly discussed Dr. Thomas' contributions to occupational safety and health.

Mr. Withrow then made remarks about Dr. Thomas as well.

### **Meeting Adjournment**

Chair Stiff expressed his thanks to everyone for all the work that done this past year. Chair Stiff asked for a motion to adjourn and a second. Chair Stiff adjourned the meeting at 1:03PM.



**DRAFT**  
**SAFETY AND HEALTH CODES BOARD**  
**PUBLIC HEARING MEETING MINUTES**  
**Tuesday, January 5, 2021**

This public hearing was held for the purpose of consideration of 16VAC25-220, Proposed Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a).

The Safety and Health Codes Board (“Board”) held an electronic meeting pursuant to the budget language as amended by Chapter 1289 of the 2020 Acts of Assembly that states:

Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, the Board held an electronic emergency meeting utilizing **WebEx**.

Notice of the public hearing was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to witness the meeting remotely via WebEx. Notice of this public hearing was published in the Richmond Times Dispatch on December 21, 2020. Notice of this hearing was also published on the Virginia Regulatory Townhall’s website here: <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31985>.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members *physically* assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the public hearing.

A recording of the public hearing in its entirety is available here: <https://www.doli.virginia.gov/wp-content/uploads/2021/01/SHCB-Public-Hearing-20210105-1416-1.mp4>.

**BOARD MEMBERS**

**PARTICIPATING:**

Ms. Milagro Rodriguez, Chair  
Mr. Charles Stiff, Vice Chair  
Mr. Patrick Bolling  
Mr. John Fulton  
Ms. Tina Hoover  
Ms. Anna Jolly  
Mr. Michael Luce  
Mr. Courtney Malveaux  
Mr. Travis Parsons  
Mr. Kenneth Richardson, II  
Mr. Thomas Thurston  
Mr. Phil Glaize  
Mr. Jerome Brooks

**BOARD MEMBERS ABSENT:**

Mr. Louis J. Cernak, Jr.

**STAFF PARTICIPATING:**

Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director  
Ms. Christine Childress  
Mr. Richard White  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Ms. Cristin Bernhardt, Staff Attorney  
Mr. Alex West, Staff Attorney

**OTHERS PARTICIPATING:**

Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**CALL TO ORDER**

Chair Milagro Rodriguez called the Public meeting to order at 9:15am. A quorum was present. Chair Rodriguez made opening remarks informing the public that this virtual public hearing was being held for the purpose of consideration of 16VAC25-220, Proposed Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a).

## **OPPORTUNITY FOR PUBLIC COMMENT ON THE PROPOSED PERMANENT STANDARD.**

After Ms. Rodriguez made her opening remarks, the opportunity of public comment on the proposed permanent standard began. This public hearing only included discussion on the proposed public standard. No votes were taken; there were no deliberations, and no decisions were made.

Members of the public had been given the opportunity to sign up to offer their comments on the proposed permanent standard ahead of the public hearing.

The following members of the public made appearances to present public comment on the proposed permanent standard:

1. Brett Vassey, Virginia Manufacturers Association
2. Nandan Kenkeremath, Leading Edge Policy & Strategy, LLC
3. Laura Karr, Amalgamated Transit Union
4. Kyle Shreve, Virginia Agribusiness Council
5. Hobey Bauhan, Virginia Poultry Federation
6. Vanessa Patterson, Richmond Area Municipal Contractors Assoc. and Precast Concrete Assoc. of Virginia
7. Doris Crouse-Mays, Virginia AFL-CIO
8. Nicole Riley, National Federation of Independent Business
9. Jodi Roth, Virginia Retail Federation
10. Terrance Durkin, Roanoke Regional Chamber of Commerce
11. Mike Wilson, United Food and commercial Workers Local 400
12. David Broder, SEIU Virginia 512
13. Ron Jenkins, Virginia Loggers Association
14. Charlotte Brody, BlueGreen Alliance
15. Rebecca Reindel, AFL-CIO
16. M.K. Fletcher, AFL-CIO
17. Donald Baylor, National Coalition of Public Safety Officers
18. Clayton Medford, Northern Virginia Chamber of Commerce
19. P. Dale Bennett, Virginia Trucking Association
20. Susan Seward, Seward Consulting Inc. for VA. Veterinary Medical Association and the VA. Forest Products Assoc.
21. Brandon Robinson, Associated General Contractors of Virginia (AGCVA)
22. Kim Bobo, Virginia Interfaith Center for Public Policy
23. Rachel McFarland, Virginia Justice Project for Farm and Immigrant Workers-Legal Aid Justice Center

Emily Hasty of Hampton Roads Chamber of Commerce had signed up to speak but was not connected to the Webex when her name was called. Ms. Hasty's name was called again after that last speaker had provided comments and Ms. Trice of DOLI stated that she spoke with Ms.

Hasty via telephone. Ms. Trice stated Ms. Hasty stated she was unable to connect to the Webex due to the internet being out at her location. Ms. Hasty stated to Ms. Trice that she would email her comments she would have presented to DOLI.

## **ADJOURNMENT**

Ms. Rodriguez thanked the Board members, all participants and the Agency. Ms. Rodriguez adjourned the hearing at 11:27am.

**Draft**  
**SAFETY AND HEALTH CODES BOARD**  
**PUBLIC HEARING AND MEETING MINUTES**  
**Tuesday, January 12, 2021**

On January 12, 2021, the Safety and Health Codes Board (“Board”) held an electronic meeting pursuant to the budget language as amended by Chapter 1289 of the 2020 Acts of Assembly that states:

Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, the Board held an electronic meeting utilizing **WebEx**.

Notice of the meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to witness the meeting remotely via **WebEx**. Notice was provided on the Virginia Regulatory Townhall’s website here:  
<https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31986>.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members *physically* assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the meeting.

A recording of the meeting in its entirety is available here: <https://www.doli.virginia.gov/wp-content/uploads/2021/01/SHCB-Meeting-January-12-2021-Recording.mp4>

**BOARD MEMBERS**

**PARTICIPATING:**

Ms. Milagro Rodriguez, Chair  
Mr. Patrick Bolling  
Mr. Jerome Brooks  
Mr. Louis J. Cernak, Jr.  
Mr. John Fulton  
Mr. Phil Glaize  
Ms. Tina Hoover  
Ms. Anna Jolly

Mr. Courtney Malveaux, participated for parts of the meeting, absences noted  
Mr. Travis Parsons  
Mr. Kenneth Richardson, II  
Mr. Charles Stiff, Vice Chair  
Mr. Thomas Thurston

**BOARD MEMBERS ABSENT:** Mr. Michael Luce

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director Cooperative Programs  
Ms. Christine Childress, Security Information Officer  
Mr. Richard White, IT Project Manager  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Alex West, Senior Staff Attorney  
Ms. Cristin Bernhardt, Staff Attorney

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

#### **CALL TO ORDER**

Chair Rodriguez called the Public meeting to order at 9:15am. A quorum was present. Chair Rodriguez made opening remarks informing the public that this meeting was an electronic meeting, held under Va. Code Section 2.2-3708.2, and using WebEx to allow panelists (Board members and DOLI staff) and participants to listen to the meeting by internet or telephone.

The purpose of the meeting was to consider for adoption 16VAC25-220 Final Permanent Standard: Infectious Disease Prevention SARS-Co2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code 40.1-22(6a).

The Department prepared a document entitled "DRAFT Combined Board Amendments, Final Standard for Infectious Disease Prevention, COVID-19 ("combined board document") A copy of this document is available here: <https://www.doli.virginia.gov/wp-content/uploads/2021/01/DRAFT-Combined-Board-Amendments-Final-Standard-for-Infectious-Disease-Prevention-COVID-19-1.10.2021-FOR-PUBLICATION.pdf>. This document combined all the amendments the board members had introduced into one document as well as revisions the Department and the Administration wished to make. References to certain page numbers in motions that were made during this meeting, reference the page numbers of the above listed document.

**APPROVAL OF AGENDA**

Chair Rodriguez asked the Board if there was any discussion on the agenda. There was none. Chair Rodriguez asked if there was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 8:45

<b>#1 Approval of Agenda</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

After approval of the agenda, Chair Rodriguez announced that no one from the public submitted a request to address the Board during the oral public comment period prior to the deadline of January 8, 2021 at 5:00 pm so there would be no public comment.

**NEW BUSINESS**

Next, Chair Rodriguez moved onto new business, which consisted of review and consideration of adoption of a final permanent standard for Infectious Disease Prevention, SARS-CoV-2 Virus that causes COVID-19. Chair Rodriguez recognized the Department and introduced Director of Legal Support, Jay Withrow. Before discussing the standard, Director Withrow gave an update on statistics of the Coronavirus both in Virginia and across the United States. He also discussed the Economic Impact Analysis (EIA). The EIA was not prepared pursuant to the Administrative Process Act (APA) as the Final Standard was not being promulgated pursuant to the APA. However, the Agency contracted with an outside firm, CHMURA, to conduct an EIA as the Agency had stated it would follow the regulatory steps laid out in the APA as closely as it could, taking into consideration the 6 month time frame for promulgation of the Standard laid out in Va. Code § 40.1-22(6a). The Board asked various clarifying questions throughout the presentation.

During the briefing by Director Withrow, there was a **10 MINUTE RECESS at 10:37 am; RECONVENE 10:47 am.**

During the briefing by Director Withrow, there was a **30 MINUTE RECESS for Lunch at 12:33pm; RECONVENE 1:03pm.**

After lunch, Director Withrow continued (on page 68 of briefing package) with Virginia COVID-19 statistics, including Virginia Worker’s Compensation Commission (VWCC) and Virginia Occupational Safety and Health (VOSH) COVID-19 case statistics. Chair Rodriguez then asked if Board members had any questions regarding the presentation. There were none. Holly Trice announced that Board member Malveaux emailed her to report he had to leave the meeting at 1:27pm. Director Withrow announced once discussion of the draft final standard began, Director Withrow would skip any amendments proposed by Malveaux until his return to the meeting.

Chair Rodriguez called for a 10 minute recess before the Department proceeded with the next portion of the meeting.

**10 MINUTE RECESS at 2:07pm; RECONVENE 2:17pm**

The Department proceeded with discussion of the draft final permanent standard using the document entitled “DRAFT Combined Board Amendments, Final Standard for Infectious Disease Prevention, COVID-19 (“combined board document”). Director Withrow announced that Member Malveaux would return around 2:30 and that Board Member Malveaux’ amendments would be considered upon his return.

Chair Rodriguez called for the next item. Starting from the beginning of the draft final standard, the Department had some highlighted changes on pages 1-6. The Department explained some non-substantive and numbering changes highlighted on pages 1-6.

Chair Rodriguez asked if someone would make a motion to accept the highlighted changes recommended by the Department. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 5:04:55

<b>#2 Highlighted changes. Pages 1-6</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				



Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

The Department moved on to page 4 of the combined board document and discussed the comments of Board Member Parsons and Member Jolly regarding respiratory protection and PPE availability and striking the language proposed by the Administration in Sec. 10.C. The Board discussed the matter.

The Department supported the language as proposed, which addressed the revisions to Sec 10.C. put forth by the Administration. There was some concern by Board member Jolly and Member Parson regarding the term “commercially reasonable” and the ability for employers to avoid their responsibility to provide appropriate PPE. The Department explained that due to the supply issues with PPE, there would be no citation for the lack of PPE if employer could show good faith effort to provide PPE, and that there was still ability for DOLI to conduct onsite investigations to verify that either compliance or good faith efforts were made.

There was discussion about “commercially reasonable” for purposes of how to define the language in the standard. Member Hoover addressed the Board supporting the Department’s amendment explaining the reality of businesses having difficulty obtaining PPE and Board Member Hoover stated something should be in place to protect businesses from enforcement if PPE is not available. The Board discussed the need for the language to protect employers if VOSH can address those issues during investigation to determine if the employers made a good faith effort.

Josh Laws provided Black’s law definition of “commercially reasonable” as well as UCC definition in order to provide context of the phrase as it would apply in the standard. Commissioner Davenport addressed the Board that Administration had put a lot of time and effort with comments of various state agencies to include this language.

During the discussion, Board member Malveaux returned to the meeting.

Vice Chair Stiff asked for a motion on what was proposed and Chair Rodriguez asked if someone would make a motion to accept the Administration’s revisions to 10.C. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 5:33:10

<b>#3 Sec.10.C. pg 4 Department recommendation for this section that no enforcement for lack of PPE “commercially reasonable” available</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.		1			

Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
TOTALS	8	5	0	1	

Chair Rodriguez called for the next item by the Department. Board member Malveaux returned so Director Withrow went back to page 1 to address Member Malveaux' proposed amendment to Sec. 220-20, Title to strike "Final Permanent" and insert "Emergency Temporary" as well as changes to Sec 220-20.C. effective date to provide continuing standard as a Temporary standard with a sunset provision. The Department explained they did not believe they have legal authority to extend the temporary standard past the 6 months ending January 27, 2021. Member Malveaux asked to enact another temporary standard instead of extending the current ETS. The Board discussed the motion as it related to the temporary nature of the pandemic and the need for such a standard would eventually not be necessary.

Assistant Attorney General Josh Laws addressed the Board, giving his advice regarding the Board's authority of enacting an emergency temporary standard and a permanent standard under Va. Code § 40.1-22(6a). Member Malveaux respectfully disagreed with the interpretation. The Board continued to provide their comments regarding the "permanent" language of the standard.

Vice Chair Stiff made a motion to accept Board member Malveaux's proposed amendments. The motion was made, properly seconded, and a roll call vote was conducted. The motion was defeated.

Meeting Recording Time of Vote: 5:52:30

<b>#4 Malveaux proposed amendment to change title to temporary as well as Sec.20.C. effective date with a sunset provision</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling		1			
Mr. Jerome Brooks		1			
Mr. Louis J. ("Lou") Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				

Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II		1			
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff		1			
Mr. Thomas A. Thurston		1			
TOTALS	4	9	0	1	

Chair Rodriguez called for the next item. The Department announced that Member Malveaux removed his proposed language on page 5. The Department then moved to page 7 of the document, with the Department removal of Sec. 10.F. which states "This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency." After discussions with legal counsel, the Department recommended removal of the above language. The language was considered redundant in light of Executive Order 72, which states that if any conflicts exist, EO 72 shall control. Josh Laws referenced separation of powers and conflicts between branches of government and constitutional issues.

Board Member Malveaux had a proposed amendment before the Board to keep the language in the standard in order to make clear to the employers which rule applies.

After discussion by the Board, Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation to remove Sec. 10.F. language on bottom of page 7 of the combined document. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 6:17:20

<b>#5 Sec. 220-10.F. pg 7 Dept recommendation to strike this section.</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13		0	1	

Chair Rodriguez called for the next item where Member Malveaux proposed some substitute language to Section 10.F. to include back the language with the addition of "if" into the standard. Chair Rodriguez

asked if there was any discussion on the matter where Department expressed its opposition to the motion. Board Member Malveaux asked the Department to provide clarifying language to any conflicts and Director Withrow explained that those conflicts are resolved outside the standard.

Chair Rodriguez then asked if someone would make a motion to make the changes suggested by Member Malveaux on page 7 Sec. 10.F. The motion was made, properly seconded, and a roll call vote was conducted. The motion was defeated.

Meeting Recording Time of Vote: 6:27:30

<b>#6 Sec 10.F. CM proposal for substitute language ETS governs if conflicts with EO/OPH</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling		1			
Mr. Jerome Brooks		1			
Mr. Louis J. ("Lou") Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize		1			
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II		1			
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff		1			
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>3</b>	<b>9</b>	<b>0</b>	<b>1</b>	

Chair Rodriguez called for the next item. The Department moved to page 8 and an amendment proposed by Board member Malveaux. Member Malveaux presented his amendment to strike the current language in Sec. 10.E. and substitute the following language, "[t]o the extent that an employer complies with requirements contained in CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation." The Department presented its position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The standard's language assures such protections. The original language was proposed by the Administration.

Chair Rodriguez asked if someone would make a motion to accept Member Malveaux proposed amendment language on page 8. The motion was made, properly seconded, and a roll call vote was conducted. The motion was defeated.

Meeting Recording Time of Vote: 6:38:40

<b>#7 Sec 220-10. Malveaux motion to change language on pg 8. regarding compliance if follow CDC guidelines</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling		1			
Mr. Jerome Brooks		1			
Mr. Louis J. ("Lou") Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II		1			
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>5</b>	<b>8</b>	<b>0</b>	<b>1</b>	

Board member Malveaux announced that he had to leave the meeting and would be returning as soon as he was available.

Chair Rodriguez called for the next item. The Department moved on to page 9-12 and the proposed "clean up" changes recommended by the Department. Chair Rodriguez asked if someone would make a motion to accept the changes recommended by the Department. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 6:45:00

<b>#8 Highlighted changes pg 9 through Adoption Process pg 12</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

Chair Rodriguez called for the next item. The Department moved to page 13 of the combined board document and Sec. 220-70.B relating to the Infectious Disease Preparedness and Response Plan. The Department recommended the effective date of training requirements to take effect March 26, 2021, the same 60 day time period as temporary standard.

Chair Rodriguez asked if there was any discussion on the matter. Board members Jolly and Parsons expressed concern that these requirements [for an Infectious disease preparedness and response plan] were in the original ETS and questioned why the final standard also provided 2 months to comply with already existing requirement. Parsons commented that this created a period of time where there would be a lack of employee protection.

Director Withrow explained that this was in response to public comments received and the Department does not believe this was an unreasonable request. Director Withrow explained that new businesses were being opened on a regular basis and should be afforded a sufficient time to develop a plan. Therefore the recommendation was to keep 60 day effective date time period. Vice Chair Stiff asked the Department about the experience with the ETS and Withrow indicated that so far there had been no citations issued for violating this section.

Member Jolly made a motion for a 30 day time period and an effective date of February 25, 2021 for requirements for an Infectious disease preparedness and response plan. The Department was asked if they would approve of a 30 day time period and Director Withrow indicated they prefer the 60 days. Chair Rodriguez asked if there was a second on member Jolly’s proposal for Sec. 220-70 effective date of February 25, 2021. The motion was made, properly seconded, and a roll call vote was conducted. The motion was defeated.

Meeting Recording Time of Vote: 67:00:10

<b>#9 Member Jolly amendment for Sec 70 eff date of 2/25/2001</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks		1			
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize		1			
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II		1			
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>6</b>	<b>6</b>	<b>0</b>	<b>2</b>	

Chair Rodriguez called for the next item. The Department moved to their recommendation on page 13, that Section 220-70 take effect on March 26, 2021. There was a motion to accept the Department’s recommendation for March 26, 2021 effective date. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 7:02:50

<b>#10 Motion 220-70.B. eff date 3/26/2021 Recommended by Dept</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez		1			
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>7</b>	<b>5</b>	<b>0</b>	<b>2</b>	

Member Jerome Brooks announced that he would need to leave the meeting at 4:30pm.

Chair Rodriguez called for the next item. The Department moved to their recommendation on page 13 that Section 220-80 relating to the training requirements of the standard. The Department recommended an expanded time for employee training from 30 days to 60 days in response to employer concerns expressed during multiple public comment opportunities about the ability to develop and provide effective training to management personnel and employees in 30 days. Member Jolly expressed her position that there was essentially no difference in the requirements from the temporary standard that was currently in effect and; therefore, no reason to give employers 2 additional months.

Chair Rodriguez asked if there were any other comments from the Board. Board Member Bolling recommended the same dates for both the plan in Sec. 70 and the training in Sec. 80. There was a motion to accept the Department’s recommendation for March 26, 2021 effective date for the training requirements of Sec. 220-80. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 7:11:10

<b>#11 Sec. 80 training eff date 3/26/2021 Recommended by Dept</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				

Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
TOTALS	7	5		2	

Chair Rodriguez called for the next item. The Department moved to page 14 of the combined board document and discussed several pages of "clean up" revisions. The Department recommended that the board adopt the Department's small revisions in yellow and blue highlights found on pages 14-18 as well as an amendment by Member Malveaux on page 16 that the Department did not take issue. In addition, there was discussion about the Department addition to 220-20.C. starting at the bottom of page 14 where Vice Chair Stiff had a clarifying question regarding the Board process for determination of the need to continue the standard.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation to adopt the revisions found on pages 11-18. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 7:18:50

<b>#12 Recommended changes by Department on pages 11-18 &amp; Malveaux amendment pg 16</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks				1	
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	11	0	0	3	



Chair Rodriguez called for the next item. The Department moved to page 18 of the combined board document and the proposed amendment of Board member Malveaux. Member Malveaux was not present at the meeting, but the Department did not have any issue with the changes requested. Board Member Bolling provided the VDH prospective with use of “effective” and therefore decision was made to wait until Member Malveaux was present.

Chair Rodriguez asked if there was any discussion on the matter. Board member Malveaux explained the reasoning behind adding “effective” to the definition of disinfecting. After some discussion, he withdrew his proposal and no motion was made.

The Department continued with page 18 of the combined board document that included some highlighted changes to the definition of “duration and frequency of employee exposure.” The Department explained those highlighted changes as well as the suggested amendment made by Board member Jolly. Member Jolly explained her reasoning for the clarification in the definition and Director Withrow made some suggested language that would address Member Jolly’s concerns. The change suggested was “the greater the frequency or length of time of the exposure...” Member Jolly was fine with the proposed changes made by the Department. Continuing to page 19, the Department wanted to note that the amendment proposed by Member Malveaux has been withdrawn.

Chair Rodriguez asked if someone would make a motion to accept the changes on page 18-20 discussed. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 7:28:00

<b>#13 Motion to accept definitional changes in yellow and blue highlighted and discussed during meeting on pg 18-20</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks				1	
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Chair Rodriguez called for the next item. The Department continued with the combined board document and the amendment to definition of “economic feasibility” on page 20 and “exposure risk level” on page

22 proposed by Board member Malveaux. Director Withrow announced that the Department supported the proposed changes. Chair Rodriguez asked if there was any other discussion on the matter. There was none. Next, the Department discussed the proposed change by Member Jolly to the definition of “employee” and noted that the definition as written in the draft final standard is a well established definition that the Department did not support changing the definition. Member Jolly acknowledged and withdrew her proposal. The Department requested the motion include the amendment by Member Malveaux on page 22 that was supported by the Department.

Chair Rodriguez asked if someone would make a motion to accept proposed changes discussed by the Department on pages 20-22. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 7:32:50

<b>#14 pg 22 Malveaux proposed amendments on pages 20, 22. DOLI supports</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks				1	
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Chair Rodriguez called for the next item. The Department moved onto page 23 and the recommended adoption of the small changes highlighted on pages 23, 25, and 28 as well as the highlighted language that was stricken at the top of page 30. The Department noted that the amendments of Member Malveaux on pages 24, 26, 28, 29 were withdrawn. The amendment proposed by Member Thurston on page 25 would be discussed separately and not included in this discussion/motion.

Chair Rodriguez asked if there was any discussion on the matter. Chair Rodriguez asked if someone would make a motion to accept the Department’s recommendation to adopt the discussed changes to pages 23-29 and top of page 30. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 7:37:10

<b>#15 DOLI proposed highlighted changes pgs. 23-29 &amp; strike through language at the top of pg. 30.</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks				1	
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Chair Rodriguez mentioned that it was 4:54 pm and close to the end of the day and asked the Department if this would be a good time to adjourn for the day. Director Withrow agreed that it would be a good stopping point and the next item to consider in tomorrow's meeting would be Member Thurston's amendment on page 25.

Chair Rodriguez asked if someone would make a motion to adjourn the meeting for the day and continue the meeting tomorrow morning at 9:15 am as scheduled. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 7:40:00

<b>#16 Motion to Adjourn and continue January 13, 2021</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks				1	
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff				1	
Mr. Thomas A. Thurston	1				

TOTALS	10	0	0	4	
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There being no further business for the day, a motion was properly made and seconded to adjourn the meeting and continue at 9:15 am on January 13, 2021. The meeting adjourned at 4:57 p.m.

**Draft**  
**SAFETY AND HEALTH CODES BOARD**  
**PUBLIC HEARING AND MEETING MINUTES**  
**Wednesday, January 13, 2021**

On January 13, 2021, the Safety and Health Codes Board (“Board”) held a continued electronic meeting pursuant to the budget language as amended by Chapter 1289 of the 2020 Acts of Assembly that states:

Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, the Board held an electronic meeting utilizing **WebEx**.

Notice of the continued meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to witness the meeting remotely via **WebEx**. Notice was provided on the Virginia Regulatory Townhall’s website here:  
<https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31987>

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members *physically* assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the meeting.

A recording of the meeting in its entirety is available here: <https://www.doli.virginia.gov/wp-content/uploads/2021/01/SHCB-Meeting-January-13-2021-Recording.mp4>

**BOARD MEMBERS**

**PARTICIPATING:**

Ms. Milagro Rogriguez, Chair  
Mr. Patrick Bolling  
Mr. Jerome Brooks  
Mr. Louis J. Cernak, Jr.  
Mr. John Fulton  
Mr. Phil Glaize  
Ms. Tina Hoover  
Ms. Anna Jolly (participated in parts of the meeting, absences noted)  
Mr. Michael Luce

Mr. Courtney Malveaux  
Mr. Travis Parsons (participated for parts of the meeting, absences noted)  
Mr. Kenneth Richardson (participated for parts of the meeting, absences noted)  
Mr. Chuck Stiff, Vice Chair  
Mr. Thomas Thurston

**BOARD MEMBERS ABSENT:** None

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Ms. Marta Fernandes, Director VOSH Safety Compliance  
Mr. Ron Graham, Director VOSH Health Compliance  
Ms. Jennifer Rose, Director Cooperative Programs  
Ms. Christine Childress, Security Information Officer  
Mr. Richard White, IT Project Manager  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Alex West, Senior Staff Attorney  
Ms. Cristin Bernhardt, Staff Attorney

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

## **CALL TO ORDER**

Chair Milagro Rodriguez called the Public meeting to order at 9:16am. A quorum was present. Chair Rodriguez made opening remarks informing the public that this meeting was a continued electronic meeting, held under Va. Code Section 2.2-3708.2, and using WebEx to allow panelists (Board members and DOLI staff) and participants to listen to the meeting by internet or telephone.

The purpose of the meeting was to consider for adoption a Final Standard under Va. Code 40.1-22(6a), Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19, VAC 25-220, applicable to all employers and employees covered by Virginia Occupational Safety and Health (VOSH) program.

The department prepared a document entitled "DRAFT Combined Board Amendments, Final Standard for Infectious Disease Prevention, COVID-19 ("combined board document") A copy of this document is available here: <https://www.doli.virginia.gov/wp-content/uploads/2021/01/DRAFT-Combined-Board-Amendments-Final-Standard-for-Infectious-Disease-Prevention-COVID-19-1.10.2021-FOR-PUBLICATION.pdf>. This document combined all the amendments the board members had introduced into one document as well as revisions the Department and the Administration wished to make. References to certain page numbers in motions that were made during this meeting, reference the page numbers of the above listed document.

**NEW BUSINESS (Continued from January 12, 2021)**

Chair Rodriguez recognized the Department’s Director Withrow return to discussing the proposed standard by starting where the January 12<sup>th</sup> meeting ended.

Mr. Withrow started by addressing Anna Jolly. There were a significant number of her amendments that the Department agreed with and asked if she would mind if the Board proceeded with those. Ms. Jolly approved and Mr. Withrow noted that if there were a lot of questions about her amendments the Board would wait until she was back.

Mr. Withrow moved to an amendment by Board member Malveaux on page 18. Mr. Withrow requested to speak with Mr. Malveaux offline since this amendment impacted another part of the standard.

Mr. Withrow moved to 16VAC25-220-30, to discuss Mr. Thurston’s amendment to add an item number 6 to the definition for “High Exposure Risk” which would include “correctional facilities, jail detention centers, and juvenile detention centers” to this category. Mr. Thurston explained the reason for his amendment.

The Chair asked if there was any discussion on the amendment. Board members engaged in a discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 10:27.

<b>Motion No. 17 on p. 25</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>14</b>	<b>0</b>	<b>0</b>		

Mr. Withrow moved to p. 30 and the top of p. 31 and discussed an amendment to accept changes in yellow, and an amendment from Ms. Jolly on face coverings.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 26:10.

<b>Motion No. 18 on pp. 30-31</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly				1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Mr. Withrow continued on p. 31 and discussed a Department revision to the definition of face shield, Anna Jolly's amendment on p. 32 and a change recommended by the Virginia Department of Health (VDH), and the yellow language on p. 32.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 30:58.

<b>Motion No. 19 on pp. 31-32</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	



Mr. Withrow continued to p. 33. There was an amendment made by Mr. Malveaux that was withdrawn. On p. 33, a new definition for the term “minimal occupational contact” was added at the request of commenters and developed in cooperation with VDH. This term was used when classifying hazards and job tasks as lower risk. On p. 34, there was an amendment by Ms. Jolly to revise the definition of “personal protective equipment,” but the Department recommended including the language “for actual or potential exposure to SARS-CoV-2 or COVID-19.”

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 34:07.

<b>Motion No. 20 pp. 33-34</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Mr. Withrow continued to pp. 35 and 36. Mr. Malveaux’ amendment at the top of the p.35 regarding the definition of “Physical distancing” was withdrawn. Mr. Withrow discussed the Department’s motion to accept language in yellow revising the definition for “Physical distancing” and add the word “travel,” as suggested by the Board, to the sentence “..., provided that six feet of physical travel distance is maintained from others around the edges or sides of the wall as well. Mr. Withrow asked the Board to include revisions on p. 36 to the definition of “SARS-CoV-2” in this motion.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 40:22.

<b>Motion No. 21 pp. 35-36</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				

Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Mr. Withrow continued to p. 37 and Ms. Jolly's amendment to the definition of "severely immunocompromised" and p. 39, Ms. Jolly's revisions to the definition of "signs of COVID-19." Mr. Withrow recommended that the Board accept the revisions on p. 37 and 39.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 50:53.

<b>Motion No. 22 pp. 37-39</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Mr. Withrow continued to pp. 39 and 40 to discuss Ms. Jolly's motion and the Department's motions in yellow.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 55:15.

<b>Motion No. 23 pp. 39-40</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

Mr. Withrow continued to pp. 41, 42, 43 to discuss the language in yellow and Ms. Jolly's amendment.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 59:10.

<b>Motion No. 24 pp. 41-43</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

Mr. Withrow continued to pp. 45-47 to discuss the language in yellow but not including Mr. Parson's amendment.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 01:02:40.

<b>Motion No. 25 pp. 45-47</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

**10 MINUTE RECESS at 10:38 am; RECONVENE 10:48 am**

Mr. Withrow continued to discuss the Department's motion for changes on pp. 48, 50, and 51.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 01:30:00.

<b>Motion No. 26 pp. 48, 50, and 51</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	0			1	
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Mr. Withrow continued pp. 52-54 to discuss the Department’s changes in yellow and Mr. Malveaux’ motion on p. 51.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 01:40:30.

<b>Motion No. 27 pp. 52-54</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	0			1	
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Mr. Withrow continued p. 55 to discuss the Department’s typographical changes.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 01:46:55.

<b>Motion No. 28 p. 55</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	0			1	
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				

Mr. Thomas A. Thurston	1				
TOTALS	11	0	0	3	

Mr. Withrow continued p. 60 to discuss the Department's motion in yellow.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 01:49:20.

<b>Motion No. 29 p. 60</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12	0	0	2	

Mr. Withrow continued p. 61 to discuss the Department's changes.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 02:14:52.

<b>Motion No. 30 p. 61</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	

Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Mr. Withrow continued p. 62 and 63 to discuss changes.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 02:29:20.

<b>Motion No. 31 pp. 62-63</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Mr. Withrow continued to Ms. Jolly's amendment on p. 64, with the Department's additions and the language in yellow on p. 65.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 02:34:20.

<b>Motion No. 32 pp. 64-65</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0			1	

Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	11	0	0	3	

Mr. Withrow continued to p. 66 to discuss Ms. Jolly's amendments and the Department's changes in yellow.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 02:43:46.

<b>Motion No. 33 p. 66</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	0	1			
Mr. Thomas A. Thurston	1				
TOTALS	11	1	0	2	

Mr. Withrow continued to pp. 66-69 to discuss the Department's changes in yellow and blue.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 02:47:40.

<b>Motion No. 34 pp. 66-69</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				



Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12			2	

Mr. Withrow continued to pp. 70-75 regarding the Department's motion to clean up those pages, but excluding items in blue on p. 72.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 03:00:00.

<b>Motion No. 35 pp. 70-75, excluding language in blue on p 72</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12			2	

Mr. Withrow discussed Mr. Parson's amendment on p. 47 to discuss Mr. Parson's amendment regarding mandatory requirements for all employers changing reporting to DOLI within 24 hours of discovery of two instead of three or more confirmed cases of COVID-19..."

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion was defeated.

Meeting Recording Time 03:04:21.

<b>Motion No. 36 p. 47</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling		1			
Mr. Jerome Brooks		1			
Mr. Louis J. ("Lou") Cernak Jr.				1	
Mr. John D. Fulton		1			
Mr. Phil Glaize		1			
Ms. Tina Hoover		1			
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce		1			
Mr. Courtney M. Malveaux		1			
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>3</b>	<b>9</b>		<b>2</b>	

Mr. Withrow went back to p. 72 to discuss the Department's motion to correct typographical errors and an error where the language in blue was dropped when the ETS was revised with no explanation.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 03:09:19.

<b>Motion No. 37 p. 72</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	0			1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>			<b>3</b>	

**30 MINUTE RECESS at 12:32 am; RECONVENE 1:02 pm**

Mr. Withrow began with Ms. Jolly’s amendment on p. 32 regarding “good faith,” but Ms. Jolly withdrew her amendment.

Mr. Withrow went back to p. 18 to discuss Mr. Malveaux’ amendment regarding the definition of “disinfecting” to include the words “or effective” after the word “approved,” and on p. 64 to include the same language regarding non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 03:46:35.

<b>Motion No. 38 p. 18 and p. 64</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Mr. Withrow discussed the Department’s motion to clean up air handling language on pp. 75-80, excluding Mr. Parson’s amendment.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 03:56:44.

<b>Motion No. 39 pp. 75-80</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				

Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12			2	

Mr. Withrow discussed Mr. Parson's motion on p. 75 regarding the requirements for hazards or job tasks classifications as very high or high exposure risk and deleting the language on respiratory protection program, number 4 because the language used was outdated/incorrect respiratory protection standard language.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 04:06:46.

<b>Motion No. 40 p. 75</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0			1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12			2	

Mr. Withrow discussed Department changes that clean up language in yellow on pp. 81-83.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 04:12:00.

<b>Motion No. 41 pp. 81-83</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow discussed Ms. Jolly's amendment on p. 84 regarding requirements for hazards or job tasks classified at medium exposure risk and respiratory protection. Ms. Jolly withdrew her amendment after discussion.

Mr. Withrow discussed changes on pp. 86-88 in yellow and blue.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 04:15:28.

<b>Motion No. 42 pp. 86-88</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow discussed Department changes on pp. 89-90 in yellow and blue and a change on p. 58 that was struck through and in yellow (G).

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 04:30:30.

<b>Motion No. 43 pp. 89-90</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0			1	
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	0	1			
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>1</b>		<b>1</b>	

Mr. Withrow discussed Mr. Malveaux' motion to amend Sec. 40.B.8.e on p. 48 regarding mandatory requirements for all employers.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 04:35:14.

<b>Motion No. 44 p. 48</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0	1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	0	1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	0	1			
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	0	1			

Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	0	1			
TOTALS	9	5			

Mr. Withrow discussed changes on p. 91 in yellow and blue and Ms. Jolly's amendment on p. 91, language in yellow on pp. 92, 93, 94, 95, and 96.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 05:07:33.

<b>Motion No. 45 pp. 91-96</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	14				

Mr. Withrow discussed Mr. Thurston's amendment on p. 92 regarding training.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 05:13:28.

<b>Motion No. 46 p. 92</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				

Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	14				

**10 MINUTE RECESS at 2:36 pm; RECONVENE 2:46 pm**

Mr. Withrow discussed an amendment by Ms. Jolly on p. 93 regarding training and verifying compliance records for risk categories.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 05:30:26.

<b>Motion No. 47</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	0	1			
Mr. Phil Glaize	0	1			
Ms. Tina Hoover	0	1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	0	1			
Mr. Courtney M. Malveaux	0	1			
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	0	1			
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	0	1			
Mr. Thomas A. Thurston	1				
TOTALS	7	7			

Mr. Withrow discussed Ms. Jolly's comment on p. 94 regarding the section on training, and the Department suggested changes to strike through language.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 05:51:20.

<b>Motion No. 48 p. 94</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				



Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	14				

Mr. Withrow discussed the Department's change on p. 97 and Ms. Jolly's revisions on p. 97.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 05:58:43.

<b>Motion No. 49 p. 97</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	14				

Mr. Withrow discussed Mr. Malveaux' motion to strike language on p. 98 regarding discrimination against an employee for exercising rights under this standard being prohibited.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion did not carry.

Meeting Recording Time 06:06:14.

<b>Motion No. 50 p. 98</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	0	1			
Mr. Jerome Brooks	0	1			
Mr. Louis J. ("Lou") Cernak Jr.	0	1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	0	1			
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0	1			
Mr. Michael. A. Luce	0	1			
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	0	1			
Mr. Kenneth W. Richardson, II	0	1			
Ms. Milagro ("Milly") Rodriguez	0	1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	0	1			
<b>TOTALS</b>	<b>4</b>	<b>10</b>			

Mr. Withrow discussed Mr. Malveaux' amendment regarding discrimination against an employee for exercising rights under this standard being prohibited, and Ms. Jolly's amendment and Department edits on p. 99.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 06:12:04.

<b>Motion No. 51 p. 99</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>14</b>				

Mr. Withrow discussed Mr. Thurston’s amendment on pp. 56-57 with Mr. Thurston’s suggestion to reorder and add administrative and mitigation language.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 06:23:44.

<b>Motion No. 52 pp. 56-57</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	0	1			
Ms. Tina Hoover	0	1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	0		1		
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>2</b>	<b>1</b>		

Mr. Withrow discussed Mr. Malveaux’ motion on pp. 43-44 and added language.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion did not carry.

Meeting Recording Time 07:18:23.

<b>Motion No. 53 pp. 43-44</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	0	1			
Mr. Jerome Brooks	0	1			
Mr. Louis J. (“Lou”) Cernak Jr.	0	1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0	1			
Mr. Michael. A. Luce	0	1			
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	0	1			
Mr. Kenneth W. Richardson, II	0	1			
Ms. Milagro (“Milly”) Rodriguez	0	1			
Mr. Charles L. (“Chuck”) Stiff	1				

Mr. Thomas A. Thurston	0	1			
TOTALS	5	9			

Mr. Withrow discussed Mr. Malveaux' motion on p. 44 to delete the sick leave mentioned in the standard.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 07:33:12.

<b>Motion No. 54 p. 44</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	0	1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0	1			
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	0	1			
Mr. Kenneth W. Richardson, II	0	1			
Ms. Milagro ("Milly") Rodriguez	0	1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	0	1			
TOTALS	8	6			

Mr. Withrow discussed Mr. Malveaux' motion for an additional 30-day comment period.

The Chair asked if there was any discussion on the amendment. Assistant Attorney General Laws gave his legal opinion regarding Mr. Malveaux' amendment. A motion to accept the amendment was made and properly seconded. The motion did not carry.

Meeting Recording Time 07:38:07.

<b>Motion No. 55</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	0	1			
Mr. Jerome Brooks	0	1			
Mr. Louis J. ("Lou") Cernak Jr.	0	1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	0	1			
Mr. Michael. A. Luce	0		1		
Mr. Courtney M. Malveaux	1				

Mr. Travis M. Parsons	0	1			
Mr. Kenneth W. Richardson, II	0	1			
Ms. Milagro ("Milly") Rodriguez	0	1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	0	1			
TOTALS	5	8	1		

Mr. Stiff asked to address the board before the board votes on the Final Standard. Mr. Withrow responded to Mr. Stiff's comments.

Mr. Withrow requested that the Board vote on whether to pass the Final Standard.

The Chair asked if there was any discussion on the amendment. A motion to accept the amendment was made and properly seconded. The motion carried.

Meeting Recording Time 08:00:00.

<b>Motion No. 56</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Patrick Bolling	1				
Mr. Jerome Brooks	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	0	1			
Mr. Phil Glaize	0	1			
Ms. Tina Hoover	0	1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	0		1		
Mr. Courtney M. Malveaux	0	1			
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	9	4	1		

Chair Rodriguez moved to the next item on the agenda.

#### **Items of Interest from the Department of Labor and Industry**

Chair Rodriguez asked if there were any items of interest from the Department of Labor and Industry. Chair Rodriguez recognized the Commissioner. Commissioner Davenport thanked all the Board members.

#### **Items of Interest from Members of the Board**

Chair Rodriguez asked if there were any items of interest from the Board members. No board members requested to address the Board.

#### **Meeting Adjournment**

There being no further business, the meeting was adjourned at 5:37 p.m.

**Draft**  
**SAFETY AND HEALTH CODES BOARD**  
**EMERGENCY ELECTRONIC MEETING Tuesday,**  
**June 29, 2021**

On June 29, 2021, the Safety and Health Codes Board (“Board”) held an emergency electronic meeting pursuant to the budget language as amended by Chapter 1289 of the 2020 Acts of Assembly that states:

Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

Given the nature of the emergency, that COVID-19 spreads easily from person to person who remain unvaccinated, the Board held an electronic meeting utilizing **WebEx**.

Notice of the meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to witness the meeting remotely via **WebEx**. Notice was provided on the Virginia Regulatory Townhall’s website here:  
<https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=32669>.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members *physically* assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the meeting.

A recording of the meeting in its entirety is available here:  
<https://www.doli.virginia.gov/wpcontent/uploads/2021/06/SHCB-Emergency-Meeting-20210629-1320-1.mp4>

**BOARD MEMBERS**

**PARTICIPATING:** Ms. Milagro Rodriguez, Chair  
Ms. Elizabeth (“Beth”) Lohman

Mr. Louis J. Cernak, Jr.  
Mr. John Fulton  
Mr. Phil Glaize, participated for parts of the meeting, absences noted  
Ms. Tina Hoover, participated for parts of the meeting, absences noted Ms.  
Anna Jolly  
Mr. Courtney Malveaux, participated for parts of the meeting, absences noted  
Mr. Travis Parsons  
Mr. Charles Stiff, Vice Chair  
Mr. Thomas Thurston  
Mr. Michael Luce  
Ms. Julie Henderson

**BOARD MEMBERS ABSENT:** Mr. Kenneth Richardson, II

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director Cooperative Programs  
Mr. Richard White, IT Director  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Alex West, Senior Staff Attorney  
Ms. Cristin Bernhardt, Staff Attorney

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court  
Reporters

## **CALL TO ORDER**

Chair Rodriguez called the emergency electronic meeting to order at 9:15 a.m. A quorum was present. Chair Rodriguez made opening remarks informing the public that this emergency meeting was an electronic meeting, held under Va. Code Section 2.2-3708.2, and using WebEx to allow panelists (Board members and DOLI staff) and participants to listen to the meeting by internet or telephone.

Chair Rodriguez announced that Commissioner Oliver of the Department of Health submitted a letter to her, authorizing Julie Henderson to be his designated representative for the June 29, 2021 meeting. This letter shall be part of the permanent minutes. Chair Rodriguez also announced Director David K Paylor of the Department of Environmental Quality submitted a letter to her, authorizing Elizabeth (Beth) Lohman to be his designated representative for the June 29, 2021 meeting. This letter shall also be part of the permanent minutes.



**APPROVAL OF AGENDA**

Chair Rodriguez asked the Board if there was any discussion on the agenda. There was none. Chair Rodriguez asked if there was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 00:08:04

#1 Approval of Agenda	Yea	Nay	Abstain	Absent	Other
Ms. Elizabeth (“Beth”) Lohman	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12	0	0	2	

**PUBLIC COMMENT**

After approval of the agenda, Chair Rodriguez announced that a number of members of the public had signed up to offer their comments to the Board. The public was given the opportunity to address the Board on the issues pending before the Board that day, as well as any other topics that may be of concern to the Board and within its scope of authority. All of the commenters presented comments on the proposed amendments to the Final Permanent Standard (FPS), for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. Below is a list of all the commenters who presented to the Board.

Robert B. Melvin	Virginia Restaurant, Lodging, & Travel Association	Director of Government Affairs
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Nicole Riley	National Federation of Independent Business	Virginia State Director
Kyle Shreve	Virginia Agribusiness Council	Executive Director
MK Fletcher	AFL-CIO	Safety and Health Specialist
Debbie Berkowitz	National Employment Law Project	Worker Health & Safety Program Director
Jodi Roth	Virginia Retail Federation	Government Affairs
Marcia Tetterton	Virginia Association for Home Care and Hospice	Executive Director
Vanessa Patterson	Richmond Area Municipal Contractors Association	Executive Director
Mike Wilson	United Food and Commercial Workers, Local 400	Executive Assistant to the President

**NEW BUSINESS**

Next, Chair Rodriguez moved onto new business, item 4a-- Consider for adoption federal OSHA’s Occupational Exposure to COVID-19, Emergency Temporary Standard (COVID-19 ETS), 1910.502, et. seq. Chair Rodriguez recognized the Department and introduced Jay Withrow, Director of Legal Support to present the briefing package for the COVID-19 ETS.

During the briefing by Director Withrow, there was a **10 MINUTE RECESS at 10:58 a.m.; RECONVENE 11:15 a.m.**

After Director Withrow completed presenting the briefing package on the COVID-19 ETS, Chair Rodriguez asked for someone to make a motion to adopt the COVID-19 ETS and to accept Department's recommendations along with Chair Rodriguez' slight amendments to language. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 02:17:36

<b>#2 Motion to adopt the COVID-19 ETS and to accept Department's recommendations with Chair Rodriguez' amendments to language (Maintained, modified...)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth (“Beth”) Lohman	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton		1			

Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	9	2	1	2	

Chair Rodriguez then called for the next item, item 4b—to consider Proposed Amendments to the Final Permanent Standard (FPS), for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. Chair Rodriguez recognized Director Withrow again. Before discussing the standard, Director Withrow presented a briefing package on the proposed amendments to the FPS. The Board asked various clarifying questions throughout the presentation.

During the briefing by Director Withrow, there was a **30 MINUTE RECESS for Lunch at 12:45 p.m.; RECONVENE 1:15 p.m.**

At 1:15 p.m., Chair Rodriguez reconvened the meeting and recognized Director Withrow from the Department who finished presenting the briefing package on the proposed amendments to the FPS.

The Department prepared a document entitled COMBINED BOARD AMENDMENTS of REVISED Final Permanent Standard 16VAC25-220, DRAFT 6.29.2021." (combined board document) This document is attached to the agenda for the June 29, 2021 Emergency Electronic Meeting which is available on the Regulatory Townhall site here:

[https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\92\32669\Agenda\\_DOLI\\_32669\\_v6.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\92\32669\Agenda_DOLI_32669_v6.pdf)

This document combined a few amendments the board members had introduced into one document as well as revisions the Department and the Administration wished to make. References to certain page numbers in motions that were made during this meeting, reference the page numbers of the above listed document.

The Department moved to page 3 of the combined board document and discussed the Departments' highlighted recommended changes as well as Chair Rodriguez' amendment on page 4.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation on page 3 and Chair Rodriguez amendment on the top of page 4. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 04:16:52

<b>#3 Motion to accept Dept. recommendation on page 3 and Chair Rodriguez' amendment on top of page 4</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton			1		
Mr. Phil Glaize	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff				1	
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>9</b>		<b>2</b>	<b>3</b>	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted on the bottom of page 5 and the top of page 6 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 04:24:11

<b>#4 Motion to accept Dept's highlighted changes on page 5 and top of page 6 of combined board document</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				

Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12	0	0	2	

Chair Rodriguez called for the next item. The Department moved to the Department's suggested change to section 10.E on page 6 of the combined board document.

Member Parsons made a motion to reject the Department's recommended changes in Subsection 10.E on page 6 and to keep the language as written in the current FPS. (motion #5) Member Malveaux then made a substitute motion to accept the changes to 10.E on page 6. (motion #6)

There was then a question posed as to how to proceed with a main motion and a substitute motion under Robert's Rules of Order. Chair Rodriguez recognized Josh Laws, Assistant Attorney General (AAG Laws) to speak. AAG Laws explained that a main motion and two substitute motions are allowed on the floor at one time. If a substitute motion passes, it kills the main motion. If the substitute motion fails, it would bring back up the main motion. Board Member Cernak then asked some clarifying questions as to how the process worked.

Chair Rodriguez asked if Board Member Malveaux's motion had a second. The motion was made, properly seconded, and a roll call vote was conducted. The motion was defeated.

Meeting Recording Time of Vote: 04:49:41

<b>#6 Board Member Malveaux's Motion to accept the Dept's language in 10.E on page 6</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				

Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce		1			
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>6</b>	<b>6</b>		<b>2</b>	

Chair Rodriguez then turned back to Board Member Parson's main motion and prepared to take a vote on it. Board Member Cernak then asked why the Board would need to vote on the main motion. (motion #5) AAG Laws stated that the main motion was still on the floor. There was a discussion as to whether there was a need for a vote on the main motion. AAG Laws explained that the main motion was still live and had been properly seconded so a vote should be taken unless Board Member Parsons withdrew his motion. Board Member Parsons then withdrew his motion (motion #5) and the language of the standard in 10.E did not change.

Chair Rodriguez called for the next item. The Department moved to pages 6-8 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation on pages 6-8. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 05:07:21

<b>#7 Accept Dept's recommendation of changes on pages 6-8</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				

Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12	0	0	2	

Chair Rodriguez called for the next item. Director Withrow moved to Chair Rodriguez' proposed amendments striking the 30 and 60 day effective dates in Sections 20.C. and 20.D. on pages 8-9 of the combined board document. Chair Rodriguez spoke to her amendment and made her motion. The motion was made, properly seconded, and a roll call vote was conducted. The motion failed.

Meeting Recording Time of Vote: 05:16:08

<b>#8 Chair Rodriguez' motion on pgs. 8 and 9 to strike language in Section 20.C and 20.D</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman		1			
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize		1			
Ms. Julie Henderson		1			
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce		1			
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff		1			
Mr. Thomas A. Thurston	1				
TOTALS	5	6		3	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted on the top of page 9 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 05:19:49

<b>#9 Dept recommendation to accept highlighted language in section 20.C. and 20.D on 9 of combined board document</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>6</b>	<b>4</b>	<b>1</b>	<b>3</b>	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted from the bottom of page 9 through page the top of page 16 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 05:27:27

<b>#10 Dept. recommendation to accept changes on pages 9-top of page 16 of combined board document</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	



Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	11	0	0	3	

After the vote on motion #10, the Chair called for a recess. **10 MINUTE RECESS at 2:49 p.m.;**  
**RECONVENE 3:00 p.m.**

Chair Rodriguez reconvened the meeting at 3 p.m. and called for the next item by the Department. The Department recommended the Board accept the changes highlighted on pages 16-23 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 05:47:52

<b>#11 Dept. motion to accept changes on pages 16-23 of combined board document</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted on page 24 of the combined board document. This motion contemplated changes to Subsection 40.A.

Board Member Parsons did not like that the Department had added references to "good faith" in 40.A. The Board members discussed this subsection thoroughly and Board Member Parsons made a motion to delete the third proposed sentence of subsection 40.A and to add back "Employers shall ensure compliance with the requirements in this section to protect employees from workplace exposure to the SARS-CoV-2 virus that causes COVID-19 disease."

The motion was made, properly seconded, and a roll call vote was conducted. The motion failed.

Meeting Recording Time of Vote: 06:12:52

<b>#12 Member Parsons motion to delete 3<sup>rd</sup> sentence of proposed subsection 40.A and add sentence</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman		1			
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize				1	
Ms. Julie Henderson		1			
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce		1			
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>5</b>	<b>5</b>		<b>4</b>	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted at the top of page 24 of the combined board document that concerned subsection 40.A.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 6:16:38

<b>#13 Dept. Motion to accept changes at top of page 24 to Subsection 40.A as written</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>6</b>	<b>4</b>	<b>0</b>	<b>4</b>	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted starting with changes made to subsection 40.B on page 24 through to changes made to 40.C.3 on page 29 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 06:23:29

<b>#14 Dept. motion to accept changes to 40.B on page 24 through changes to 40.C.3 on page 29</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				

Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted to Subsection 40.C.4 through changes made to Subsection 40.E.3, located on pages 29-30 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 06:27:38

<b>#15 Dept. motion to accept changes to Subsections 40.C.4 through Subsection 40.E. 3 (pgs. 29-30)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes highlighted made to Subsection 40.F on pages 30-32 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 06:35:22

<b>#16 Dept. motion to accept changes to Subsection 40.F</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>4</b>	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes made to Subsection 40.G through Subsection 40.J, highlighted on pages 32-35 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 06:40:10

<b>#17 Dept. Motion to accept changes made to Subsection 40.G through 40.J on pages 32-35</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				

Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes to the rest of section 40, subsections 40.K through 40.L.11, highlighted on pages 3537 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 06:46:04

<b>#18 Dept. Motion to accept changes to Subsection 40.K through 40.L.11, pgs. 35-37</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth (“Beth”) Lohman	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes made to Subsections 50.A through 50.C, to include Chair Rodriguez' motion to add language to Subsection 50.A.3, found on pages 39-44 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 06:54:26

<b>#19 Motion to accept changes made to Subsection 50.A to 50.C, to include language additions amendment by Chair Rodriguez, pgs 39-44</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>3</b>	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes made to Subsection 50.D to include the amendment made by Board Member Parsons of subsection 50.D, found on page 46 of the combined board document.

The Department noted a typo in the amendment by Board Member Parsons and clarified it was to say "selection" no "section."

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 07:00:18

<b>#20 Dept. motion to accept changes made to Subsection 50.D to include Board Member Parsons' amendment to 50.D (pg 45)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>5</b>	

After the vote on motion #20, the Chair called for a recess. **10 MINUTE RECESS at 4:22 p.m.; RECONVENE 4:32 p.m.**

Chair Rodriguez reconvened the meeting at 4:32 p.m. and called for the next item by the Department. The Department recommended the Board accept the changes to Subsection 60.A. to include the amendment by Chair Rodriguez to change the language in the Section 60 title, found on page 47 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 07:17:56

<b>#21 Dept. motion to accept changes to 60.A on page 47 to include Board Chair Rodriguez' amendment to language in title of Section 60</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				



Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

Chair Rodriguez called for the next item by the Department. The Department introduced Board Member Parsons' amendment to add some language to subdivision 2 to subsection 60.A. found on page 48 of the combined board document. Board Member Parsons spoke to his amendment and made his motion.

The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.  
Meeting Recording Time of Vote: 07:27:21

<b>#22 Board Member Parsons motion to add language to subdivision 60.A.2 on pg 48</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth (“Beth”) Lohman		1			
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson		1			
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	8	2	0	4	

Chair Rodriguez called for the next item by the Department. The Department introduced Board Member Parsons' amendment to add a new subdivision 60.A.3, found at the bottom of page 48 of the combined board document. Board Member Parsons spoke to his amendment and made his motion. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 07:24:23

<b>#23 Board Member Parsons amendment to add a subdivision 60.A.3 (pg 48)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman		1			
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson		1			
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>7</b>	<b>3</b>	<b>0</b>	<b>4</b>	

Chair Rodriguez called for the next item by the Department. The Department introduced Board Member Parsons' amendment to strike "cough or sneeze" from the Department's recommended language in subdivision 60.A.3 (now renumbered as 4), found at the top of page 49 of the combined board document.

Board Member Parsons spoke to his amendment and made his motion. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 07:27:56

<b>#24 Board Member Parsons amendment to strike "cough or sneeze" from Subdivision 60.A.3 (renumbered as 4)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>

Ms. Elizabeth (“Beth”) Lohman	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10			4	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes to subdivision 60.A.4 (now reordered as 5) through subdivision 60.D.4, found on pages 49-53 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 07:36:18

<b>#25 Dept. motion to accept changes from subdivision 60.A.4 (now reordered as 5) through subdivision 60.D.4 on pgs. 49-53</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth (“Beth”) Lohman	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				

Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

Chair Rodriguez called for the next item by the Department. The Department began discussion of the proposed changes to Section 70. Board Member Parsons did not like some of the language proposed by the Department in Subdivision 70.A.2 (found on page 54 of the combined board document) and made a motion to strike the sentence, "In counting the number of employees, the employer may exclude fully vaccinated employees" from proposed Subdivision 70.A.2.

The motion was made, properly seconded, and a roll call vote was conducted. The motion failed.

Meeting Recording Time of Vote: 07:48:12

<b>#26 Board Member Parsons motion to strike 2<sup>nd</sup> sentence of proposed Subdivision 70.A.2 (page 54)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman		1			
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize				1	
Ms. Julie Henderson		1			
Ms. Tina Hoover				1	
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux		1			
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff		1			
Mr. Thomas A. Thurston	1				
TOTALS	4	6		4	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes made to Section 70, found on pages 54-57 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 07:50:04

<b>#27 Dept. motion to accept changes to Section 70 found on pages 54-57</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>4</b>	

Chair Rodriguez called for the next item by the Department. The Department recommended the Board accept the changes made to Section 80, found on pages 58-61 of the combined board document.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 07:54:55

<b>#28 Dept. Motion to accept changes to Section 80 found on pages 58-61</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				

Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>4</b>	

Chair Rodriguez called for the next item by the Department. The Department turned back to the briefing package to the FPS to read out the Department's recommended action on page 108 of the briefing package.

Before the Department could read out the final recommendation, Board Member Malveaux asked if the Board was following the Administrative Process Act (APA). Director Withrow explained that the proposed changes were being pursued under Va. Code 40.1-22(6a) to which the APA does not apply. That being said, the Board and the Department were attempting to follow the core requirements of the APA as much as possible, taking into consideration the time constraints placed upon the Board and Department.

Board Member Malveaux discussed his interpretation of Va. Code 40.1-22(6a). Board Member Malveaux asked if the Department felt it had the legal authority to act in this way and Director Withrow responded that it did. Board Member Malveaux announced that after the vote on this motion, he would want to make another motion.

Director Withrow then read out the Department's recommended action on page 108 of the briefing package to the FPS.

Chair Rodriguez asked if someone would make a motion to accept the Department's recommendation. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

Meeting Recording Time of Vote: 08:05:08

<b>#29 Motion to accept Dept. Final Recommend Action</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Ms. Elizabeth ("Beth") Lohman	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Julie Henderson	1				
Ms. Tina Hoover				1	
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	

Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II				1	
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	10	0	0	4	

After the final vote on the proposed amendments to the FPS, Board Member Malveaux stated he wanted to repeal the final permanent standard and adopt the federal ETS. Director Withrow asked Board Member Malveaux if Board Member Malveaux was suggesting that Virginia adopt the ETS and apply it to all employers in Virginia. Board Member Malveaux stated that he meant he just wanted to repeal the final permanent standard. Board Member Malveaux then stated the repeal of the final standard should be on the agenda for the next board meeting.

Chair Rodriguez then stated item 4 was complete and moved onto item 5; items of interest from the Department of Labor and Industry.

**Items of Interest from the Department of Labor and Industry**

Chair Rodriguez asked if there were any items of interest from the Department of Labor and Industry. Chair Rodriguez recognized the Commissioner. Commissioner Davenport thanked all the Board members and Department staff for all its hard work.

**Items of Interest from Members of the Board**

Chair Rodriguez thanked the Department for all the work they put in to make the meeting happen quickly. The Chair also thanked the Board members for their hard work. Board Member Fulton expressed his gratitude to the Department for its work to bring the meeting together quickly.

**Meeting Adjournment**

There being no further business, Chair Rodriguez adjourned the meeting at 5:36 p.m.



M. Norman Oliver, MD, MA  
State Health Commissioner

*Department of Health*  
P O BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

June 24, 2021

Chair of the Board c/o/  
Ms. Princy R. Doss  
Director of Policy, Planning, and Public Information  
Department of Labor and Industry  
600 East Main Street  
Richmond, VA 23219

Dear Ms. Doss:

The purpose of this letter is to designate Julie Henderson, as my standing designated alternate representative and voting member on the Safety and Health Codes Board. Ms. Kari Atwood is my current primary representative, but she is unable to attend the June 29, 2021, meeting. Ms. Henderson will attend in her place.

The designation is effective as of the date of this letter. Please feel free to contact me if you have any questions or concerns.

Sincerely,

DocuSigned by:

*M. Norman Oliver, MD*

E9885CE3DE124C6...

State Health Commissioner

cc: Julie Henderson  
Karri Atwood, JD





*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178 [www.deq.virginia.gov](http://www.deq.virginia.gov)

Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director  
(804) 698-4000

June 24, 2021

Chair of the Board c/o/  
Ms. Princy R. Doss  
Director of Policy, Planning, and Public Information  
Department of Labor and Industry  
600 East Main Street  
Richmond, VA 23219

Dear Ms. Doss:

The purpose of this letter is to designate Elizabeth (Beth) Lohman, as DEQ's primary representative and voting member on the Safety and Health Codes Board until further notice. Mr. Jerome Brooks was DEQ's primary representative; however, his new duties at DEQ will preclude his being able to continue to fill his role as DEQ's primary representative to the Board.

The designation is effective as of the date of this letter. Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "David K. Paylor".

David K Paylor Director

cc: Jeffrey Steers

**DRAFT**  
**SAFETY AND HEALTH CODES BOARD**  
**PUBLIC HEARING MEETING MINUTES**  
**Thursday, August 5, 2021**

This public hearing was held for the purpose of consideration of amendments to the 16VAC25-220, Final Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a).

The Safety and Health Codes Board (“Board”) held a hybrid meeting that allowed participants to attend in person or electronically utilizing **WebEx**.

Notice of the public hearing was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to attend the meeting in person at Patrick Henry Building, 1111 E. Broad Street, East Reading Room, Richmond, VA 23219 or witness the meeting remotely via WebEx. Notice of this public hearing was published in the Richmond Times Dispatch on July 29, 2021. Notice of this hearing was also published on the Virginia Regulatory Townhall’s website here:

<https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=32816>

The Board members and Department staff listed below participated either in person (indicated by asterick) or via WebEx.

A recording of the public hearing in its entirety is available here:

<https://www.doli.virginia.gov/wp-content/uploads/2021/08/Public-Hearing-on-16VAC25-220-Proposed-Amendments-to-Permanent-Standard-20210805-1335-1.mp4>.

**BOARD MEMBERS**

**PARTIPATING:** \* in person

- \*Mr. Charles Stiff, Vice Chair
- Mr. Louis J. Cernak, Jr.
- \*Mr. John Fulton
- Ms. Julie Henderson
- Ms. Tina Hoover
- \*Ms. Anna Jolly
- Ms. Elizabeth (“Beth”) Lohman
- Mr. Michael Luce
- Mr. Courtney Malveaux
- Mr. Travis Parsons
- Mr. Kenneth Richardson, II

**BOARD MEMBERS ABSENT:**

- Mr. Phil Glaize
- Ms. Milagro Rodriguez, Chair

Mr. Thomas Thurston

**STAFF PARTICIPATING:**

- \*in person
- Mr. C. Ray Davenport, Commissioner
- Mr. William P. Burge, Assistant Commissioner
- \*Ms. Princy R. Doss, Director, Policy, Planning
- Ms. Marta Fernandes, Director of VOSH Safety Compliance
- Ms. Jennifer Rose, Director of Consultation
- Ms. Christine Childress, Information Security Officer
- \*Mr. Richard White, IT Director
- \*Ms. Holly Trice, Senior Staff Attorney
- Ms. Cristin Bernhardt, Staff Attorney
- Mr. Alex West, Senior Staff Attorney

**OTHERS PARTICIPATING:**

- Mr. Joshua Laws, Assistant Attorney General
- Ms. Lisa Wright, Court Reporter

**CALL TO ORDER**

Vice Chair Stiff called the Public meeting to order at 9:30 am. Vice Chair Stiff made opening remarks informing the public that this hybrid in person and virtual public hearing was being held for the purpose of consideration of amendments to 16VAC25-220, Final Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a).

**OPPORTUNITY FOR PUBLIC COMMENT ON THE PROPOSED AMENDMENTS TO THE FINAL PERMANENT STANDARD.**

After Mr. Stiff made his opening remarks, the opportunity of public comment on the proposed amendments to the final permanent standard began. This public hearing only included discussion on the proposed amendments to the final public standard. No votes were taken; there were no deliberations, and no decisions were made.

Members of the public had been given the opportunity to sign up to offer their comments on the proposed amendments to the final permanent standard ahead of the public hearing.

The following members of the public made appearances virtually through Webex to present public comment on the proposed amendments to the final permanent standard:

1. Beck Stanley, Virginia Agribusiness Council
2. Hobey Bauhan, Virginia Poultry Federation
3. Manuel Gago, Legal Aid Justice Center

4. P. Dale Bennett, Virginia Trucking Association
5. M.K. Fletcher, AFL-CIO
6. Robert Melvin, Virginia Restaurant, Lodging, and Travel Association
7. Brett Vassey, Virginia Manufacturers Association

The following members of the public made appearances in person to present public comment on the proposed amendments to the final permanent standard:

1. Nicole Riley, National Federation of Independent Business
2. Jeffrey McClurken, University of Mary Washington

## **ADJOURNMENT**

During the first 7 minutes, 28 seconds of the webex, there was a sound malfunction, making it difficult to hear. Therefore, before adjournment, Vice Chair Stiff reread his opening remarks to include the announcement that the public will get another opportunity to discuss the proposed amendments when the Board meets again to consider whether to adopt the proposed amendments to the final permanent standard as final. This next Board meeting has not been scheduled yet, but Mr. Stiff communicated that the meeting date and time will be posted through the appropriate processes when it has been scheduled.

Mr. Stiff thanked the Board members, all participants and the Agency. Mr. Stiff adjourned the hearing at 10:17 am.

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
PUBLIC MEETING MINUTES  
Thursday, August 26, 2021**

This public meeting was held for the purpose of consideration of amendments to the 16VAC25-220, VOSH Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a).

The Safety and Health Codes Board (“Board”) held a hybrid meeting that allowed participants to attend in person or electronically utilizing **WebEx**.

Notice of the public meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to attend the meeting in person at Patrick Henry Building, 1111 E. Broad Street, East Reading Room, Richmond, VA 23219 or witness the meeting remotely via WebEx. Notice of this hearing was also published on the Virginia Regulatory Townhall’s website here: <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=32907>

The Board members and Department staff listed below participated either in person (indicated by asterick) or via WebEx.

A recording of the public hearing in its entirety is available here: <https://www.doli.virginia.gov/wp-content/uploads/2021/08/SHCB-Emergency-Meeting-08-27-21-1.mp4>

**BOARD MEMBERS PARTIPATING:** \* in person

- \*Ms. Milagro Rodriguez, Chair
- Mr. Jay Abbott
- Mr. Robert Buchler
- \*Ms. Kelly Bundy
- Mr. Louis J. Cernak, Jr.
- \*Mr. John Fulton
- \* Ms. Julie Henderson
- Ms. Tina Hoover
- \*Ms. Elizabeth (“Beth”) Lohman
- Mr. Michael Luce
- Mr. Travis Parsons
- Ms. Lutheria Smith
- \* Mr. Charles Stiff
- Mr. Thomas Thurston

**STAFF PARTICIPATING:** \*in person

- Mr. C. Ray Davenport, Commissioner
- \*Mr. Jay Withrow, Director or Legal Services
- \*Ms. Princy R. Doss, Director, Policy, Planning
- Ms. Marta Fernandes, Director of VOSH Safety Compliance
- \*Mr. Richard White, IT Director
- \*Ms. Holly Trice, Senior Staff Attorney

Ms. Cristin Bernhardt, Staff Attorney

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter

**CALL TO ORDER**

Chair Rodriguez called the Public meeting to order at 10:04 am. A quorum was present. Chair Rodriguez made opening remarks informing the public that this hybrid in person and virtual public hearing was being held for the purpose of consideration of amendments to 16VAC25-220, VOSH Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a). The process and procedures of the hybrid meeting were also explained including in the event there is an interruption to the WebEx electronic broadcast.

**APPROVAL OF AGENDA**

Chair Rodriguez asked the Board if there was any discussion on the agenda. There was none. Chair Rodriguez asked if there was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [10:10:00]

<b>Motion #1: Approval of Agenda</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	

**OPPORTUNITY FOR PUBLIC COMMENT ON THE PROPOSED AMENDMENTS TO THE VOSH STANDARD.**

After Chair Rodriguez made her opening remarks and approval of the agenda, the opportunity of public comment on the proposed amendments to the VOSH standard began.

Members of the public had been given the opportunity to sign up to offer their comments on the proposed amendments to the VOSH standard ahead of the public hearing.

The following members of the public made appearances virtually through Webex to present public comment on the proposed amendments to the VOSH standard:

1. Juley Fulcher, Public Citizen/Congress Watch
2. Nicole Riley, National Federation of Independent Business (NFIB)
3. Beck Stanley, Virginia Agribusiness Council
4. Rachel McFarland, Virginia Justice Project for Farm & Immigrant Workers
5. Rebecca Reindel, AFL-CIO
6. M.K. Fletcher, AFL-CIO

The following members of the public made appearances in person to present public comment on the proposed amendments to the VOSH standard:

1. Sam Revenson,
2. Ben Traynham, Virginia Beer Wholesalers Association

At the conclusion of the public commenters, there was a **5 MINUTE RECESS for Lunch at 11:03 am; RECONVENE 11:08 am**

#### **NEW BUSINESS**

Next, Chair Rodriguez moved onto new business, which consisted of review and consideration of adoption of amendments to the VOSH standard for Infectious Disease Prevention, SARS-CoV-2 Virus that causes COVID-19. Co-Chair Chuck Stiff spoke to the Board of the concerns of the use and impact of the existing standards such as General Duty clause with the adoption of the VOSH Standard. Chair Rodriguez recognized the Department and introduced Director of Legal Support, Jay Withrow. Director Withrow addressed Co-Chair Stiff concerns in general terms and explained more specific concerns will be addressed during his presentation.

Director Withrow gave an update on statistics of the Coronavirus both in Virginia and across the United States. He also discussed the Economic Impact Analysis (EIA). *The EIA was not prepared pursuant to the Administrative Process Act (APA) as the amendments to the VOSH Standard was not being promulgated pursuant to the APA. However, the Agency contracted with an outside firm, CHMURA, to conduct an EIA as the Agency had stated it would follow the regulatory steps laid out in the APA as closely as it could, taking into consideration the 6 month time frame for promulgation of the Standard laid out in Va. Code § 40.1-22(6a).*

During the presentation by Director Withrow, there was a **33 MINUTE RECESS for Lunch at 12:27 pm; RECONVENE 1:00 pm. [recording timestamp: 2:22:33]**

After lunch, Director Withrow began with presentation of the briefing package, which included the current statistics and trends of COVID-19 in the United States and in Virginia hospitals and VOSH workplace complaints. Director Withrow discussed the purpose of the DOLI recommended revisions to the VOSH Standard are to address the Governor's proposed amendments as well as the CDC updated Guidelines for fully vaccinated persons. He discussed the changes requested by the Governor, the 30 day comment period, the public hearing held on August 5, 2021, and the 7 day comment period leading up to this August 26 meeting. Also included in the presentation of the briefing package were the

proposed amendments and recommendations to the VOSH Standard that will be discussed and voted on later on in the meeting. The Board asked various clarifying questions during the presentation.

During the presentation by Director Withrow, there was a **5 MINUTE RECESS at 1:58 pm; RECONVENE 2:03 pm. [recording timestamp: 3:53:30]**

After the recess, Director Withrow began with the proposed amendments to the VOSH Standard and the changes that will be voted on by the Board. Motion #2 involved Governor change to Sec. 10.#. to strike out CDC language referring requiring CDC recommendations to be “equivalent or greater protection than provided by this standard.” Member Parson and Member Thurston opposed the removal of this language as it weakens the protections for workers. Member Bundy asked about the experience from public with mandatory v. non-mandatory language and Director Withrow mentioned he has not been aware of any questioning of mandatory v non-mandatory language. After discussion by the Board with concerns with removal of this language and why it is necessary and Agency interpretation, Chair Rodriguez asked if there was a motion to accept the Admin recommendation. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [4:25:30]

<b>Motion #2 Admin changes to Sec. 10.E. strike out CDC language highlighted</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.		1			
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons		1			
Ms. Milagro (“Milly”) Rodriguez		1			
Ms. Luthera Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>10</b>	<b>4</b>	<b>0</b>	<b>0</b>	

Director Withrow moved onto the proposed amendments to the VOSH standard beginning on page 3 and through page 26 with all non-substantive changes for consistency with federal OSHA ETA and definition updates. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [4:35:40]

<b>Motion #3: pgs 3-26: Department highlighted changes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				



Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	

Director Withrow continued with Section 40 on page 27 and asked the Board if anyone was planning to propose their own amendments to Sec. 40. A few Board members expressed their proposals and they will be discussed at the time in separate motions. Director Withrow went through the Department recommended changes from page 27 through 33 Section 40.C.2. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [4:44:40]

<b>Motion #4: pgs 27-33: Department highlighted changes through Sec 40.C.2</b>				<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott				1				
Mr. Robert Buchler				1				
Ms. Kelly Bundy				1				
Mr. Louis J. (Lou) Cernak Jr.				1				
Mr. John Fulton				1				
Ms. Julie Henderson				1				
Ms. Tina Hoover				1				
Mr. Elizabeth (Beth) Lohman				1				
Mr. Michael Luce				1				
Mr. Travis M. Parsons				1				
Ms. Milagro ("Milly") Rodriguez				1				
Ms. Lutheria Smith				1				
Mr. Charles L. (Chuck) Stiff				1				
Mr. Thomas A. Thurston				1				
<b>TOTALS</b>				<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	

Next Sec. 40.3.E. pg 33 and language recommended by VDH and Administration and Department recommends adoption of highlighted language. Member Abbott requests the language be removed

relating to the “the employee must follow any testing or quarantine guidance provided by a VDH public health professional.” Member Abbott believes it is vague and covered by VDH procedures already in standard. Department recommend voting on highlighted language with exception of contested language by Member Abbott. Chair Rodriguez asked if there was a motion to accept the Department recommended underlined changes to Sec.40.C.3 with exception of contested sentence highlighted at top of page 34. . The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [4:52:00]

<b>Motion #5: pg 33: Sec. 40.C.3 Department underlined changes bottom page 33. Not including highlighted sentence (top of page 34)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	

Chair Rodriguez asked if there was a motion to accept the Department recommended underlined changes to Sec.40.C.3 with highlighted sentence at top of page 34. Member Lohman clarified the VDH position for adding this language and requirement. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [4:56:45]

<b>Motion #6: pg. 33 Sc. 40.C.3 Department highlighted language in entirety</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott		1			
Mr. Robert Buchler		1			
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton	1				
Ms. Julie Henderson	1				

Ms. Tina Hoover		1			
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce		1			
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>10</b>	<b>4</b>	<b>0</b>	<b>0</b>	

Director Withrow continued with Se. 40.C.4 top of page 34 and through the Department highlighted changes up through Sec.40.F.3 middle of page 36. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:01:00]

<b>Motion #7: pg. 34 Department highlighted changes from top Sec. 40.C.4 through pg. 36 Sec. F.3</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	

Director Withrow explained the Department recommended changes to Sec. 40.F.4 regarding face coverings and fully vaccinated persons while in vehicle as relates to respirator requirements. Member Thurston proposed strike last highlighted sentence beginning with "or a face covering..." Chair Rodriguez asked if there was a motion to accept the changes proposed by Member Thurston. The motion was made, properly seconded and the roll call vote was conducted. The motion failed.

Meeting Recording Timestamp of Vote: [5:16:10]

<b>Motion #8: pg. 36 Sec.40.F.4 1<sup>st</sup> sentence take out "and wear" and rest of highlighted sentence (Thurston motion)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott		1			

Mr. Robert Buchler		1			
Ms. Kelly Bundy		1			
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton		1			
Ms. Julie Henderson		1			
Ms. Tina Hoover		1			
Mr. Elizabeth (Beth) Lohman		1			
Mr. Michael Luce		1			
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith		1			
Mr. Charles L. (Chuck) Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>4</b>	<b>10</b>	<b>0</b>	<b>0</b>	

Member Buchler proposed changes to Sec.40.F.4 to strike language from "and wear...." and replace with "shall be provided with a face covering. Director Withrow explained that Department would oppose the motion because removal of "and wear..." does not follow CDC guidelines. Chair Rodriguez asked if there was a motion to accept the changes proposed by Member Buchler. The motion was made, was not properly seconded and therefore no vote was taken. The motion failed.

Meeting Recording Timestamp of Vote:[5:21:20]

<b>Motion #9: pg. 36 Sec. 40 F. 4 1<sup>st</sup> sentence take out "and wear" only (Abbott motion)</b> <b>NO SECOND/NO VOTE</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott					
Mr. Robert Buchler					
Ms. Kelly Bundy					
Mr. Louis J. (Lou) Cernak Jr.					
Mr. John Fulton					
Ms. Julie Henderson					
Ms. Tina Hoover					
Mr. Elizabeth (Beth) Lohman					
Mr. Michael Luce					
Mr. Travis M. Parsons					
Ms. Milagro ("Milly") Rodriguez					
Ms. Lutheria Smith					
Mr. Charles L. (Chuck) Stiff					
Mr. Thomas A. Thurston					
<b>TOTALS</b>		<b>0</b>	<b>0</b>	<b>0</b>	

Member Henderson then made a motion to accept the original Department recommended changes highlighted in the proposed standard. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:22:30]

<b>Motion #10: pg. 36 Sec. 40 F. 4 Department recommended changes as highlighted</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler		1			
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez		1			
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>11</b>	<b>3</b>	<b>0</b>	<b>0</b>	

There was a **5 MINUTE RECESS at 3:28 pm; RECONVENE 3:33 pm. [recording timestamp: 5:24:00]**

Director Withrow continued with Sec. 40.F.5 (pg. 36) through Sec.40.M. (pg. 45) with non-substantive changes and changes based on new CDC guidelines. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:35:30]

<b>Motion #11: pg. 36 Sec. 40 F.5 through Pg. 45 Sec. 40.M.</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				

Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Director Withrow continued with Sec. 50 (pg 46) through Sec.60. (pg. 62) with non-substantive changes and changes based on new CDC guidelines. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:43:10]

<b>Motion #12: pg 46 through pg 62 Department highlighted changes</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Luthera Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Discussion continued with pg 63 Sec. 70.A.2 relating to counting vaccinated and unvaccinated employees for purposes of applicability to requirement for response plan for employees with 11 or more employees. Member Parsons opposes exclusion of vaccinated employees into the count. Decision was made to vote on Sec. 70.A. with exception of last sentence that is at issue for further discussion. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:50:00]

<b>Motion #13: pg. 63, Sec.70.A.2 (except last sentence "In counting...exclude fully vaccinated...")</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				

Mr. Louis J. (Lou) Cernak Jr.				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons	1				
Ms. Milagro ("Milly") Rodriguez	1				
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Moving to the last sentence of Sec.70.A.2 opposed by Member Parson, Director Withrow presented to the Board the Department recommendation that the last sentence excluding vaccinated employees remain in the standard. Chair Rodriguez asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:52:25]

<b>Motion #14: pg 63, Sec.70.A.2. entirely as Department recommended changes (including sentence "In counting...")</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons		1			
Ms. Milagro ("Milly") Rodriguez		1			
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>10</b>	<b>3</b>	<b>0</b>	<b>1</b>	

Director Withrow proceeded with Department recommendations to adopt starting with Sec.70.B. (pg 63) and through the end of the standard on page 74. Member Bundy asked clarifying question to Director Withrow regarding rationale to Sec.70.B.2. which provides for exclusion of plan and training requirements for those vaccinated employees. It was clarified that it was placed in the standard to encourage employee vaccinations. Chair Rodriguez then asked if there was a motion to accept the

Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:55:30]

<b>Motion #15: Pg 62 Sec.70.B through pg 74 end of standard/chapter</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.				1	
Mr. John Fulton	1				
Ms. Julie Henderson	1				
Ms. Tina Hoover	1				
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce	1				
Mr. Travis M. Parsons		1			
Ms. Milagro ("Milly") Rodriguez		1			
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>10</b>	<b>3</b>	<b>0</b>	<b>1</b>	

Director Withrow then presented the Department's recommendation that the Safety and Health Codes Board adopt final amendments to the VOSH Standard for Infectious Disease Prevention of the SARS-CoV-2 That Causes COVID-19, §16 VAC 25-220 ("VOSH Standard"). Va. Code §40.1-22(6a). The Department also recommends that the Board state in this motion that it may make to amend this standard that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation. Chair Rodriguez then asked if there was a motion to accept the Department recommended changes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Meeting Recording Timestamp of Vote: [5:59:25]

<b>Motion #16: Adopt VOSH Standard amendments as voted upon</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jay Abbott	1				
Mr. Robert Buchler	1				
Ms. Kelly Bundy	1				
Mr. Louis J. (Lou) Cernak Jr.	1				
Mr. John Fulton		1			
Ms. Julie Henderson	1				
Ms. Tina Hoover		1			
Mr. Elizabeth (Beth) Lohman	1				
Mr. Michael Luce			1		
Mr. Travis M. Parsons		1			
Ms. Milagro ("Milly") Rodriguez		1			
Ms. Lutheria Smith	1				
Mr. Charles L. (Chuck) Stiff	1				



Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>8</b>	<b>5</b>	<b>1</b>	<b>0</b>	

Chair Rodrigues announced that this concludes New Business and moved onto Agenda item 5 and asked if there were any items of interest from the Department of Labor and Industry. Director Withrow announced to the new Board members the Department is working on a Heat Illness Prevention Standard with approximately 40 person regulatory advisory panel and a dedicated webpage for those interested in following the process of this regulation.

Commissioner Davenport then welcomed the new Board members, thanked the current Board members for their service and expressed appreciation to the departing Board members, Anna Jolly, Phil Glaize, Courtney Malveaux and Ken Richardson for their dedicated service during their terms on the Board.

Chair Rodriguez proceeded to agenda item 6 and asked if the members of the Board had any items of interest to share at this time. No Board members had any items at this time.

**ADJOURNMENT**

Chair Rodriguez thanked the Board members, all participants and the Agency. The meeting was adjourned at 4:07 pm.



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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COMMISSIONER

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**NOVEMBER 22, 2021**

### **VIRGINIA SAFETY AND HEALTH CODES BOARD**

#### **BRIEFING PACKAGE FOR DECEMBER 3, 2021**

#### **Proposed Heat Illness Prevention Standard, 16VAC25-210**

#### **I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board consider for adoption the proposed Heat Illness Prevention Standard pursuant to Va. Code §40.1-22(5).

#### **A. Attachments.**

**ATTACHMENT A:**  
REGULATORY ADVISORY PANEL

**ATTACHMENT B:**  
UNDERREPORTING OF OCCUPATIONAL ILLNESSES, INJURIES, AND  
FATALITIES DUE TO HAZARDOUS HEAT

**ATTACHMENT C:**  
SUMMARY OF VIRGINIA HEAT FATALITIES AND CATASTROPHES

**ATTACHMENT D:**  
WORK INJURIES IN THE HEAT IN 2015, BUREAU OF LABOR STATISTICS

**ATTACHMENT E:**

WORKERS COMPENSATION INSURANCE ORGANIZATIONS INJURY DESCRIPTION CODES FOR POSSIBLE HEAT-RELATED FIRST REPORT OF INJURY CASES

**ATTACHMENT F:**

VOSH HEAT ILLNESS RELATED UNPROGRAMMED ACTIVITIES AUGUST 1, 2014 TO AUGUST 30, 2021

**ATTACHMENT G:**

HOUSE BILL NO. 805, 2020 GENERAL ASSEMBLY SESSION

**ATTACHMENT H:**

HOUSE BILL NO. 1785, 2021 GENERAL ASSEMBLY SESSION

**II. Summary of Rulemaking Process.**

At its meeting on September 17, 2019, the Virginia Safety and Health Codes Board directed the Commissioner of Labor and Industry to initiate work on a proposed Notice of Intended Regulatory Action (NOIRA) to begin the regulatory adoption process of a Heat Illness Prevention Standard applicable to all Virginia employers and employees covered by VOSH jurisdiction.

The NOIRA for Heat Illness Prevention was adopted by the Board on March 5, 2020. Executive Branch review of the NOIRA was completed on April 12, 2021.<sup>1</sup>

The NOIRA was published in the Virginia Register of Regulations on May 10, 2021.<sup>2</sup>

A 30-day written comment period on the NOIRA was provided from May 10, 2021 to June 9, 2021.<sup>3</sup> The Department received 145 comments submitted to the Virginia Regulatory Townhall and 10 comments submitted directly to the Department. **See separate document entitled "Heat Illness Prevention NOIRA 30 Day Public Comment Period and Department Response."**

The Department formed a Regulatory Advisory Panel (Panel) pursuant to 16VAC25-11-70<sup>4</sup> to assist the Department's VOSH program in identifying and analyzing issues associated with the development of proposed regulatory language to be considered by the Board.

The Panel consisted of 40 representatives from business, labor and public interest groups (See **ATTACHMENT A**) and held three virtual meetings on August 11, 2021, September 1, 2021 and October 7, 2021. The meetings were recorded and posted on the Department's Heat Illness Prevention webpage along with all the documents presented by the Department to the Panel.<sup>5</sup>

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<sup>1</sup> <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8926>

<sup>2</sup> <http://register.dls.virginia.gov/vol37/iss19/v37i19.pdf>

<sup>3</sup> <https://townhall.virginia.gov/L/comments.cfm?stageid=8926>

<sup>4</sup> <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-11-70>

<sup>5</sup> <https://www.doli.virginia.gov/final-standard-for-heat-related-illnesses/>

The Panel primarily focused on providing input to the Department on draft regulatory text for the proposed standard. Panel members were also provided the opportunity to provide written comments on the need for the standard. **See separate document entitled "Heat Illness Prevention Regulatory Advisory Panel Comments."**

### **III. Summary of Proposed Standard.**

The VOSH Program seeks to adopt regulations applicable to protect Virginia employers and employees from outdoor and indoor heat illness hazards.

NOTE: VOSH jurisdiction over the maritime industry only extends to public sector employers and employees. Federal OSHA retains jurisdiction over the maritime industry in the private sector in Virginia.

In order to assure that employees and employers are provided the same level of occupational safety and health protections, the proposed standard addresses indoor and outdoor heat illness hazards<sup>6</sup> experienced by similarly situated employees and employers exposed to the same job-related hazards in all industries covered by VOSH jurisdiction.

The proposed standard includes the following components:

- Definitions of terms
- Temperature action levels that trigger certain requirements (heat index of 85° triggers primary requirements of the standard; heat index of 95° triggers "high heat" requirements of the standard)
- 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
- 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
- Written heat illness prevent plan for certain employers
- Employee and supervisory training on heat illness hazards and preventative measures in a language the employee and supervisor understands

### **IV. Basis, Purpose and Impact of the Proposed Rulemaking.**

#### **A. Basis.**

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<sup>6</sup> OSHA heat-related case studies involving a roofer, delivery driver, and foundry work demonstrate the variety of occupations that are exposed to heat-related hazards: <https://www.osha.gov/SLTC/heatstress/casestudies.html>

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

“... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title....In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.”

"Heat is the leading cause of death among all weather-related phenomena (NWS, September 8, 2021a;<sup>7</sup> NWS, September 8, 2021b<sup>8</sup>). Excessive heat exacerbates existing health problems like asthma, kidney failure, and heart disease, and can cause heat stroke and even death if not treated properly and promptly. Workers in both outdoor and indoor work settings without adequate climate-controlled environments are at risk of hazardous heat exposure. In an evaluation of 66 heat-related illness enforcement investigations from 2011-2016, 80% of heat-related fatalities occurred in outdoor work environments. However, 61% of non-fatal heat-related illness cases occurred during or after work in an indoor work environment."<sup>9 10</sup>

"In a warm environment, the human body maintains a healthy internal body temperature by getting rid of excess heat through mechanisms like sweating and increasing blood flow to the skin. This is especially true during physical activity or exertion....[I]f the body is not able to dissipate heat, the body temperature may rise, and symptoms of heat-related injury and illness can result."<sup>11</sup>

## 1. Heat-related Illness Factors.

Heat-related illness external risk factors generally include, but are not limited to:<sup>12</sup>

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<sup>7</sup> National Weather Service (NWS). (2021a, September 8). 80-year list of severe weather fatalities. [https://www.weather.gov/media/hazstat/80years\\_2020.pdf](https://www.weather.gov/media/hazstat/80years_2020.pdf). 2020. Accessed September 8, 2021.

<sup>8</sup> National Weather Service (NWS). (2021b, September 8). Weather related fatality and injury Statistics: weather fatalities 2020. <https://www.weather.gov/hazstat/2020>. Accessed September 8, 2021.

<sup>9</sup> Page 59310, <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

<sup>10</sup> Tustin A et al. (2018, August). Risk factors for heat-related illness in U.S. workers: an OSHA case series. *Journal of Occupational and Environmental Medicine*, 60(8).

<sup>11</sup> Page 59310, <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

<sup>12</sup> Page 36, <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

- High temperature and humidity
- Direct sun exposure
- Indoor radiant heat sources
- Limited air movement
- Physical exertion
- Personal Protective Equipment (PPE) and clothing

Heat-related illness internal risk factors generally include, but are not limited to:<sup>13</sup>

- Lack of recent exposure
- Not enough fluids
- Physical condition and health problems
- Medications
- Pregnancy
- Advanced age
- Previous heat-related illness

NOTE: "A study of U.S. Army personnel demonstrated that those who have been hospitalized in U.S. hospitals for heat-related illness may experience organ damage that can persist for years afterward, even resulting in an increased risk of death from cardiovascular disease and ischemic heart disease compared to those previously hospitalized for other reasons."<sup>14 15</sup>

Medical and personal conditions<sup>16</sup> that can contribute to heat intolerance include, but are not limited to:

- Obesity (body mass index  $\geq 30$  kg/m<sup>2</sup>)
- Diabetes
- High blood pressure
- Heart disease
- Lower level of physical fitness
- Medications, diuretics (water pills) and some psychiatric or blood pressure medicines
- Some medications can result in a worker's inability to feel heat conditions and/or the inability to sweat, so symptoms of heat stress may not be evident.
- Alcohol use
- Use of illicit drugs such as opioids, methamphetamine, or cocaine

## 2. Heat-related Illnesses, Symptoms.<sup>17</sup>

a. "**Heat stroke** is the most serious heat-related illness. It occurs when the body becomes unable to control its temperature: the body's temperature rises rapidly, the

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<sup>13</sup> *Id.*

<sup>14</sup> Page 59310, <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

<sup>15</sup> Wallace RF et al. (2007). Prior heat illness hospitalization and risk of early death. *Environmental Research*, 104, 290-295. doi:10.1016/j.envres.2007.01.003.

<sup>16</sup> <https://www.osha.gov/heat-exposure/personal-risk-factors>

<sup>17</sup> <https://www.osha.gov/heat-exposure/illness-first-aid>

sweating mechanism fails, and the body is unable to cool down. When heat stroke occurs, the body temperature can rise to 106°F or higher within 10 to 15 minutes. Heat stroke can cause death or permanent disability if emergency treatment is not given.

Symptoms of heat stroke include:

- Confusion, altered mental status, slurred speech
- Loss of consciousness (coma)
- Hot, dry skin or profuse sweating
- Seizures
- Very high body temperature
- Fatal if treatment delayed"<sup>18</sup>

b. "**Heat exhaustion** is the body's response to an excessive loss of the water and salt, usually through excessive sweating. Workers most prone to heat exhaustion are those that are elderly, have high blood pressure, and those working in a hot environment.

Symptoms of heat exhaustion include:

- Headache
- Nausea
- Dizziness
- Weakness
- Irritability
- Thirst
- Heavy sweating
- Elevated body temperature
- Decreased urine output"<sup>19</sup>

c. "**Rhabdomyolysis** is a medical condition associated with heat stress and prolonged physical exertion, resulting in the rapid breakdown, rupture, and death of muscle. When muscle tissue dies, electrolytes and large proteins are released into the bloodstream that can cause irregular heart rhythms and seizures, and damage the kidneys.

Symptoms of rhabdomyolysis include:

- Muscle cramps/pain
- Abnormally dark (tea or cola colored) urine
- Weakness
- Exercise intolerance
- Asymptomatic"<sup>20</sup>

d. "**Heat syncope** is a fainting (syncope) episode or dizziness that usually occurs with prolonged standing or sudden rising from a sitting or lying position. Factors that may

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

contribute to heat syncope include dehydration and lack of acclimatization.

Symptoms of heat syncope include:

Fainting (short duration)

Dizziness

Light-headedness during prolonged standing or suddenly rising from a sitting or lying position"<sup>21</sup>

e. "**Heat cramps** usually affect workers who sweat a lot during strenuous activity. This sweating depletes the body's salt and moisture levels. Low salt levels in muscles causes painful cramps. Heat cramps may also be a symptom of heat exhaustion.

Symptoms of heat cramps include:

Symptoms of heat"<sup>22</sup>

f. "**Heat rash** is a skin irritation caused by excessive sweating during hot, humid weather.

Symptoms of heat rash include:

Looks like red cluster of pimples or small blisters

Usually appears on the neck, upper chest, groin, under the breasts, and in elbow creases"<sup>23</sup>

### 3. Heat-related Illness Statistics

#### a. **National**

"According to the Bureau of Labor Statistics (BLS) Census of Fatal Occupational Injuries, exposure to excessive environmental heat stress has killed 907 U.S. workers from 1992-2019, with an average of 32 fatalities per year during that time period.<sup>24</sup>

In 2019, there were 43 work-related deaths due to environmental heat exposure.<sup>25</sup>

A recent analysis of BLS data by National Public Radio and Columbia Journalism Investigations found that the three-year average of heat-related fatalities among U.S.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Bureau of Labor Statistics (BLS). (2021a, September 10). Fatal occupational injuries by selected worker characteristics and selected event or exposure, All U.S., all ownerships, 1992-2019. <https://data.bls.gov/gqt/InitialPage>. Accessed September 10, 2021.

<sup>25</sup> Bureau of Labor Statistics (BLS). (2021, September 1). 43 work-related deaths due to environmental heat exposure in 2019. The Economics Daily. <https://www.bls.gov/opub/ed/2021/43-work-related-deaths-due-to-environmental-heat-exposure-in-2019.htm>.



workers has doubled since the early 1990s.<sup>26</sup>

The BLS Annual Survey of Occupational Injuries and Illnesses estimates that 31,560 work-related heat injuries and illnesses involving days away from work have occurred from 2011-2019, with an average of 3,507 injuries and illnesses of this severity occurring per year during this period."<sup>27 28</sup>

NOTE: "Heat-related illnesses, injuries, and fatalities are underreported (EPA, April 2021; Popovich and Choi-Schagrin, August 11, 2021). Occupational heat-related illnesses, injuries, and fatalities may be underestimated for several reasons."<sup>29</sup> See ATTACHMENT B.

## **b. Virginia**

See ATTACHMENT C for a summary and description of Virginia heat illness fatalities and catastrophes from 1999 to October, 2021.

A total of 17 heat-related employee fatalities and 5 employee hospitalizations were reported to VOSH during the period in construction, agriculture and general industry settings.

According to BLS, in 2015 there were 100 nonfatal occupational injuries and illnesses in Virginia caused by exposure to environmental heat.<sup>30</sup> See ATTACHMENT D.

The Department conducted an informal review of Virginia Workers' Compensation Commission (VWCC) First Report of Injury (FRI) statistics for the period 2009 to 2020 to obtain some baseline data on heat-related illnesses and injuries in Virginia. The review was not intended to be a comprehensive assessment of all work-related heat cases, in part because the review found at times a lack of consistency in the coding of cases.

NOTE: FRI's may be submitted by either the employer or the injured worker.

In attempting to obtain a universe of data to review, the Department selected from Workers Compensation Insurance Organizations (WICO) codes used by VWCC for coding FRI submissions in the areas of "cause of injury" and "nature of injury" that appeared to have some relationship to well-known signs, symptoms and causes of heat-related illnesses (e.g., temperature extremes, heat prostration, myocardial infarction,

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<sup>26</sup> Shipley J et al. (2021, August 17). Heat is killing workers in the U.S.—and there are no federal rules to protect them. National Public Radio. <https://www.npr.org/2021/08/17/1026154042/hundreds-of-workers-have-died-from-heat-in-the-last-decade-and-its-getting-worse>.

<sup>27</sup> Bureau of Labor Statistics (BLS). (2021b, September 10). Databases, Tables & Calculators by Subject. Nonfatal cases involving days away from work: selected characteristics (2011 forward). <https://data.bls.gov/PDQWeb/cs>. Accessed September 10, 2021.

<sup>28</sup> Page 59310, <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

<sup>29</sup> *Id.* at 59311.

<sup>30</sup> <https://www.bls.gov/opub/ted/2017/work-injuries-in-the-heat-in-2015.htm>

syncope, etc.). See ATTACHMENT E for a list of the codes selected.<sup>31</sup>

In compiling the following statistics the Department, placed reliance on the expertise of VWCC staff's decision making process for properly coding the "nature of injury" and "cause of injury" data fields. According, the Department assumed first that all FRIs where the "nature of injury" was coded by the VWCC as "heat prostration" would be included in its count of heat-related FRIs.

Second, the Department assumed that all FRIs where the "cause of injury" was classified by VWCC as either "contact with – temperature extremes" or "contact with – hot object or substances" and the resulting description of the injury revealed a potential heat illness related sign or symptom (e.g., fainting/syncope, dizziness, heat rash, dehydration, cramps, etc.) the case would be included in its count of heat-related FRIs.

Third, for all other FRI cases, the Department reviewed the various codes for "nature of injury," "cause of injury" and the "injury narrative" using a combination of keyword identify potential heat-related FRIs. Some representative samples of FRIs (editing to protect employee privacy and ease of comprehension) so identified include:

Nature of Injury	Cause of Injury	Injury Narrative
All Other Specific Injuries, NOC	Contact With - Temperature Extremes	Employee worked a 12-hour day on the roof in extreme heat and felt cramps due to possible dehydration.
No Physical Injury	Other Than Physical Cause of Injury	Employee was outside taking orders and started feeling like they had to faint due to heat.
All Other Specific Injuries, NOC	Contact With - Fire or Flame	Employee sent to medical center due to difficulty breathing secondary to heat exhaustion while firefighting.
Sprain or Tear	Other Than Physical Cause of Injury	Employee alleges they were returning from break time, walked into clean room, thinks they may have passed out from the heat, suddenly found them self on the floor. Alleges injury to right wrist, contusion to both knees.
Multiple Physical Injuries Only	Contact With - Temperature Extremes	Injured worker was driving back to shop. Suffered heat exhaustion and syncope.

<sup>31</sup> Use of the codes resulted in a universe of 48,303 records.

All Other Specific Injuries, NOC	Other Than Physical Cause of Injury	Employee was at the field picking tomatoes when all of a sudden they started vomiting and had a headache; possible heat prostration; no physical injury.
Multiple Physical Injuries Only	Contact With - Temperature Extremes	Employee became overheated while sweeping debris from machine
No Physical Injury	Contact With - Temperature Extremes	Working in the heat with welder - employee became light headed and passed out.
Syncope	Contact With - Temperature Extremes	Employee fainted because of the heat in store.

For the period 2009-2020, the Department identified 2,443 heat-related illnesses, 701 (28.71%) of which resulted in payments totaling \$3,121,767.87 (average of \$4,453.31).

Year	Heat Prostration Cases	Heat Prostration Cases With Payments	Heat Prostration Payments	Other Cases	Other Cases With Payments	Other Cases Payments	Total Cases	Total Cases With Payments	Total Payments	Average Payment
2020	104	20 19.23%	\$77,487.19	53	12 22.64%	\$43,257.24	157	32 20.38%	\$120,744.43	\$3,773.26
2019	144	45 31.25%	\$247,792.29	78	27 34.62%	\$159,496.11	222	72 32.43%	\$407,288.40	\$5,656.78
2018	178	44 24.72%	\$485,630.80	84	21 25.00%	\$143,991.96	262	65 24.81%	\$629,622.76	\$9,686.50
2017	142	53 37.32%	\$214,753.80	64	25 39.06%	\$111,538.44	206	78 37.86%	\$326,292.24	\$4,183.23
2016	207	58 28.02%	\$258,347.27	72	19 26.39%	\$92,017.71	279	77 27.60%	\$350,364.98	\$4,550.19
2015	102	35 34.31%	\$140,619.81	69	19 27.54%	\$69,233.07	171	54 31.58%	\$209,852.88	\$3,886.16
2014	98	32 32.65%	\$109,563.04	54	18 33.33%	\$83,247.20	152	50 32.89%	\$192,810.24	\$3,856.20
2013	109	37 33.94%	\$95,824.37	56	18 32.14%	\$70,348.55	165	55 33.33%	\$166,172.92	\$3,021.33
2012	136	44 32.35%	\$161,526.40	64	13 20.31%	\$51,028.55	200	57 28.50%	\$212,554.95	\$3,729.03
2011	203	48 23.65%	\$171,635.40	56	10 17.86%	\$37,958.31	259	58 22.39%	\$209,593.71	\$3,613.68
2010	202	57 28.22%	\$179,626.29	48	10 20.83%	\$32,136.22	250	67 26.80%	\$211,762.51	\$3,160.63
2009	91	27 29.67%	\$61,740.65	28	9 32.14%	\$22,967.20	119	36 30.25%	\$84,707.85	\$2,353.00
<b>Totals</b>	<b>1716</b>	<b>500</b> 29.14%	<b>\$2,204,547.31</b>	<b>726</b>	<b>201</b> 27.69%	<b>\$917,220.56</b>	<b>2442</b>	<b>701</b> 28.71%	<b>\$3,121,767.87</b>	<b>\$4,453.31</b>

Please note that the statistics presented above are likely under representative of heat illness related FRIs because approximately 6% of the FRIs illness/injury-related information in the "Injury Narrative" field was blank.

#### 4. Industries Impacted.

##### a. National

"Hazardous heat exposure can occur indoors or outdoors, and can occur during any season if the conditions are right, not only during heat waves. The following is a list of some industries where workers have suffered heat-related illnesses."<sup>32</sup>

Outdoors	Indoors
Agriculture	Bakeries, kitchens, and laundries (sources with indoor heat-generating appliances)
Construction – especially, road, roofing, and other outdoor work	Electrical utilities (particularly boiler rooms)
Construction – roofing work	Fire Service
Landscaping	Iron and steel mills and foundries
Mail and package delivery	Manufacturing with hot local heat sources, like furnaces (e.g., paper products or concrete)
Oil and gas well operations	Warehousing

"Since 2018, 789 heat-related hospitalizations and 54 heat-related fatalities across nearly 275 unique industries have been documented by OSHA through workplace inspections and violations. During this time, hospitalizations occurred most frequently in postal and delivery service, landscaping, and commercial building, as well as highway, street, and bridge construction workers. Fatalities were reported in landscaping, masonry, and highway, street, and bridge construction workers."<sup>33 34</sup>

"Further, multiple analyses of OSHA enforcement investigations and the Census of Fatal Occupational Injuries have found that Agriculture (NAICS code 11), Construction (NAICS code 23), Transportation and Warehousing (NAICS codes 48-49), and

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<sup>32</sup> <https://www.osha.gov/heat-exposure>

<sup>33</sup> Page 59311, <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

<sup>34</sup> Federal OSHA Heat-Related Inspections and Violations, Jan 2018-August 19, 2021.

Administrative and Support and Waste Management and Remediation Services (NAICS code 56) experience the highest rates of heat-related mortality.<sup>35 36</sup>

Compared to the average annual heat-related workplace fatality rate in all other industries of 0.09 deaths per 1 million workers, Agriculture, Forestry, Fishing, and Hunting was found to have 35 (95% confidence interval, 26.3-47.0) times the risk of heat-related deaths with 3.06 deaths per 1 million workers from 2000-2010. Construction had 13 (95% confidence interval, 10.1-16.7) times the risk of heat-related deaths with 1.13 deaths per 1 million workers during that time period."<sup>37 38</sup>

## **b. Virginia**

During the period August 1, 2014 to August 30, 2021, VOSH received 229 heat illness related unprogrammed activities (UPA) in well over 100 industries (i.e. complaints, referrals from other government agencies, employer reported hospitalizations, fatalities), including 50 hospitalizations and 4 fatalities. See **ATTACHMENT F** for a list of the industries.

The four UPA fatalities occurred in NAICS:

- 238110 Poured Concrete Foundation and Structure Contractors
- 238160 Roofing Contractors
- 238220 Plumbing, Heating, and Air-Conditioning Contractors
- 321999 All Other Miscellaneous Wood Product Manufacturing

NOTE: Please note that six other heat illness related fatalities not included in the above UPA report occurred during the period August 1, 2014 to August 30, 2021 in the following industries:

- 237310 Highway, Street, and Bridge Construction
- 236220 Commercial and Institutional Building Construction
- 111910 Tobacco Farming
- 561320 Temporary Help Services [in a Manufacturing Plant]
- 561730 Landscaping Services
- 236118 Residential Remodelers

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<sup>35</sup> Gubernot DM et al. (2015, February). Characterizing occupational heat-related mortality in the United States, 2000-2010: An analysis using the census of fatal occupational injuries database. *American Journal of Industrial Medicine*, 58(2), 203-211. doi:10.1002/ajim.22381.

<sup>36</sup> Tustin A et al. (2018, August). Risk factors for heat-related illness in U.S. workers: an OSHA case series. *Journal of Occupational and Environmental Medicine*, 60(8).

<sup>37</sup> Pages 59311-12, <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

<sup>38</sup> Gubernot DM et al. (2015, February). Characterizing occupational heat-related mortality in the United States, 2000-2010: An analysis using the census of fatal occupational injuries database. *American Journal of Industrial Medicine*, 58(2), 203-211. doi:10.1002/ajim.22381.

The 50 UPA hospitalizations occurred in NAICS:

221122 Electric Power Distribution  
221310 Water Supply and Irrigation Systems  
236220 Commercial and Institutional Building Construction  
237110 Water and Sewer Line and Related Structures Construction  
238110 Poured Concrete Foundation and Structure Contractors  
238140 Masonry Contractors  
238160 Roofing Contractors  
311111 Dog and Cat Food Manufacturing  
311611 Animal (except Poultry) Slaughtering  
311612 Meat Processed from Carcasses  
312230 Tobacco Manufacturing  
321918 Other Millwork (including Flooring)  
322130 Paperboard Mills  
323113 Commercial Screen Printing  
326199 All Other Plastics Product Manufacturing  
327390 Other Concrete Product Manufacturing  
332312 Fabricated Structural Metal Manufacturing  
332321 Metal Window and Door Manufacturing  
335311 Power, Distribution, and Specialty Transformer Manufacturing  
337110 Wood Kitchen Cabinet and Countertop Manufacturing  
448120 Women's Clothing Stores  
485111 Mixed Mode Transit Systems  
492110 Couriers and Express Delivery Services  
493110 General Warehousing and Storage  
541320 Landscape Architectural Services  
541330 Engineering Services  
561311 Employment Placement Agencies  
561730 Landscaping Services  
611310 Colleges, Universities, and Professional Schools  
623110 Nursing Care Facilities (Skilled Nursing Facilities)  
722511 Full-Service Restaurants  
812332 Industrial Launderers  
921190 Other General Government Support  
922160 Fire Protection  
922190 Other Justice, Public Order, and Safety Activities

For the period 2009-2020, the Department's review of VWCC FRI data identified 2,443 heat-related illnesses, 701 (28.71%) of which resulted in payments totaling \$3,121,767.87 (average of \$4,453.31). Following is a breakdown of the FRI's by 2-digit North American Industrial Classification System (NAICS) code:

NAICS Industry Sector	NAICS Codes	Heat-Related VWCC FRIs	Percentage
Accommodation and Food Services	72	80	3.3%
Administrative and Support and Waste Manageme	56	214	8.8%
Agriculture, Forestry, Fishing and Hunting	11	45	1.8%
Arts, Entertainment, and Recreation	71	92	3.8%
Construction	23	362	14.8%
Educational Services	61	35	1.4%
Finance and Insurance	52	15	0.6%
Health Care and Social Assistance	62	57	2.3%
Information	51	26	1.1%
Management of Companies and Enterprises	55	3	0.1%
Manufacturing	31-33	334	13.7%
Mining, Quarrying, and Oil and Gas Extraction	21	15	0.6%
Other Services (except Public Administration)	81	56	2.3%
Professional, Scientific, and Technical Services	54	64	2.6%
Public Administration	92	758	31.0%
Real Estate and Rental and Leasing	53	20	0.8%
Retail Trade	44-45	117	4.8%
Transportation and Warehousing	48-49	76	3.1%
Unclassified establishments	99	0	NA
Utilities	22	21	0.9%
Wholesale Trade	42	53	2.2%
<b>Total, All Industries</b>		<b>2443</b>	



Following is a list of industries that had 10 or more VWCC FRI forms filed from 2009 to 2020:

25 to 50 VWCC Heat Illness Related FRI's	10 to 25 VWCC Heat Illness Related FRI's
Department Stores/Discount Department Stores	All Other Amusement and Recreation Industries
Electrical Contractors and Other Wiring Installation Contractors	All Other Personal Services
Highway, Street, and Bridge Construction	All Other Plastics Product Manufacturing
Police Protection	All Other Specialty Trade Contractors
Private Mail Centers	Amusement and Theme Parks
Tire Manufacturing (except Retreading)	Correctional Institutions
Water and Sewer Line and Related Structures Construction	Couriers and Express Delivery Services
	Elementary and Secondary Schools
50 to 75 VWCC Heat Illness Related FRI's	Engineering Services
Commercial and Institutional Building Construction	Food Service Contractors
Executive Offices	Full Service Restaurants/Limited Services Restaurants
Landscaping and Landscape Architectural Services	Fruit and Vegetable Canning
Ship Building and Repairing	General Freight Trucking, Long-Distance, Truckload
Temporary Help Services	General Medical and Surgical Hospitals
	Hotels (except Casino Hotels) and Motels
75 to 100 VWCC Heat Illness Related FRI's	Janitorial Services
Fire Protection	Masonry Contractors
	Museums
250 to 275 VWCC Heat Illness Related FRI's	New and Used Car Dealers
Other General Government Support	Other Building Material Dealers
Other Justice, Public Order, and Safety Activities	Other Vegetable (except Potato) and Melon Farming
	Paper (except Newsprint) Mills
	Plumbing, Heating, and Air-Conditioning Contractors
	Poured Concrete Foundation and Structure Contractors
	Power Generation/Distribution
	Scheduled Passenger Air Transportation
	Site Preparation Contractors
	Skiing Facilities
	Solid Waste Collection
	Sports Teams and Clubs
	Supermarkets and Other Grocery (except Convenience) Stores
	Vocational Rehabilitation Services

Since July, 1999, 17 heat-related employee fatalities (16 of 17 reported to VOSH and inspected) and 2 non-fatal hospitalization incidents involving 5 employees (both reported to and inspected by VOSH) have occurred in Virginia in the following industries:

July 1999	<b>Meatpacking plant, pork slaughterhouse</b>
July, 2002	<b>Agricultural field work, squash harvesting</b>
July, 2002	<b>Residential construction</b> , subfloor installation
July, 2005	Non-fatal catastrophe, three employees hospitalized during <b>agricultural field work</b> , tomato harvesting
July, 2006	<b>Manufacturing plant</b> , fabrication of wooden doors
August, 2006	<b>Logging site</b> , tree limbing
August, 2007	Non-fatal catastrophe, <b>Firefighting</b> , three firefighters hospitalized and two treated and released
August, 2009	<b>Agricultural field work, tobacco pruning</b>
June, 2010	<b>Construction site roofing work</b>
July, 2011	<b>Construction site, drywall installation</b> (not reported to VOSH, but reported to Virginia Workers' Compensation Commission)
July, 2015	<b>Bridge construction site</b> , carpentry work
September, 2015	<b>Construction site, commercial construction</b>
September, 2015	<b>Manufacturing facility</b> , temporary employee
July, 2016	<b>Agricultural field work</b> , weeding in a <b>tobacco field</b>
June, 2017	<b>Construction site</b> , installation of <b>concrete</b> molds and pouring concrete
August, 2018	<b>Construction site excavation</b> , backfilling a sewer installation
August, 2019	<b>Tree trimming operation</b> , tree climber
September, 2020	<b>Construction site, demolition</b> and site cleanup
July, 2021	<b>Manufacturing of wood products</b> , working in <b>open field</b> , <b>screening mulch chips</b> by size

## 5. Laws and Regulations

### a. OSHA and VOSH Standards and Regulations

Neither OSHA nor VOSH has a comprehensive heat illness prevention standard.

There are several federal OSHA laws and regulations adopted by the VOSH program and two Virginia unique regulations that indirectly address certain heat illness issues:

Requirements to provide potable drinking water to employees are contained in 1910.141<sup>39</sup> (for general industry); 16VAC25-160-10<sup>40</sup> (Virginia unique regulation that is the functional equivalent of 1926.51 for Construction); 16VAC25-180<sup>41</sup> (Virginia unique regulation that is the functional equivalent of 1928.110); 1915.88<sup>42</sup>; 1917.127<sup>43</sup>; 1918.95<sup>44</sup>

<sup>39</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.141>

<sup>40</sup> <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-160-10>

<sup>41</sup> <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-180-10>

<sup>42</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.88>

<sup>43</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.127>

General requirements to train **construction** employees “in the recognition and avoidance of unsafe conditions” are contained in 1926.21<sup>45</sup> (no requirements in general industry, agriculture, or maritime).

General requirements to provide personal protective equipment to employees are contained in 1926.28<sup>46</sup>, 1926.95<sup>47</sup>, 1910.132(d)<sup>48</sup>, 1915.152<sup>49</sup>; 1917.95<sup>50</sup> (no requirements in agriculture).

Medical services and first aid requirements are contained in 1926.50<sup>51</sup>; 1910.151<sup>52</sup>; 1915.87<sup>53</sup>; 1917.26<sup>54</sup>; 1918.97<sup>55</sup> (no requirements in agriculture).

Injury and illness recordkeeping requirements are contained in 1904.7(b)(5)<sup>56</sup>

## **b. The General Duty Clause**

Va. Code §40.1-51(a), otherwise known as the “general duty clause” (the Virginia equivalent to §5(a)(1)<sup>57</sup> 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<sup>58</sup>, 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

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<sup>44</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.95>

<sup>45</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.21>

<sup>46</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.97>

<sup>47</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.95>

<sup>48</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.132>

<sup>49</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.152>

<sup>50</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.95>

<sup>51</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.50>

<sup>52</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.151>

<sup>53</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1915/1915.87>

<sup>54</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1917/1917.26>

<sup>55</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1918/1918.97>

<sup>56</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.7>

<sup>57</sup> [https://www.osha.gov/laws-regs/oshact/section\\_5](https://www.osha.gov/laws-regs/oshact/section_5)

<sup>58</sup> *The Law of Occupational Safety and Health*, Nothstein, 1981, page 259.

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. Struggill Roofing, Inc.*,<sup>59</sup> 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.<sup>60</sup>

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”.<sup>61</sup>

### **c. OSHA Advance Notice of Proposed Rulemaking, October 27, 2021**

OSHA has been petitioned twice in recent years to adopt either an emergency temporary standard and/or a permanent heat illness standard by the consumer and health advocacy group, Public Citizen, on September 1, 2011<sup>62</sup> and July 17, 2018.<sup>63</sup> OSHA officially responded to the 2011 petition and denied the organization’s request by letter dated June 7, 2012.<sup>64</sup>

On October 27, 2021, OSHA published an Advance Notice of Proposed Rulemaking (ANPRM) to protect indoor and outdoor workers from hazardous heat. The ANPRM provides an overview of the problem of heat stress in the workplace and of measures that have been taken to prevent it, and seeks information on issues that OSHA can consider in developing the standard, including the scope of the standard and the types of controls that might be required.

Beginning October 27, 2021, submit comments at [www.regulations.gov](http://www.regulations.gov),<sup>65</sup> the Federal e-Rulemaking Portal, and refer to Docket No. OSHA-2021-0009. All comments must be

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<sup>59</sup> OSHRC Docket No. 13-0224, [https://www.oshrc.gov/assets/1/18/A.H.\\_Sturgill\\_Roofing\\_Inc.%5E13-0224%5EComplete\\_Decision\\_signed%5E022819%5EFINAL.pdf?8324](https://www.oshrc.gov/assets/1/18/A.H._Sturgill_Roofing_Inc.%5E13-0224%5EComplete_Decision_signed%5E022819%5EFINAL.pdf?8324)

<sup>60</sup> Id. at pages 2-3, Contributing factors included that the worker had some preexisting medical conditions, it was his first day on the job, and the outside temperature at the time of collapse was estimated to be 82°F with 51 percent relative humidity. The work took place on a flat roof with periods of direct sun alternating with clouds; and involved removing a single-ply sheet rubber membrane and Styrofoam insulation so that a new roof could be installed.

<sup>61</sup> An other than serious violation “means a violation which is not, by itself, a serious violation within the meaning of the law but which has a direct or immediate relationship to occupational safety or health.” 16VAC25-60-10.

<sup>62</sup> <https://www.citizen.org/wp-content/uploads/petition-for-a-heat-standard-090111.pdf>

<sup>63</sup> [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)

<sup>64</sup> <https://www.citizen.org/wp-content/uploads/migration/denial-of-heat-stress-petition.pdf>

<sup>65</sup> <https://www.regulations.gov/>

submitted by Dec. 27, 2021. For more information, please see OSHA’s [News Release](#)<sup>66</sup> and [Federal Register Notice](#).<sup>67</sup>

As of 2012, OSHA averaged 7 years to adopt a major safety or health standard.<sup>68</sup>

## 6. Other Occupational Safety and Health State Plans

Several OSH State Plan States have adopted regulations addressing employee exposure to extreme heat, including **California**<sup>69</sup> (outdoor only), **Minnesota**<sup>70</sup> (indoor and outdoor), **Washington**<sup>71</sup> (outdoor only), and **Oregon** (indoor and outdoor).<sup>72</sup>

**California** is currently in the process of promulgating a regulation addressing “Heat Illness Prevention in Indoor Places of Employment.”<sup>73</sup>

In accordance with Md. Code Ann., Lab. & Empl., § 5-1201,<sup>74</sup> **Maryland** is in the process of adopting a Heat Stress Standard (indoor and outdoor) by October 1, 2022.<sup>75</sup>

**Nevada** is in the process of adopting a regulation to mitigate occupational injuries and illnesses resulting from heat exposure in the workplace.<sup>76</sup>

These state regulations variously include requirements on:

Definitions for such terms as acclimatization<sup>77</sup>; environmental risk factors for heat illness<sup>78</sup>; heavy, moderate and light work<sup>79</sup>; indoor<sup>80</sup>; outdoor environment<sup>81</sup>; personal risk factors for heat illness<sup>82</sup>; shade<sup>83</sup>; temperature<sup>84</sup>; vapor barrier

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<sup>66</sup> <https://www.osha.gov/news/newsreleases/national/10262021>

<sup>67</sup> <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

<sup>68</sup> <https://www.gao.gov/assets/gao-12-330.pdf>

<sup>69</sup> <https://www.dir.ca.gov/title8/3395.html>, Title 8 CCR Section 3395, Heat Illness Prevention

<sup>70</sup> <https://www.revisor.mn.gov/rules/5205.0110/>, MAR 5205.0110, Indoor Ventilation and Temperature in Places of Employment; <https://www.revisor.mn.gov/rules/5206.0500/> MAR 5205-0500, Harmful Physical Agents;

<https://www.revisor.mn.gov/rules/5206.0700/>, MAR 5205-0700, Training

<sup>71</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=296-62&full=true#296-62-095>, WAC 296-62-095, Outdoor Heat Exposure

<sup>72</sup> <https://osha.oregon.gov/OSHArules/adopted/2021/ao6-2021-letter-heatillnessprevention.pdf>

<sup>73</sup> <https://www.dir.ca.gov/dosh/doshreg/Heat-illness-prevention-indoors/>

<sup>74</sup>

[file:///N:/DLS/HEAT%20ILLNESS/State%20Standards/Maryland/CH\\_308\\_hb0722t%20Maryland%20Heat%20Stress%20Standards,%20Maryland%20Code%205-1201.pdf](file:///N:/DLS/HEAT%20ILLNESS/State%20Standards/Maryland/CH_308_hb0722t%20Maryland%20Heat%20Stress%20Standards,%20Maryland%20Code%205-1201.pdf)

<sup>75</sup> <https://www.eventbrite.com/e/maryland-heat-stress-informational-sessions-tickets-165743536379>

<sup>76</sup> <https://kzalaw.com/knowledge-center/employer-reports/nv-osha-alert-proposed-regulations-require-nevada-employers-to-mitigate-heat-illness/>

<sup>77</sup> California and Washington

<sup>78</sup> California and Washington

<sup>79</sup> Minnesota

<sup>80</sup> Minnesota

<sup>81</sup> Washington

<sup>82</sup> California

<sup>83</sup> California

<sup>84</sup> California

clothing<sup>85</sup>; wet bulb globe temperature index, natural wet-bulb temperature, globe temperature<sup>86</sup>

Written heat prevention/training plan

Provision of potable drinking water

Access to shade<sup>87</sup>

Rest periods<sup>88</sup>

High heat procedures when the temperature equals or exceeds 95°F<sup>89</sup>

Information and training for employees and supervisors, in a language the employee and supervisor understands<sup>90</sup>

Acclimatization<sup>91</sup>

Emergency response procedures

Heat is classified as a “harmful physical agent” and where there is a reasonably foreseeable potential for exposure to a harmful physical agent, employer are required to provide a written training to employees<sup>92</sup>

Employees shall not be exposed to indoor environmental heat conditions in excess of certain temperature trigger levels depending on the work activity level<sup>93</sup>

Employees shall not be exposed to indoor environmental cold conditions in excess of certain temperature trigger levels depending on the work activity level<sup>94</sup>

Outdoor temperature action levels tied to the type of clothing being worn by the employee<sup>95</sup>

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<sup>96</sup>

Employees showing signs or demonstrating symptoms of heat illness must be relieved

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<sup>85</sup> Washington

<sup>86</sup> Minnesota

<sup>87</sup> California

<sup>88</sup> California

<sup>89</sup> California

<sup>90</sup> Washington contains the language requirement

<sup>91</sup> California and Washington

<sup>92</sup> Minnesota

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> Washington

<sup>96</sup> Id.

from duty and provided sufficient means to reduce body temperature<sup>97</sup>

Training must be provided to employees prior to initial assignment and at least annually thereafter<sup>98</sup>

## 7. Proposed Virginia Legislation

During the 2020 and 2021 Virginia General Assembly Sessions, five bills requiring the Board to adopt a Heat Illness Prevention Standard were proposed:

2020 House Bill No. 805<sup>99</sup> [See ATTACHMENT G]

2020 House Bill No. 1610<sup>100</sup>

2020 Senate Bill No. 411<sup>101</sup>

2021 House Bill No. 1785<sup>102</sup> [See ATTACHMENT H]

2021 Senate Bill No. 1358<sup>103</sup>

Because of the Board's rulemaking activity on the issue, the Department asked the bills' sponsors to table them to give the Board time to consider adoption of a proposed standard.

The 2020 bills are similar but not identical, and would direct the Safety and Health Codes Board to adopt a regulation to protect employees from heat illness. The bills variously address the following heat-related employee exposure issues:

Definitions for such terms as acclimatization, environmental risk factors, heat illness, heat wave, personal risk factors, shade, and temperature<sup>104</sup>

Application to outdoor workplaces in Virginia

Application to indoor workplaces in Virginia<sup>105</sup>

Access to potable drinking water, and electrolytes as needed<sup>106</sup>

Cool-down rest periods with access to shade or a climate controlled environment at certain temperature trigger levels for outdoor and indoor work

Employees shall not be ordered back to work until any signs or symptoms of heat illness have abated

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<sup>97</sup> Id.

<sup>98</sup> Minnesota

<sup>99</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB805>

<sup>100</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1610>

<sup>101</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?201+cab+SC10108SB0411+SBREF>

<sup>102</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=hb1785>

<sup>103</sup> <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=211&typ=bil&val=sb1358>

<sup>104</sup> SB 411 contains the definition for "temperature".

<sup>105</sup> HB 805 is the only bill that applies to indoor as well as outdoor workplaces.

<sup>106</sup> HB 805 includes the provision on electrolytes.



Acclimatization procedures

Additional communication, observation, monitoring requirements, first aid and emergency response requirements at certain temperature trigger levels

Employee and supervisory training on heat illness hazards and preventative measures in a language the employee and supervisor understands

Requirement for a written heat illness prevent plan<sup>107</sup>

Special requirements for agriculture, construction, landscaping, oil and gas extraction and certain transportation employers when the temperature equals or exceeds 90°F<sup>108</sup>

The regulation established by the Board shall take into consideration the NIOSH Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published by the National Institute for Occupational Safety and Health in 2016.<sup>109</sup>

#### 8. National Institute for Occupational Safety and Health.

The National Institute for Occupational Safety and Health (NIOSH), created by Congress in the OSH Act of 1970 to research occupational safety and health hazards, has published criteria for a recommended standard for Occupational Exposure to Heat and Hot Environments.<sup>110</sup> The NIOSH document includes recommendations for employers about how to prevent heat-related illnesses:

“Heat-related occupational illnesses, injuries, and reduced productivity occur in situations in which the total heat load (environmental plus metabolic heat) exceeds the capacities of the body to maintain normal body functions. The reduction of adverse health effects can be accomplished by the proper application of engineering and work practice controls, worker training and acclimatization, measurements and assessment of heat stress, medical monitoring, and proper use of heat-protective clothing and personal protective equipment (PPE).”<sup>111</sup>

"NIOSH recommends that employers implement measures to protect the health of workers exposed to heat and hot environments. Employers need to ensure that unacclimatized and acclimatized workers are not exposed to combinations of metabolic and environmental heat greater than the applicable RALs/REs (see Figures 8-1 and 8-2). Employers need to monitor environmental heat and determine the metabolic heat produced by workers (e.g., light, moderate, or heavy work). Additional modifications (e.g., worker health interventions, clothing, and personal protective equipment) may be necessary to protect workers from heat stress, on the basis of increases in risk. In hot conditions, medical screening and physiological

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<sup>107</sup> HB 1610.

<sup>108</sup> HB 805 and SB 411.

<sup>109</sup> HB 805 and SB 411.

<sup>110</sup> <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

<sup>111</sup> *Id.* at page 1.



monitoring are recommended. Employers, supervisors, and workers need to be trained on recognizing symptoms of heat-related illness; proper hydration; care and use of heat-protective clothing and equipment; effects of various risk factors affecting heat tolerance (e.g., drugs, alcohol, obesity, etc.); importance of acclimatization; importance of reporting symptoms; and appropriate first aid.

Employers should have an acclimatization plan for new and returning workers, because lack of acclimatization has been shown to be a major factor associated with worker heat-related illness and death. NIOSH recommends that employers provide the means for appropriate hydration and encourage their workers to hydrate themselves with potable water <15°C (59°F) made accessible near the work area. Workers in heat <2 hours and involved in moderate work activities should drink 1 cup (8 oz.) of water every 15–20 minutes, but during prolonged sweating lasting several hours, they should drink sports drinks containing balanced electrolytes. In addition, employers should implement a work/rest schedule and provide a cool area (e.g., air-conditioned or shaded) for workers to rest and recover. These elements are intended to protect the health of workers from heat stress in a variety of hot environments."<sup>112</sup>

## 9. Measuring Heat.

"Multiple metrics and thresholds exist for measuring heat and identifying when it may become hazardous to a population. Ambient temperature, heat index, and WBGT are available metrics for measuring environmental heat and identifying conditions that may lead to heat-related injury or illness. Ambient temperature, which can be calculated using a common thermometer, is the most accessible and understandable metric that most people are familiar with.

However, ambient temperature measurements alone do not take into consideration humidity, which is an important factor that influences the body's ability to cool. Heat index combines air temperature and humidity and is a widely reported weather statistic that many people are familiar with and is often referred to as the “feels like” or “apparent” temperature. Heat index is used for setting heat advisories (NWS, September 2, 2021<sup>113</sup>) but does not take into consideration radiant heat or wind speed, which the more health-relevant WBGT does.

WBGT is a health-relevant measurement that incorporates air temperature, wind, radiant heat, and humidity (Budd, 2008;<sup>114</sup> OSHA, September 15, 2017;<sup>115</sup> Oliveira et al., 2019<sup>116</sup>). Measuring WBGT requires specialized thermometers or equipment, and

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<sup>112</sup> *Id.* at page vii-viii.

<sup>113</sup> National Weather Service (NWS). (2021, September 2). Heat watch vs. warning. <https://www.weather.gov/safety/heat-ww>. Accessed on September 2, 2021. (NWS, September 2, 2021)

<sup>114</sup> Budd G. (2008). Wet-bulb globe temperature (WBGT)—its history and limitations. *Journal of Science and Medicine and Sport*, 11, 20-32. 2008. doi:10.1016/j.jsams.2007.07.003. (Budd, 2008).

<sup>115</sup> Occupational Safety and Health Administration (OSHA). (2017, September 15). OSHA Technical Manual. Section III: Chapter 4—Heat Stress. <https://www.osha.gov/otm/section-3-health-hazards/chapter-4>. (OSHA, September 15, 2017).

<sup>116</sup> Oliveira AVM et al. (2019, August). Globe temperature and its measurement: requirements and limitations. *Annals of Work Exposure and Health*, 63(7), 743-758. doi:10.1093/annweh/wxz042. (Oliveira et al., August 2019)

may not always be available as a forecast through the National Weather Service. Additionally, WBGT may require guidance and training to avoid confusion with more well-known scales like temperature or heat index."<sup>117</sup>

In drafting the proposed standard, the Department has decided to recommend use of the heat index temperature method for measuring heat, because, unlike the ambient temperature, it does take into account the important aspect of humidity which influences the body's ability to cool; is a very familiar and widely reported weather statistic; and is used for heat advisories which are an important mechanism for immediately raising heat hazard awareness on the job once issued.

Although the Department believes it would be a sound industrial hygiene practice for employers to use the Wet Bulb Globe Temperature (WBGT) to measure heat if they have the resources and technical expertise, the Department does not recommend its use in the proposed standard because it requires specialized equipment and is not always available as a forecast through the National Weather Service. In drafting regulatory language, ease of use and widespread availability are an important consideration in achieving ultimate compliance with a standard's requirements by employers and employees.

#### 10. Temperature Action Levels.

##### **a. 85°F (29.4°C) Heat Index Action Level for Primary Components of the Proposed Standard<sup>118</sup>**

The Centers for Disease Control and Prevention (CDC) "Evaluation of Occupational Exposure Limits for Heat Stress in Outdoor Workers — United States, 2011–2016"<sup>119</sup> reviewed 25 heat-related illnesses that occurred during outdoor work, 14 (56.0%) of which were fatal, and **recommends use of a heat index of 85 degrees as a "screening threshold to prevent heat-related illness."** The study noted that "Among workers wearing a single layer of normal clothing (21), the minimum Heat Index was 85°F (29.4°C), and four of nine nonfatal illnesses and four of 12 fatalities occurred when the Heat Index was between 85°F (29.4°C) and 90°F (32.2°C). It also found that "The median Heat Index was 91°F (33.3°C) and ranged from 83°F to 110°F (28.3°C to 43.3°C). The Heat Index was <91°F (32.8°C) in 12 of 25 cases, including six of 14 fatalities."

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<sup>117</sup> *Id.* at 59318.

<sup>118</sup> Migrant Farm Worker Case Studies. A male Hispanic worker aged 56 years died of heat stroke after hand-harvesting ripe tobacco leaves for 3 days on a North Carolina farm [CDC 2008]. On the third day, the man started working at 6:00 a.m. and took a short midmorning break and a 90-minute lunch break. Mid-afternoon, a supervisor observed the man working slowly and reportedly instructed him to rest, but the man continued working. An hour later, the man appeared confused and coworkers carried him to the shade and tried to get him to drink water. The man was taken by ambulance to an emergency department, where his core temperature was recorded as 42.2°C (108°F) and, despite treatment, he died. On the day of the incident, the local temperature was approximately 33.9°C (93°F) with 44% RH and clear skies. The heat index (a measurement of how hot it feels when both actual temperature and RH are considered) was in the range of 30°C to 44.4°C (86°F to 112°F) that day. Pages 45-46, <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

<sup>119</sup> [https://www.cdc.gov/mmwr/volumes/67/wr/mm6726a1.htm?s\\_cid=mm6726a1\\_e#contribAf](https://www.cdc.gov/mmwr/volumes/67/wr/mm6726a1.htm?s_cid=mm6726a1_e#contribAf)

## **b. 95°F (35°C) Heat Index Action Level for "High Heat" Requirements**

The Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health NIOSH "Criteria for a Recommended Standard Occupational Exposure to Heat and Hot Environments," notes:

"In a hot environment, where heat transfer by radiation is not possible, the primary means for the transfer of heat to the environment is evaporative heat loss through the vaporization of sweat from the skin. The sweat glands are found in abundance in the outer layers of the skin. They are stimulated by cholinergic sympathetic nerves and secrete a hypotonic watery solution onto the surface of the skin. Several other mechanisms for heat transfer to the environment include convection, conduction, and behavioral (e.g., leave the area, put on or take off clothes, drink water, or modify environmental controls) [Taylor et al. 2008].

In a hot environment that has an ambient wet-bulb temperature of 35°C (95°F) the body at rest can sweat at a rate that results in a body fluid loss of 0.8 to 1.0 L·h<sup>-1</sup>. For every liter of water that evaporates, 2,436 kJ (580 kcal) are extracted from the body and transferred to the environment [McArdle et al. 1996a]. The enormous capacity for heat loss through evaporation is generally more than adequate to dissipate metabolic heat generated by a subject at rest (~315 kJ·h<sup>-1</sup> for a 75-kg man) and at high levels of activity. The mean sweat rate in endurance athletes ranges from 1.5 to 2.0 L·h<sup>-1</sup>, which provides an evaporative heat loss capacity of 3,654 to 4,872 kJ that is about 11.6–15.5 times the amount of heat produced at rest [Gisolfi 2000]. This is generally more than adequate to remove heat from the body, even at extreme levels of metabolic heat production.

However, in environments with high humidity, even though sweating continues (increasing the level of dehydration), the evaporation of sweat is inhibited, heat transfer from the body is reduced, and the internal body temperature increases. Thus, when the heat index is greater than 35°C (95°F), largely due to high relative humidity (RH) (or with a WBGT of 33°C to 25°C [91.4°F to 77°F], depending on the workload), the evaporative heat loss is virtually nonexistent. Consequently, even if the ambient dry temperature is within a comfortable range (e.g., 23°C [73.4°F]), the high humidity could result in an "apparent temperature" or heat index high enough to cause heat stress for the worker and possible heat injury [Taylor et al. 2008]."<sup>120</sup>

Also see frequency of "heat waves" in Virginia study: "The Impact of Heat Waves on Emergency Department Admissions in Charlottesville, Virginia, U.S.A."

"Emergency admissions to the University of Virginia Medical Center are significantly elevated during heat waves in which the apparent temperature exceeds 35 °C [95° F] for three or more days."<sup>121</sup>

### **B. Purpose.**

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<sup>120</sup> Page 28, <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

<sup>121</sup>

The purpose of the proposed standard is to reduce/eliminate employee injuries, illnesses, and fatalities by considering for adoption 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.

**C. Impact on Employers.**

Employers with employees in the affected industry would have to familiarize themselves with the requirements of any new regulation and train employees on the requirements of the regulation.

Covered employers would be required by the proposed standard to implement a heat illness prevention plan. Employers with eleven or more employees would be required to have a written plan. "Evaluations of heat-related enforcement cases have shown that in investigations of heat-related fatalities or heat-related illness that resulted in 5(a)(1) violations from 2012-2013, no employer had a complete heat illness prevention program that addressed all of the recommended components, and 12 of the 20 cases evaluated had no heat illness prevention program at all (Arbury et al., April 2016). In one study, the implementation of a heat illness prevention program was found to decrease workers' compensation costs associated with heat-related illness incidents and reduce the total number of heat-related illnesses experienced by outdoor municipal workers in Texas (McCarthy et al., September 2019)."<sup>122</sup>

"The effects of heat-related injury and illness can be significant to employers and workers alike. They harm workers financially, physically, and mentally, and employers also bear several costs and reduced revenue. A single serious injury or illness can lead to workers' compensation losses of thousands of dollars, along with thousands of dollars in additional costs for overtime, temporary staffing, or recruiting and training a replacement. Even if a worker does not have to miss work, heat stress can still lead to higher turnover and deterioration of productivity and morale."<sup>123 124</sup>

Employers should benefit from reductions in injuries, illnesses, and fatalities associated with employee exposure to heat illness hazards which would be addressed by any comprehensive regulation. In addition, there may be a beneficial increase in productivity for employers as a result of managing the heat exposure of employees.

Outreach, training and education materials developed by the Department would be made available to the regulated community, employees, and the general public for free.

In addition, VOSH Consultation and Training Services provides free, confidential onsite consultation services to small businesses which includes identification of occupational

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<sup>122</sup> 8McCarthy RB et al. (2019, September). Outcomes of a heat stress awareness program on heat-related illness in municipal outdoor workers. *Journal of Occupational and Environmental Medicine*, 61(9), 724-728.  
doi:10.1097/JOM.0000000000001639. (McCarthy et al., September 2019)6 FR 59309, 59319.

<sup>123</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6068980/>

<sup>124</sup> *Id.* at 59322.

safety and health hazards, abatement advice and employee training. For more information, see <https://www.doli.virginia.gov/vosh-programs/consultation/>.

#### **D. Impact on Employees.**

Employees would benefit from increased safety and health protections provided by a comprehensive regulation to address heat illness hazards in the workplace.

New employees or those returning to work after a long absence would benefit from acclimatization provisions in the proposed standard. "Acclimatization refers to the process of the human body becoming accustomed to new environmental conditions by gradually adapting to the conditions over time. Gradual exposure to the condition of concern (e.g., heat) allows the body to develop more robust physiological responses, such as a greater sweat response, to adapt to heat more efficiently. Workers who are new to working in warm environments may not be acclimatized to heat, and their bodies need time to gradually adapt to working in hot environments.

Evaluations of workplace fatalities have shown that approximately 70% of deaths occur within the first few days of work, and upwards of 50% occur on the first day of work (Arbury et al., August 8, 2014;<sup>125</sup> Tustin et al., August 2018<sup>126</sup>), highlighting the consequences of workers not becoming acclimatized to the environmental conditions of the workplace. Acclimatization is also important for those who may have been previously acclimatized but were out of the workforce or hot environment of the workplace for more than 2 weeks (e.g., due to vacation or sick leave). All outdoor workers may need time to acclimatize to heat during early season hazardous heat, or during particularly severe or long-lasting heat events, which are associated with higher mortality in the general population (Anderson and Bell, February 2011<sup>127</sup>). During a heat wave, environmental conditions may become extremely hazardous, even to workers who may have been previously acclimatized."<sup>128</sup>

Employees would benefit from some basic monitoring of jobsite conditions required under the proposed standard. "Physiological, medical, and exposure monitoring of workers exposed to heat hazards can prevent heat strain from progressing to heat-related illness or death. Monitoring can alert both employees and employers when workers have been exposed to hazardous heat and are experiencing heat strain and should seek water, rest, shade, cooling, or medical attention.

Monitoring activities may include monitoring environmental conditions regularly, self-monitoring of urine color, and monitoring of heart rate and core body temperature. Individual-level biomonitoring with wearable technologies may be an option in some

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<sup>125</sup> Arbury S et al. (2016, April). A critical review of OSHA heat enforcement cases: lessons learned. *Journal of Occupational and Environmental Medicine*, 58(4). doi:10.1097/JOM.0000000000000640. (Arbury et al., April 2016)

<sup>126</sup> Tustin A et al. (2018, August). Risk factors for heat-related illness in U.S. workers: an OSHA case series. *Journal of Occupational and Environmental Medicine*, 60(8). (Tustin et al., August 2018)

<sup>127</sup> Anderson GB and ML Bell. (2011, February). Heat waves in the United States: mortality risk during heat waves and effect modification by heat wave characteristics in 43 U.S. communities. *Environmental Health Perspectives*, 119, 210-218. doi:10.1289/ehp.1002313. (Anderson and Bell, February 2011)

<sup>128</sup> *Id.* at 59320.

occupational settings. Monitoring activities may also include buddy systems where workers are educated in signs and symptoms of heat-related illness and proactively look for signs and symptoms in fellow workers and encourage them to rest, hydrate, and find shade or seek emergency medical attention if the worker is experiencing signs of heat-related illness."<sup>129</sup>

Employees in the affected industries would have to be trained on the requirements of any new regulation. "Training is an effective tool to reduce injury and illness (Burke et al., February 2006<sup>130</sup>). Employees must know what protective measures are being utilized and be trained in their use so that those measures can be effectively implemented. Training and education provide employees and managers an increased understanding of existing safety and health programs. Training provides managers, supervisors, and employees with the knowledge and skills needed to do their work safely, as well as awareness and understanding of workplace hazards and how to identify, report, and control them."<sup>131</sup>

"Training is essential to ensure that both employers and employees understand the sources of potential exposure to hazardous heat, control measures to reduce exposure to the hazard, signs and symptoms of heat-related illness, and how to respond in the event of an emergency. A 2018 analysis of OSHA enforcement investigations of 66 heat-related illnesses showed that nearly two-thirds of the employers did not provide employees with training on occupational heat-related illness (Tustin et al., August 2018<sup>132</sup>)."<sup>133</sup>

Outreach, training and education materials developed by the Department would be made available to the regulated community, employees, and the general public for free.

#### **E. Impact on the Department of Labor and Industry.**

No significant impact is anticipated on the Department. VOSH employees would have to be trained on the requirements of any new standard.

A VOSH compliance directive explaining how the standard would be enforced would be developed to provide guidance to VOSH staff, the regulated community and employees and their representatives.

Equipment to measure extreme temperatures would have to be purchased for Compliance Safety and Health Officer (CSHO) use during inspections.

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<sup>129</sup> *Id.* at 59321.

<sup>130</sup> Burke MJ et al. (2006, February). Relative effectiveness of worker safety and health training methods. *American Journal of Public Health*, 96, 315-324. (Burke et al., February 2006)

<sup>131</sup> *Id.* at 59321-322.

<sup>132</sup> Tustin A et al. (2018, August). Risk factors for heat-related illness in U.S. workers: an OSHA case series. *Journal of Occupational and Environmental Medicine*, 60(8). (Tustin et al., August 2018)

<sup>133</sup> *Id.* at 59322.

Outreach, training and education materials would be developed by VOSH Cooperative Programs staff and made available to the regulated community, employees, and the general public for free.

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board consider for adoption the proposed Heat Illness Prevention Standard, 16VAC25-210.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.



**ATTACHMENT A: Heat Illness Prevention Standard Regulatory Advisory Panel**

<b>NAME</b>	<b>TITLE</b>	<b>ORGANIZATION</b>	<b>EMPLOYER</b>	<b>Industry</b>
Philip F. Abraham	Director and General Counsel The Vectre Corporation	Old Dominion Highway Contractors Association	The Vectre Corporation	Construction
Donald Aheron	General Manager		Nationwide Homes	Manufacturing Construction
Todd Atkins	Director of Safety	Virginia Asphalt Association	Superior Paving Corporation	Construction
Elizabeth Barnette		Associated Builders and Contractors - Virginia Chapter	Damuth Trane	Construction
Matt Benka		Virginia Contractor Procurement Alliance	MDB Strategies	Construction
P. Dale Bennett	President & CEO	Virginia Trucking Association	Virginia Trucking Association	Transportation - Trucking
Thomas E Bernard	Professor, College of Public Health University of South Florida		University of South Florida	Education Research
Andrew Clark	Vice President, Government Affairs	Home Builders Association of Virginia	Home Builders Association of Virginia	Construction - Residential
Corey Connors	Executive Director	Virginia Forestry Association	Virginia Forestry Association	Logging/Forestry Management
A.J. Erskine		Virginia Seafood Council	Cowart Seafood and Bevans Oyster Company	Seafood Processing
MK Fletcher, MSPH		AFL-CIO	AFL-CIO	General Industry
Juley Fulcher		Public Citizen	Public Citizen	General Industry Agriculture Construction
Sandra Genter	Director of Safety	Virginia Transportation Construction Alliance	Allan Myers Construction	Construction
Randy Grumbine	Executive Director	Virginia Manufactured and Modular Housing Association	Virginia Manufactured and Modular Housing Association	Manufacturing Construction

Rob Harris		Heavy Construction Contractors Association	Shirley Contracting	Construction
Chris Hughes	Public Affairs Manager	Virginia Manufacturer's Association	Georgia-Pacific, Big Island Mill	Manufacturing - Wood Products
Ron Jenkins	Executive Director	Virginia Loggers Association	Virginia Loggers Association	Logging
Dr. Bob Kitchen	Vice-Chair of Advocacy	Virginia Clinicians for Climate Action	Virginia Clinicians for Climate Action	Education Research
Lynn Lunze	Safety Office	Virginia Alcoholic Beverage Control	Virginia Alcoholic Beverage Control	Alcohol Regulation
Rachel McFarland	Senior Litigation Attorney	Legal Aid Justice Center Virginia Justice Project for Farm and Immigrant Workers	Legal Aid Justice Center	Agriculture
Bernie Mizula, MS, CIH, CIT, CHS-V, RPIH		IUPAT/Finishing Trades Institute	IUPAT/Finishing Trades Institute	Construction
Johnny D. Nugent		Virginia Department of Human Resources Management Office of Workers Compensation	Virginia Department of Human Resources Management	General Industry Construction
Vanessa Patterson	Executive Director  Executive Director	Richmond Area Municipal Contractors Association  Precast Concrete Association of Virginia		Heavy, Highway, Utility Construction  Manufacturing
Brian Rizzo			Hourigan	Construction
Ben Rowe	National Affairs Coordinator	Virginia Farm Bureau	Virginia Farm Bureau	Agriculture
Scott Schneider, CIH, FAIHA		American Industrial Hygiene Association		Industrial Hygiene
Charles Skelly		International Brotherhood of Electrical Workers LU 666		Construction General Industry

Dirrick Simmons	Safety Training Coordinator	Virginia, Maryland & Delaware Association of Electric Cooperatives	Virginia, Maryland & Delaware Association of Electric Cooperatives	Electric Distribution
Darius Sivin, PhD		International Union, UAW	International Union, UAW	Automobile Industry
Rosemary Sokas, MD, MOH			Georgetown University	Education Research
Beck Stanley	Director of Government Affairs	Virginia Agribusiness Council		Agriculture
Grant Stewart, CSP, CHST	Business Unit Safety Manager	Associated General Contractors of Virginia	Gilbane Building Company	Construction
Valentina Vega, MPH	Health Policy Analyst	Medical Society of Virginia	Medical Society of Virginia	Healthcare
David Velazquez	Health & Safety Analyst 2		Newport News Shipbuilding	Maritime Manufacturing
Gary Walters	Senior Director, Corporate Safety	Virginia Chamber of Commerce	Smithfield Foods	Meatpacking
Gavin West		CPWR - The Center for Construction Research and Training	CPWR - The Center for Construction Research and Training	Construction
Frank Wheatley	Director of Compliance		Colonna's Shipyard	Maritime Manufacturing
Kelsey Wilkinson	Senior Government Affairs Manager	Medical Society of Virginia	Medical Society of Virginia	Healthcare
Jonathan Williams	Deputy Executive Director	Virginia Ready Mixed Concrete Association	Virginia Ready Mixed Concrete Association	Construction General Industry
Petrina Jones Wroblewski	Manager, Government & Public Affairs	Columbia Gas of Virginia	Columbia Gas of Virginia	Gas Utility

## **ATTACHMENT B: Underreporting of Occupational Illnesses, Injuries, and Fatalities Due to Hazardous Heat**

Source: Page 59310, <https://www.federalregister.gov/documents/2021/10/27/2021-23250/heat-injury-and-illness-prevention-in-outdoor-and-indoor-work-settings>

### **"B. Underreporting of Occupational Illnesses, Injuries, and Fatalities Due to Hazardous Heat**

Heat-related illnesses, injuries, and fatalities are underreported (EPA, April 2021; Popovich and Choi-Schagrin, August 11, 2021).<sup>134</sup> Occupational heat-related illnesses, injuries, and fatalities may be underestimated for several reasons. First, the full extent of heat-related health outcomes is underreported generally because heat is not always recognized as a contributing factor and the criteria for defining a heat-related death or illness may vary by state, and among physicians, medical examiners, and coroners. (Gubernot et al., October 2014).<sup>135</sup> Due to the varying nature of heat-related illness symptoms, some of which (e.g., headache, fatigue) may have other causes, not all cases of illness or injury are reported. Further, if the illness or injury does not require medical treatment beyond first aid, or result in restrictions or days away from work, loss of consciousness, diagnosis by a healthcare professional as a significant injury, or death, an employer is not required to report the incident under OSHA's existing injury reporting requirements (see 29 CFR 1904.7(a)).<sup>136</sup> There may also be situations where an illness, injury, or fatality is deemed to be unrelated to work, but heat exposure at work may have contributed to that incident (Gubernot et al., October 2014; Shipley et al., August 17, 2021<sup>137</sup>).

Second, hazardous heat can impair job tasks related to complex cognitive function (Ebi et al., August 21, 2021<sup>138</sup>), and also reduce decision-making abilities and productivity. A recent global meta-analysis showed that 30% of workers who experienced hazardous heat during a single shift reported productivity losses (Flouris et al., December 2018<sup>139</sup>). Additionally, a growing body of evidence has demonstrated that these heat-induced impairments may result in significant occupational injuries that are not currently factored into assessments of the health hazards resulting from occupational heat exposure (Park et al., July 2021<sup>140</sup>). In California, the likelihood of same-day workplace injury risk significantly increased by approximately 5-7% when comparing a day that was 60-65 degrees Fahrenheit to a day that was 85-90 degrees Fahrenheit. Same-day workplace injury risk increased 10-15% when comparing a day that was 60-65 degrees Fahrenheit to a day that was above 100-degrees Fahrenheit. These increased risks were demonstrated in certain indoor and outdoor work environments, contributing to approximately 360,000 additional workplace injuries in California alone from 2001-2018 (Park et al., July 2021).

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<sup>134</sup> <https://www.nytimes.com/interactive/2021/08/11/climate/deaths-pacific-northwest-heat-wave.html>.

<sup>135</sup> Gubernot DM et al. (2014, October). The epidemiology of occupational heat-related morbidity and mortality in the United States: a review of the literature and assessment of research needs in a changing climate. *International Journal of Biometeorology*, 58(8), 1779-1788. doi:10.1007/s00484-013-0752-x.

<sup>136</sup> <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.7>

<sup>137</sup> Shipley J et al. (2021, August 17). Heat is killing workers in the U.S.—and there are no federal rules to protect them. National Public Radio. <https://www.npr.org/2021/08/17/1026154042/hundreds-of-workers-have-died-from-heat-in-the-last-decade-and-its-getting-worse>.

<sup>138</sup> Ebi KL et al. (2021, August 21). Hot weather and heat extremes: health risks. *The Lancet*, 398, 698-708.

<sup>139</sup> Flouris AD et al. (2018, December). Workers' health and productivity under occupational heat strain: a systematic review and meta-analysis. *Lancet Planetary Health*, 2, e521-31.

<sup>140</sup> Park RJ et al. (2021, July). Temperature, workplace safety, and labor market inequality. Institute of Labor Economics, Discussion Paper Series. <http://ftp.iza.org/dp14560.pdf>.

Third, self-reporting of health outcomes can result in bias which can lead to over- or under-estimates of health outcomes (Althubaiti, May 4, 2016<sup>141</sup>). In 2009, the Government Accountability Office (GAO) reported that the BLS Survey of Occupational Injuries and Illnesses, which relies heavily on employer self-report of non-fatal injuries and illnesses, may underreport employer-reported injury and illness data (GAO, October 2009<sup>142</sup>). This underreporting of non-fatal illnesses and injuries may be particularly present in some industries, like agriculture, where some employers (e.g., employers with 10 or fewer employees) are excluded from reporting requirements (Leigh et al., April 2014<sup>143</sup>). While there may be multiple factors influencing underreporting, BLS investigations of this issue have found that employers and employees may face disincentives for reporting injuries and illnesses (BLS, December 8, 2020<sup>144</sup>).

By reporting injuries and illness, employers may increase their workers' compensation costs and jeopardize their reputation. Employees may also face disincentives for reporting if they are reluctant to report for fear of retaliation or may not realize an illness or injury is heat-related. Employees may decide to continue working for economic incentives and to avoid losing wages. Employee fear of retaliation, including the potential loss of employment, may be of particular concern with heat-related illness and injuries given the disproportionate number of undocumented, migrant, low-wage, or other vulnerable workers that make up sectors that are at high risk of hazardous heat exposure such as agriculture and construction. These workers may lack the awareness of their right to, and perceived ability to, speak out about workplace conditions. Additional concerns related to the inequalities in hazardous heat exposure and resulting health outcomes are discussed below in more detail. Despite potential underreporting, these datasets are important indicators of occupational safety and health, and through the questions below, OSHA seeks additional information and data to better assess the fullest extent of occupational illnesses, injuries, and fatalities due to hazardous heat exposure in the workplace.

Finally, there are some health conditions associated with occupational heat exposure that may take many years to manifest in workers previously exposed to hazardous heat due to the latency period between exposure and symptom onset (Gubernot et al., October 2014). For these illnesses that develop over time, it is unlikely that the current national datasets of occupational illnesses and injuries associate those outcomes with hazardous heat exposure."

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<sup>141</sup> Althubaiti A. (2016, May 4). Information bias in health research: definition, pitfalls, and adjustment methods. *Journal of Multidisciplinary Healthcare*, 9, 211-217. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4862344/pdf/jmdh-9-211.pdf>.

<sup>142</sup> Government Accountability Office (GAO). (2009, October). Enhancing OSHA's records audit process could improve the accuracy of worker injury and illness data. <https://www.gao.gov/assets/gao-10-10.pdf>.

<sup>143</sup> Leigh JP et al. (2014, April). An estimate of the US government's undercount of nonfatal occupational injuries and illnesses in agriculture. *Ann Epidemiology*, 24(4). 254-259. doi:10.1016/j.annepidem.2014.01.006.

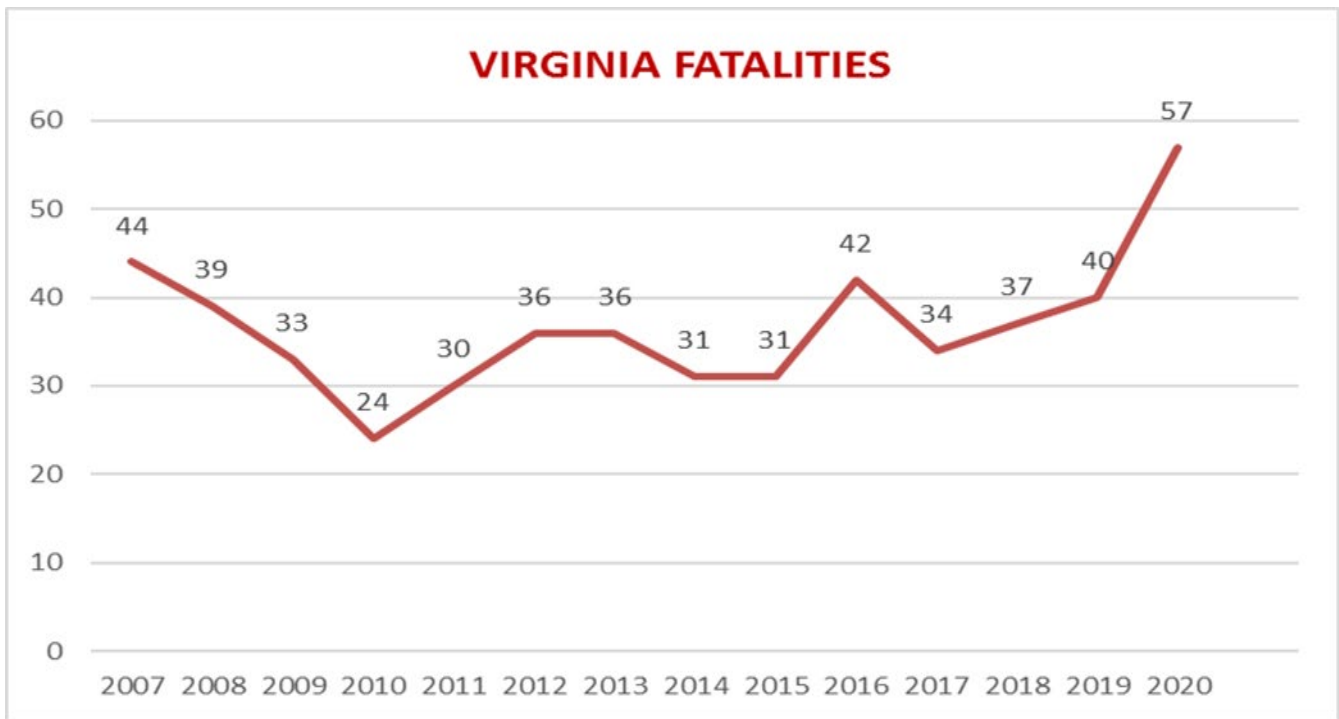
<sup>144</sup> Bureau of Labor Statistics (BLS). (2020, December 8). Survey of Occupational Injuries and Illnesses Data Quality Research. <https://www.bls.gov/iif/data-quality.htm>.

**ATTACHMENT C: Summary of Virginia Heat Illness Fatalities and Catastrophes, 1999-2021**

**Total Fatalities:** 17 (17 employee deaths)  
**Total Catastrophes:** 2 (6 employees hospitalized 2 treated and released)

**Average VOSH Fatalities Per Year Excluding 2020** 35

**Heat-related Deaths Per Year Since 2007** .8



## **1. July 7, 1999. Fatality.**

Inspection number 301806337. Employee #1 was working the kill floor in a pork slaughterhouse, where the temperature was not regulated. He showed signs of heat stress and was treated with cold packs and oral electrolyte fluids at the work site clinic. Following this treatment, he was conscious, could walk, and did not appear to be disoriented. The clinic supervisor/nurse determined that he needed further treatment and he was transported to a local medical center. About 10 to 15 minutes after arriving at the center, he suffered a grand mal seizure and did not respond to emergency treatment. Employee #1 was declared dead about 10 minutes later. Cause of death was heat stroke. 29 year old employee.

The 24 hour average temperature on the day of the accident was 86 degrees Fahrenheit. It was a common practice of employees to wrap themselves in impermeable plastic sheeting from industrial sized rolls to protect them from blood and other by-products from the hog slaughtering operation – the practice was voluntary but widely done. The kill floor was not air conditioned. The company provided high velocity ventilation from air movers on the roof, but the temperature of the air would have been the same as the outside air. Ice, water and Gatorade was available for employees.

Smithfield, Virginia  
Isle of Wight County

General Industry  
SIC: 2013/Sausages and Other Prepared Meat Products

No citations issued.

**2. July 3, 2002. Fatality.**

Inspection number 303897862. At approximately 4:00 p.m. on July 3, 2002, Employee #1 suffered heat stroke while picking squash in an agricultural field. The foreman transported him to Mary Washington Hospital, which is about 45 minutes away from the field. Employee #1 died on July 5, 2002. A migrant worker was picking squash with the temperature in the high 90s with a heat index of 105 degrees Fahrenheit.

Port Royal, Virginia  
 Caroline County

Agriculture  
 SIC: 0161/Vegetables and Melons

Violation Summary											
	Serious	Willful	Repeat	Other	Unclass	Total	#	ID	Type	Standard	Issuance
Initial Violations			2	1		3					
Current Violations			2	1		3					
Initial Penalty	\$0	\$0	\$560	\$5,000	\$0	\$5,560	1.	01001	Repeat	19280110 C01 III	12/20/2002
Current Penalty	\$0	\$0	\$420	\$2,500	\$0	\$2,920	2.	01002	Repeat	19280110 C02	12/20/2002
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0	3.	02001	Other	19040039 A	12/20/2002



**3. July 31, 2002. Fatality.**

Inspection number 305264723. At approximately 4:00 p.m. on July 31, 2002, Employee #1, his employer, and several coworkers were completing the installation of the second-story sub-floor on a two-story home under construction. Employee #1 was nailing the sub-floor when the employer noticed that he was missing the floor joist and behaving erratically. The employer sent him to lie down, so Employee #1 descended from the second story and lay down on a pile of plywood sheathing. The employer noticed that he was still acting erratically, so he abandoned his work and escorted Employee #1 into the garage, laid him down on a piece of plywood, placed ice on his neck and wrists, and called the rescue squad. Employee #1 was transported to the hospital, where he died at 10:20 a.m. on the following day of apparent hyperthermia. The temperature on the day he was stricken had been approximately 90 degrees Fahrenheit.

Suffolk, Virginia  
 City of Suffolk

Construction  
 SIC: 1751/Carpentry Work

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations	1					1
Initial Penalty	\$7,000	\$0	\$0	\$0	\$0	\$7,000
Current Penalty	\$600	\$0	\$0	\$0	\$0	\$600
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

#	ID	Type	Standard	Issuance
1.	01001	Serious	19260050 C	01/29/2003

**4. July 27, 2005. Non-fatal catastrophe involving 2 employees.**

Inspection number 309211878. At approximately 3:00 p.m. on July 27, 2005, Employee #1 and Employee #2, migrant farm workers, harvested tomatoes in the field for 12 hours per day for at least ten days were exposed to extreme temperatures reading as high as 104 degrees F with relative humidity at approximately 73.4 degrees F, placing the heat index temperature at 118 degrees F. Both Employees were hospitalized and treated for heat stroke for three and four days respectively.

Eastville, Virginia  
Northampton County

Agriculture  
NAICS: 111219/Other Vegetable (except Potato) and Melon Farming

Violation Summary							#	ID	Type	Standard	Issuance
	Serious	Willful	Repeat	Other	Unclass	Total					
Initial Violations	5					5	1.	01001	Serious	510001 A	10/06/2005
Current Violations	4			1		5	2.	01002	Serious	19100142 K02	10/06/2005
Initial Penalty	\$13,500	\$0	\$0	\$0	\$0	\$13,500	3.	01003A	Serious	19101200 E01	10/06/2005
Current Penalty	\$8,662	\$0	\$0	\$0	\$0	\$8,662	4.	01003B	Serious	19101200 H	10/06/2005
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0	5.	01004	Other	19280110 C01 III	10/06/2005
							6.	01005	Serious	19280110 C04	10/06/2005

**5. July 20, 2006. Fatality.**

Inspection number 310192240. At approximately 10:00 p.m. on July 20, 2006, Employee #1 was working on a production line where he was flipping fabricated wooden doors. He began to show signs of disorientation and unsteadiness and was escorted to a break room by his supervisor. He was transported to hospital where he died from an apparent heat stroke. Employee's use of a prescription medication may have been a contributing factor to the heat-related cause of death.

Stanley, Virginia  
Page County

General Industry  
NAICS: 321911/Wood Window and Door Manufacturing

No citations issued.

## 6. August 8, 2006. Fatality.

Inspection number 310354022. At approximately 4:00 p.m. on August 8, 2006, Employee #1 was working for a logging firm. While engaged in a tree limbing operation on a plot of land that had been logged over, he became overheated and passed out. Attempts to revive him failed, and he died later at the hospital. Temperatures on August 8, 2006, were about 98 degrees Fahrenheit, with a heat index estimated to be 105 degrees Fahrenheit or more. Co-workers found the victim passed out at a truck, called the rescue squad, put him in air conditioning and wet him down with some of the drinking water available at the site, but the victim stopped breathing before the rescue squad arrived.

Chase City, Virginia  
Mecklenburg County

General Industry  
NAICS: 113310/Logging

Violation Summary							#	ID	Type	Standard	Issuance
Initial Violations	2			2		4	1.	01001A	Serious	19100219 D01	01/30/2007
Current Violations	2			2		4	2.	01001B	Serious	19100219 E01 I	01/30/2007
Initial Penalty	\$675	\$0	\$0	\$300	\$0	\$975	3.	01002	Serious	19100266 I07	01/30/2007
Current Penalty	\$405	\$0	\$0	\$180	\$0	\$585	4.	02001	Other	19101200 F05 I	01/30/2007
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0	5.	02002	Other	19101200 F05 II	01/30/2007

**7. August 25, 2007. Non-fatal catastrophe involving 5 employees (3 hospitalized).**

Inspection number 311421556. Three firefighters were hospitalized for smoke inhalation and/or dehydration. As of August 30, 2007, all firefighters have been released from the hospital. The SCBAs were donned prior to entry. Members of the interior search and rescue teams had to climb 18 floors in full gear as well as carrying hose packs and various tools. Power to the building had been knocked out prior to their arrival. The fire was reported to have been contained within 45 minutes of arrival of fire and rescue units. All firefighters go through rehab upon exiting a fire for vitals check by emergency medical service personnel. The three firefighters encountered a male resident of the building in a hallway in respiratory distress on their way out. They carried the individual out of the building and immediately began patient assessment and treatment. Another provider on scene noticed the condition of the firefighters and treatment was started on them before being transported to the hospital. They were monitored in the emergency room from around 9:00 p.m. to 3:30 a.m. before being admitted, one of the firefighters was admitted to an intensive care unit due to smoke inhalation and dehydration. Two other firefighters were treated and released.

Alexandria, Virginia  
 City of Alexandria

General Industry  
 NAICS: 922160/Fire Protection

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	1					1
Current Violations	1					1
Initial Penalty	\$0	\$0	\$0	\$0	\$0	\$0
Current Penalty	\$0	\$0	\$0	\$0	\$0	\$0
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

#	ID	Type	Standard	Issuance
1.	01001	Serious	19100156 F01 II	02/20/2008

NOTE: At the time of the inspection, VOSH did not issue penalties to state and local government employers. That approach was changed in 2020.

## **8. August 11, 2009. Fatality.**

Inspection number 313479495. At approximately 6:00 a.m. on August 11, 2009, Employee #1 started working in a tobacco field. Employee #1 was pruning tobacco leaves by hand, and between 10:00 a.m. through 12:30 p.m., he collapsed, while suddenly trying to seek shade. Someone immediately took Employee #1 by van to a local fire department less than one quarter mile away. An onsite EMT briefly treated Employee #1, before putting him in an ambulance and taking him to a local hospital. Employee #1 died in route to the hospital. Investigators determined that Employee #1 had taken breaks and was drinking water. The temperature at that time of his collapse was approximately 83 degrees to 85 degrees Fahrenheit.

Nathalie, Virginia  
Halifax County

Agriculture  
NAICS: 111910/Tobacco Farming

No citations issued.

## 9. June 28, 2010. Fatality.

Inspection number 314620881. On June 28, 2010, Employee #1 was working on a roof in very hot conditions. The employee collapsed against a wall and was breathing but was unable to speak. Coworkers used Skytrak to bring him off the roof to the ground. An ambulance arrived at the worksite and transported the employee to the hospital. Employee #1 was pronounced dead at the hospital. The temperature was 96-97 degrees. The victim had an internal body core temperature of 110-111 degrees.

There was conflicting evidence in the case file that the rescue squad may not have been called for 30-40 minutes after the victim collapsed. The rescue squad says in at least two places that there was a 30-40 minute delay while the police report says the delay was 4-5 minutes before the call was made. VOSH's view of the information at the time was to give more weight to what the workers told the rescue squad as opposed to what they told the police.

Ridgeway, Virginia  
Henry County

Construction.  
NAICS: 238160/Roofing Contractors

Violation Summary							#	ID	Type	Standard	Issuance
	Serious	Willful	Repeat	Other	Unclass	Total					
Initial Violations	2			1		3					
Current Violations	2			1		3	1.	01001A	Serious	19260020 B01	12/17/2010
Initial Penalty	\$14,000	\$0	\$0	\$5,000	\$0	\$19,000	2.	01001B	Serious	19260021 B02	12/17/2010
Current Penalty	\$10,664	\$0	\$0	\$100	\$0	\$10,764	3.	01002	Serious	19260050 C	12/17/2010
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0	4.	02001	Other	19040039 A	12/17/2010

## 10. July 23, 2011. VWCC Employee Reported Death.

No inspection conducted – VOSH not notified of the employee's death. Employee was hanging drywall and became overheated and died.

Richmond, Virginia  
City of Richmond

Construction  
NAICS Code: 238310 Drywall and Insulation Contractors

No citations issued.

**11. July 21, 2015. Fatality.**

Inspection number 1079783. The employee was engaged in carpentry work on a new bridge constructions worksite. At 10:00 p.m. on October 21, 2015, a carpentry employee began to feel ill on the site and told his supervisor that he needed to go to the doctor. He left the site and drove himself to a convenience store that was approximately 15 to 20 minutes away, where he collapsed and was taken to the hospital where he died later. The employee had a body temperature of 104.2 degrees Fahrenheit.

Big Island, Virginia  
Bedford County

Construction  
NAICS: 237310/ Highway, Street, and Bridge Construction

No citations issued.

**12. September 21, 2015. Fatality.**

Inspection number 1079208. An employee suffered heat stroke on a commercial construction worksite.

Leesburg, Virginia  
Loudoun County

Construction  
NAICS: 236220/Commercial and Institutional Building Construction

No citations issued.

**13. September 21, 2015. Fatality.**

Inspection number 1096071. A temporary employee at a manufacturing facility reported feeling hot and sweaty and started to cool himself off in front of a pedestal fan in the work area. It apparently was not normal for the employee to cool himself in the work area. It was estimated that the employee remained in the area for 10 minutes before complaining of abdominal pain and leaving for the restroom, where he was later found unresponsive. The temperature inside the facility was estimated to be between 72-74 degrees Fahrenheit. A heart condition is considered to be a contributing factor to the employee's death.

Newport News, Virginia  
 City of Newport News

General Industry  
 NAICS: 561320/Temporary Help Services

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations				1		1
Current Violations				1		1
Initial Penalty	\$0	\$0	\$0	\$5,000	\$0	\$5,000
Current Penalty	\$0	\$0	\$0	\$0	\$0	\$0
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

Violation Items							
#	ID	Type	Standard	Issuance	Abate	Curr\$	Init\$
1.	01001	Other	40.1-51.1.D	02/23/2016	02/27/2016	\$0	\$5,000



#### **14. July 23, 2016. Fatality.**

Inspection number 1164344. At 4:30 p.m. on July 23, 2016, an employee was weeding in a tobacco field with a hoe. The employee was overcome by heat, and died from hyperthermia. The employee was 41 years old. The farm laborers started work at 7:20 AM that day. They were weeding a tobacco farm. The crew took a 15 minute break at 9:00 and then took a lunch break at noon. The crew resumed work after lunch, and took another break between 3:15 and 3:40. Shortly after returning from the break, the employee stood up and fell to his knees, but got up on his own, stating that he was fine, but tired. Shortly thereafter, the employee began to experience breathing difficulties. The employee was taken to the farm office to cool down, and 911 was called. The employee was transported to the hospital and had a body temperature of 109.9° and was unable to be resuscitated.

Employees were trained in tobacco farm worker safety - a training document briefly discusses heat stress issues. The employer posted OSHA's Heat Stress Safety Fact Sheet and OSHA's Heat Stress Quick Guide in the break room. There was a heat stress document included in the Pesticide Awareness Training binder. All of the documents are in English and Spanish. Employees indicated that they watched the training videos; were told how to work in the heat; told to get shade and water when you get tired; the symptoms of when you feel bad; and were given breaks.

Danville, Virginia  
City of Danville

Agriculture  
NAICS: 111910/Tobacco Farming

No citations were issued.

**15. June 17, 2017. Fatality.**

Inspection number 1240654. At 10:00 a.m. on June 17, 2017, Employee #1, employed by a concrete company, was working at a construction site. He was making concrete molds and pouring concrete. Employee was admitted to the hospital with signs of heat exhaustion and died of heat stroke heat stroke 4 days later. The employee was 23 years old.

Arlington, Virginia  
Arlington County

Construction  
NAICS: 238110/Poured Concrete Foundation and Structure Contractors

Violation Summary						
	Serious	Willful	Repeat	Other	Unclass	Total
Initial Violations	2					2
Current Violations	2					2
Initial Penalty	\$11,200	\$0	\$0	\$0	\$0	\$11,200
Current Penalty	\$11,200	\$0	\$0	\$0	\$0	\$11,200
FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0

#	ID	Type	Standard	Issuance
1.	01001	Serious	40.1-51.1.A	12/06/2017
2.	01002	Serious	19260050 C	12/06/2017

**16. August 17, 2018. Fatality.**

Inspection number 1339750. On August 12, 2018, an employee was back filling a sewer during a hot and humid day. The employee expressed concern of discomfort from heat and humidity to his immediate supervisor. The employee and supervisor then went to the truck to sit in the air conditioning to drink water. The employee expressed he needed to use the bathroom, the supervisor escorted him to the porta john. The supervisor found the victim had fallen. The employee was transported to the hospital where he passed away from a heart attack.

Culpeper, Virginia  
Culpeper County

Construction  
NAICS: 238220/ Plumbing, Heating, and Air-Conditioning Contractors

No citations issued.

**17. August 6, 2019. Fatality.**

Inspection number 1421218. On August 6, 2019, an employee had climbed up a tree approximately 20 feet when he began to feel sick, hot, and dizzy before falling from the tree. The employee land on the ground and was killed. The employee was 25 years old.

Colonial Beach, Virginia  
Westmoreland County

General Industry  
NAICS: 561730/Landscaping Services

Violation Summary							#	ID	Type	Standard	Issuance
	Initial Violations	5					5				
	Current Violations	5					5				
	Initial Penalty	\$32,075	\$0	\$0	\$0	\$0	\$32,075	1. 01001A	Serious	16VAC25-73-40.C.2	01/31/2020
	Current Penalty	\$32,075	\$0	\$0	\$0	\$0	\$32,075	2. 01001B	Serious	16VAC25-73-40.C.5	01/31/2020
	FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0	3. 01002A	Serious	16VAC25-73-40.D.2	01/31/2020
								4. 01002B	Serious	16VAC25-73-40.D.7	01/31/2020
								5. 01002C	Serious	16VAC25-73-40.D.8	01/31/2020
								6. 01003	Serious	16VAC25-73-90.A.4	01/31/2020
								7. 01004	Serious	16VAC25-73-90.A.19	01/31/2020
								8. 01005	Serious	16VAC25-73-90.A.20	01/31/2020

**18. September 3, 2020. Fatality.**

Inspection number 1491534. At 2:15 p.m. on September 3, 2020, an employee worked outdoors performing various labor tasks such as site cleanup and demolition of roofing materials. After approximately six to seven hours of working in the heat, the employee went to the work vehicle to take a break. The employee was later discovered unresponsive in the driver's seat of the vehicle. Coworkers called for emergency services and at tempted first aid. The employee was transported, by ambulance, to a local hospital, where the employee was pronounced dead of heat stroke.

Hampton, Virginia  
City of Hampton

Construction  
NAICS: 236118/Residential Remodelers

Violation Summary							#	ID	Type	Standard	Issuance
	Initial Violations	2			2		4				
	Current Violations	2			2		4				
	Initial Penalty	\$18,887	\$0	\$0	\$0	\$0	\$18,887	1. 01001	Serious	40.1-51.1.A	02/25/2021
	Current Penalty	\$13,221	\$0	\$0	\$0	\$0	\$13,221	2. 01002	Serious	19260050 C	02/25/2021
	FTA Amount	\$0	\$0	\$0	\$0	\$0	\$0	3. 02001	Other	19260051 A01	02/25/2021
								4. 02002	Other	19040029 B03	02/25/2021

**19. July 6, 2021. Fatality.**

Inspection number 1540563. The employee was working outside in 90 degree Fahrenheit weather in an open field on a portable screener, which screens the mulch chips by size, when he began to feel ill. The employee took a break in the truck, and was found a few minutes later unresponsive. The employee was transported to the hospital and ultimately passed away. The employee appears to have died of a heart attack, however heat stress may be a factor. Per the employer, the employee had been acclimatized, water was available, and training on heat stress has been provided.

Waverly, Virginia  
Sussex County

General Industry  
NAICS: 321999/All Other Miscellaneous Wood Product Manufacturing

No citations issued.

**ATTACHMENT D: Work Injuries in the Heat in 2015, Bureau of Labor  
Statistics**

Source: <https://www.bls.gov/opub/ted/2017/work-injuries-in-the-heat-in-2015.htm>



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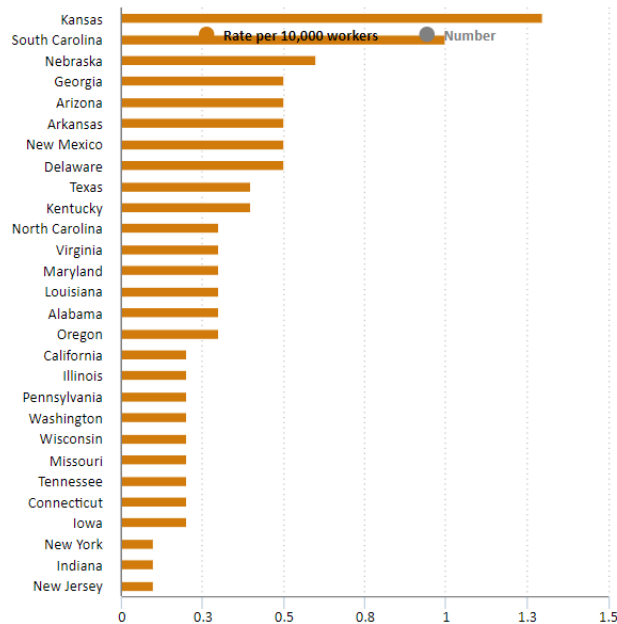
## Work injuries in the heat in 2015

AUGUST 30, 2017

High temperatures can be dangerous to people at work and can lead to injuries, illnesses, and even death. Exposure to environmental heat led to 37 work-related deaths and 2,830 nonfatal occupational injuries and illnesses involving days away from work in 2015. Thirty-three of the 37 fatal work injuries caused by exposure to environmental heat occurred in the summer months of June through September. Texas and California had the highest number of nonfatal injuries and illnesses with days away from work in 2015. Kansas and South Carolina had the highest rates of nonfatal injuries and illnesses from environmental heat.

CHART IMAGE | CHART DATA

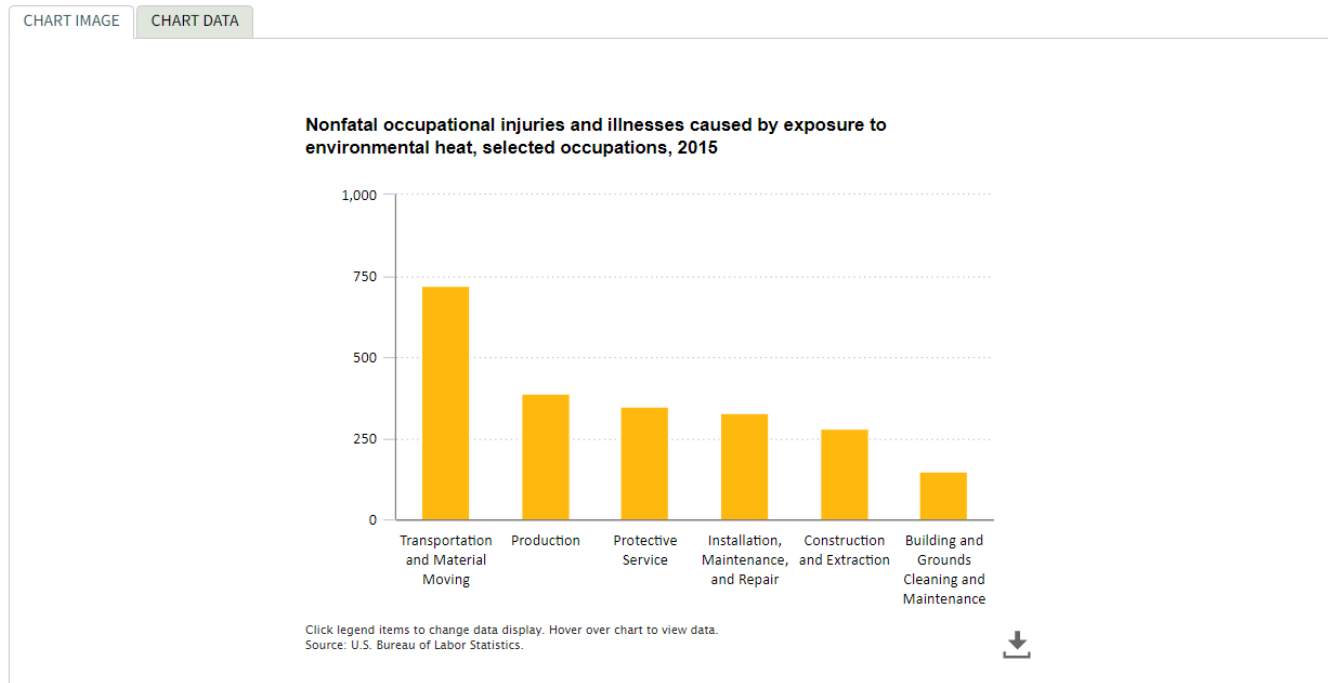
### Nonfatal occupational injuries and illnesses caused by exposure to environmental heat, 2015



Click legend items to change data display. Hover over chart to view data. Source: U.S. Bureau of Labor Statistics.



Transportation and material moving occupations accounted for 720 nonfatal cases with days away from work that resulted from exposure to environmental heat in 2015. That was one-fourth of the total cases caused by environmental heat exposure.



These data are from the [Injuries, Illnesses, and Fatalities](#) program. To learn more, see "Nonfatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2015" ([HTML](#)) ([PDF](#)) and "National Census of Fatal Occupational Injuries in 2015" ([HTML](#)) ([PDF](#)). The Occupational Safety and Health Administration has more information on heat safety from their [Heat Illness Prevention Campaign](#).

RELATED SUBJECTS | [Occupational Safety and Health](#) | [Occupations](#) | [Regions and States](#)

SUGGESTED CITATION

Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*, Work injuries in the heat in 2015 at <https://www.bls.gov/opub/ted/2017/work-injuries-in-the-heat-in-2015.htm> (visited November 20, 2021).

OF INTEREST

Recent editions of *Spotlight on Statistics*

Spotlight on Statistics

- [America's Recovery: Labor Market Characteristics of People with a Disability](#)  
Looks into some of the major labor force characteristics of people with a disability.
- [Industry on Tap: Wineries](#) Examines historical employment trends for wineries and other components of the beverage manufacturing industry.
- [Impact of the Coronavirus Pandemic on Businesses and Employees by Industry](#)  
Explores the coronavirus pandemic's impact on private industry businesses and workers.
- [Occupational Employment and Wages in Metro and Nonmetro Areas](#)  
Examines similarities and differences in employment and wages between metro and nonmetro areas.
- [Gulf War Era Veterans in the Labor Force](#)  
Examines the demographic, employment, and unemployment characteristics of civilians who served in the U.S. military during Gulf War era.

**ATTACHMENT E: Workers Compensation Insurance Organizations (WCIO)  
Injury Description Codes for Possible Heat-Related First  
Report of Injury Cases**

Injury Description Codes: Cause of Injury (Possible Heat-Related)

**I. Burn or Scald – Heat or Cold Exposures– Contact With**

02. Hot Objects or Substances

03. Temperature Extremes

Non-impact injuries resulting in a burn due to hot or cold temperature extremes. Includes freezing or frostbite.

04. Fire or Flame

05. Steam or Hot Fluids

07. Welding Operation

Includes welder's flash (burns to skin or eyes as a result of exposure to intense light from welding.)

**X. Miscellaneous Causes**

90. Other Than Physical Cause of Injury

Stress, shock, or psychological trauma that develops in relation to a specific incident or cumulative exposure to conditions.

Injury Description Codes: Nature of Injury (Possible Heat-Related)

**I. Specific Injury**

04. Burn

(Heat) Burns or scald. The effect of contact with hot substances. (Chemical) burns. Tissue damage resulting from the corrosive action chemicals, fume, etc., (acids, alkalis).

32. Heat Prostration

Heat stroke, sun stroke, heat exhaustion, heat cramps and other effects of environmental heat. Does not include sunburn.

41. Myocardial Infarction

Heart attack, heart conditions, hypertension. The inadequate blood flow to the muscular tissue of the heart.

53. Syncope

Swooning, fainting, passing out, no other injury.



55. Vascular

Cerebrovascular and other conditions of circulatory systems, NOC, excludes heart and hemorrhoids. Includes: strokes, varicose veins - nontoxic.

## **II. Occupational Disease or Cumulative Injury**

68. Dermatitis

Rash, skin or tissue inflammation including boils, etc., generally resulting from direct contact with irritants or sensitizing chemicals such as drugs, oils, biologic agents, plants, woods or metals which may be in the form of solids, pastes, liquids or vapors and which may be contacted in the pure state or in compounds or in combination with other materials. Do not include skin tissue damage resulting from corrosive action of chemicals, burns from contact with hot substances, effects of exposure to radiation, effects of exposure to low temperatures or inflammation or irritation resulting from friction or impact.

**ATTACHMENT F: VOSH Heat Illness Related Unprogrammed Activities August 1, 2014 to August 30, 2021**

Unprogrammed Activity (UPA) Notifications Received by VOSH (complaints, referrals, employer reported cases, hospitalizations, deaths)<sup>145</sup>

TOTAL UPAs Received	229 UPAs
Hospitalizations are highlighted in gray	50 Hospitalizations
Deaths are highlighted in orange	4 Deaths

NAICS
111219 Other Vegetable (except Potato) and Melon Farming
111219 Other Vegetable (except Potato) and Melon Farming
111219 Other Vegetable (except Potato) and Melon Farming
111422 Floriculture Production
114112 Shellfish Fishing
221122 Electric Power Distribution
221310 Water Supply and Irrigation Systems
236118 Residential Remodelers
236220 Commercial and Institutional Building Construction
236220 Commercial and Institutional Building Construction
236220 Commercial and Institutional Building Construction
237110 Water and Sewer Line and Related Structures Construction
237110 Water and Sewer Line and Related Structures Construction
237110 Water and Sewer Line and Related Structures Construction
237110 Water and Sewer Line and Related Structures Construction
237110 Water and Sewer Line and Related Structures Construction
237110 Water and Sewer Line and Related Structures Construction
237110 Water and Sewer Line and Related Structures Construction
237110 Water and Sewer Line and Related Structures Construction
238110 Poured Concrete Foundation and Structure Contractors

<sup>145</sup> Source: OSHA Information System (OIS), UPA One Liner Detail Report  
 Time run: 08/30/2021 8:47:36 AM  
 Virginia Occupational Safety and Health  
 Date Range: 8.1.2014 to 8.30.2021

238110 Poured Concrete Foundation and Structure Contractors
<b>238110 Poured Concrete Foundation and Structure Contractors</b>
238110 Poured Concrete Foundation and Structure Contractors
238140 Masonry Contractors
238140 Masonry Contractors
238160 Roofing Contractors
238160 Roofing Contractors
<b>238160 Roofing Contractors</b>
238210 Electrical Contractors and Other Wiring Installation Contractors
238220 Plumbing, Heating, and Air-Conditioning Contractors
<b>238220 Plumbing, Heating, and Air-Conditioning Contractors</b>
311111 Dog and Cat Food Manufacturing
311421 Fruit and Vegetable Canning
311611 Animal (except Poultry) Slaughtering
311612 Meat Processed from Carcasses
311919 Other Snack Food Manufacturing
312111 Soft Drink Manufacturing
312120 Breweries
312230 Tobacco Manufacturing
312113 Ice Manufacturing
423310 Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
321219 Reconstituted Wood Product Manufacturing
321918 Other Millwork (including Flooring)
321918 Other Millwork (including Flooring)
321920 Wood Container and Pallet Manufacturing
321920 Wood Container and Pallet Manufacturing
<b>321999 All Other Miscellaneous Wood Product Manufacturing</b>
322122 Newsprint Mills
322130 Paperboard Mills
322211 Corrugated and Solid Fiber Box Manufacturing
322211 Corrugated and Solid Fiber Box Manufacturing
323111 Commercial Printing (except Screen and Books)
323113 Commercial Screen Printing

323113 Commercial Screen Printing
323117 Books Printing
325211 Plastics Material and Resin Manufacturing
325211 Plastics Material and Resin Manufacturing
325211 Plastics Material and Resin Manufacturing
326122 Plastics Pipe and Pipe Fitting Manufacturing
326199 All Other Plastics Product Manufacturing
326199 All Other Plastics Product Manufacturing
326199 All Other Plastics Product Manufacturing
326199 All Other Plastics Product Manufacturing
327310 Cement Manufacturing
327390 Other Concrete Product Manufacturing
327390 Other Concrete Product Manufacturing
327390 Other Concrete Product Manufacturing
327991 Cut Stone and Stone Product Manufacturing
331318 Other Aluminum Rolling, Drawing, and Extruding
332312 Fabricated Structural Metal Manufacturing
332321 Metal Window and Door Manufacturing
332431 Metal Can Manufacturing
332710 Machine Shops
332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers
333992 Welding and Soldering Equipment Manufacturing
333999 All Other Miscellaneous General Purpose Machinery Manufacturing
335311 Power, Distribution, and Specialty Transformer Manufacturing
335311 Power, Distribution, and Specialty Transformer Manufacturing
335311 Power, Distribution, and Specialty Transformer Manufacturing
336212 Truck Trailer Manufacturing
337110 Wood Kitchen Cabinet and Countertop Manufacturing
337122 Nonupholstered Wood Household Furniture Manufacturing

337215 Showcase, Partition, Shelving, and Locker Manufacturing
423450 Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
423930 Recyclable Material Merchant Wholesalers
424110 Printing and Writing Paper Merchant Wholesalers
424320 Men's and Boys' Clothing and Furnishings Merchant Wholesalers
424590 Other Farm Product Raw Material Merchant Wholesalers
441120 Used Car Dealers
441310 Automotive Parts and Accessories Stores
441310 Automotive Parts and Accessories Stores
442110 Furniture Stores
442110 Furniture Stores
444220 Nursery, Garden Center, and Farm Supply Stores
Supermarkets and Other Grocery (except Convenience) Stores
Supermarkets and Other Grocery (except Convenience) Stores
445210 Meat Markets
445310 Beer, Wine, and Liquor Stores
448120 Women's Clothing Stores
448120 Women's Clothing Stores
451211 Book Stores
452210 Department Stores
452210 Department Stores
452210 Department Stores
452210 Department Stores
452210 Department Stores
493110 General Warehousing and Storage
452319 All Other General Merchandise Stores
452319 All Other General Merchandise Stores
452319 All Other General Merchandise Stores
423990 Other Miscellaneous Durable Goods Merchant Wholesalers
447190 Other Gasoline Stations
484110 General Freight Trucking, Local
484220 Specialized Freight (except Used Goods) Trucking, Local
485111 Mixed Mode Transit Systems

485510 Charter Bus Industry
488999 All Other Support Activities for Transportation
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492110 Couriers and Express Delivery Services
492210 Local Messengers and Local Delivery
493110 General Warehousing and Storage
493110 General Warehousing and Storage
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493110 General Warehousing and Storage
493110 General Warehousing and Storage
493110 General Warehousing and Storage
493110 General Warehousing and Storage
493110 General Warehousing and Storage
493110 General Warehousing and Storage
493190 Other Warehousing and Storage
512132 Drive-In Motion Picture Theaters
531110 Lessors of Residential Buildings and Dwellings
531312 Nonresidential Property Managers
532284 Recreational Goods Rental
541320 Landscape Architectural Services
541330 Engineering Services
541490 Other Specialized Design Services
541940 Veterinary Services
561311 Employment Placement Agencies
561422 Telemarketing Bureaus and Other Contact Centers
561612 Security Guards and Patrol Services
561612 Security Guards and Patrol Services
561710 Exterminating and Pest Control Services
561720 Janitorial Services

561730 Landscaping Services
561730 Landscaping Services
561730 Landscaping Services
561730 Landscaping Services
561730 Landscaping Services
561910 Packaging and Labeling Services
561990 All Other Support Services
562212 Solid Waste Landfill
562910 Remediation Services
611110 Elementary and Secondary Schools
611310 Colleges, Universities, and Professional Schools
611310 Colleges, Universities, and Professional Schools
611620 Sports and Recreation Instruction
621492 Kidney Dialysis Centers
621991 Blood and Organ Banks
623110 Nursing Care Facilities (Skilled Nursing Facilities)
623110 Nursing Care Facilities (Skilled Nursing Facilities)
623311 Continuing Care Retirement Communities
623312 Assisted Living Facilities for the Elderly
624310 Vocational Rehabilitation Services
713990 All Other Amusement and Recreation Industries
721110 Hotels (except Casino Hotels) and Motels
721110 Hotels (except Casino Hotels) and Motels
721110 Hotels (except Casino Hotels) and Motels
721110 Hotels (except Casino Hotels) and Motels
721110 Hotels (except Casino Hotels) and Motels
721110 Hotels (except Casino Hotels) and Motels
722511 Full-Service Restaurants
722511 Full-Service Restaurants
722511 Full-Service Restaurants
722511 Full-Service Restaurants
722511 Full-Service Restaurants
722511 Full-Service Restaurants
722511 Full-Service Restaurants





922120 Police Protection
922140 Correctional Institutions
922160 Fire Protection
922160 Fire Protection
922160 Fire Protection
922160 Fire Protection
922190 Other Justice, Public Order, and Safety Activities

**ATTACHMENT G: House Bill No. 805, 2020 General Assembly Session**

Source: <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB805>

# 2020 SESSION

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20104780D

## HOUSE BILL NO. 805

Offered January 8, 2020

Prefiled January 7, 2020

*A BILL to amend the Code of Virginia by adding a section numbered 40.1-44.2, relating to the protection of employees; standards for heat illness prevention.*

-----  
Patrons-- Ward and Kory  
-----

Referred to Committee on Labor and Commerce  
-----

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered **40.1-44.2** as follows:

§ **40.1-44.2**. *Standards for heat illness prevention.*

A. *As used in this section:*

*"Acclimatization" means the gradual, temporary adaptation of the body to work in the heat when a person is exposed to heat.*

*"Environmental risk factors for heat illness" means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, protective clothing, and personal protective equipment worn by employees.*

*"Heat illness" means a serious medical condition resulting from the body's inability to cope with a particular heat load and includes heat cramps, heat exhaustion, heat syncope, and heat stroke.*

*"Heat wave" means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.*

*"Landscaping" means providing landscape care and maintenance services or installing trees, shrubs, plants, lawns, or gardens, or providing these services in conjunction with the design of landscape plans. "Landscaping" includes the construction, installation, or maintenance of walkways, retaining walls, decks, fences, ponds, and similar structures.*

*"Oil and gas extraction" means operating or developing oil and gas field properties, exploring for crude petroleum or natural gas, mining or extracting of oil or gas, or recovering liquid hydrocarbons from oil or gas field gases.*

*"Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, and use of prescription medications that affect the body's water retention or other physiological responses to heat.*

*"Potable water" means water that is suitable for drinking purposes found in Occupational Safety and Health Administration (OSHA) standard 29 C.F.R. 1910.141(a)(2).*

*"Rest period" means a cool-down period made available to an employee to prevent heat illness.*

*"Shade" means the complete blockage of direct sunlight that allows the body to cool. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and does not deter or discourage access or use.*

B. *The Safety and Health Codes Board shall adopt regulations establishing reasonable standards as provided in this section that are designed to protect employees from heat illness while engaged in outdoor work. This section applies to the control of risk of occurrence of heat illness. These standards shall apply to all indoor and outdoor places of employment, and to all employers that come within the auspices of the Virginia Occupational Safety and Health (VOSH) Program, except that only employers engaged in the following industries shall be required to comply with the standards established pursuant to subsection E:*

1. Agriculture;
2. Construction;
3. Landscaping;
4. Oil and gas extraction; or
5. Transportation or delivery of agricultural products, construction materials, or other heavy materials, including furniture, lumber, freight, cargo, cabinets, and industrial or commercial materials, except for employment that consists of operating an air-conditioned vehicle and does not include loading or unloading.

C. Such standards shall require each employer to provide water as follows:

1. Employees shall be given access, at no cost to themselves, to drinking water in quantities sufficient to maintain adequate levels of hydration at varying levels of heat, using a baseline of one cup of cool water per 15 to 20 minutes, as well as electrolytes if employees are sweating for more than two hours.
2. The water shall be located as close as practicable to the areas where employees are working.
3. Employers may begin the shift with smaller quantities of water if effective procedures are established for replenishment during the shift as needed.
4. The water provided shall be filtered, fresh, pure, suitably cool, and shall be provided to employees free of charge.
5. The frequent drinking of water, as described in subdivision 1 c (3), shall be encouraged.
6. The water shall be located as close as practicable to the areas where employees are working and shall not in any event be farther than 400 feet walking distance from an employee's work area.

D. Such standards shall require each employer to provide access to shade or climate controlled environment as follows:

1. When the temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall ensure there are one or more areas with shade or climate-controlled environment provided and maintained at all times while employees are present that are either open to the air or provided with ventilation or cooling. The amount of shade or climate-controlled environment provided shall be at least enough to accommodate the number of employees on rest periods so that they can sit in a normal posture fully in the shade or climate-controlled environment without having to be in physical contact with each other. The shade or climate-controlled environment shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the amount of shade or climate-controlled environment present during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite.
2. When the temperature in the work area does not exceed 80 degrees Fahrenheit, employers shall either provide shade or a climate-controlled environment in accordance with subdivision 1 or provide timely access to shade or a climate-controlled environment upon an employee's request.
3. Employees shall always be allowed and encouraged to take a cool-down rest period in the shade or climate-controlled environment for preventative measures, including but not limited to protecting themselves from overheating. An individual employee who takes a preventative cool-down rest (i) shall be asked if he or she is experiencing symptoms of heat illness; (ii) shall be encouraged to remain in the shade or climate-controlled environment; and (iii) shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than five minutes in addition to the time needed to access the shade or climate-controlled environment.
4. Notwithstanding the provisions of subdivisions 1 and 2, except for employers in the agricultural industry, cooling measures other than shade or climate-controlled environment, including the use of misting machines, may be provided in lieu of shade if the employer is able to demonstrate that these measures are at least as effective as shade in allowing employees to be cooled.

*E. Such standards shall require each employer, when the temperature equals or exceeds 90 degrees Fahrenheit, to implement high-heat procedures that:*

- 1. Ensure that employees are able to contact their supervisor by any effective communication vehicle when necessary.*
- 2. Require effectively observing and monitoring employees for signs or symptoms of heat illness by implementing two or more of the following:*
  - a. Supervisor or designee observation of 20 or fewer employees;*
  - b. Mandatory buddy system;*
  - c. Regular communication with sole employee such as by radio or cellphone; or*
  - d. Other effective means of observation.*
- 3. Designate one or more employees on each worksite as authorized to call for emergency medical services, and if no designated employees are available, allowing other employees to call on their behalf.*
- 4. Require reminding employees throughout the work shift to stay properly hydrated.*
- 5. For employees employed in agriculture, conduct pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.*

*F. Such standards shall require each employer to provide rest periods as follows:*

- 1. An employer shall provide rest periods away from the hot environment that should range in duration from 15 to 45 minutes per hour, depending on the workplace temperature and worker activity level. At certain wet bulb globe temperatures, work must be stopped entirely.*
- 2. If an employer fails to provide a rest period in accordance with this subsection, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that a required rest period is not provided.*

*G. Such standards shall require each employer to implement effective emergency response procedures pursuant to which the employer shall:*

- 1. Ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the worksite can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cellphone or text messaging device, may be used for this purpose only if reception in the area is reliable.*
- 2. Respond to signs and symptoms of possible heat illness if a supervisor observes, or any employee reports, any signs or symptoms of heat illness in any employee. The supervisor shall take immediate action commensurate with the severity of the illness, including but not limited to first aid measures and how emergency medical services will be provided. If they are the employee is exhibiting signs of symptoms severe enough to indicate heat illness, the employee shall not be sent home without being offered onsite first aid or provided with emergency medical services.*

*H. Such standards shall require that all employees who commence employment in high-heat environments, or who will be working in hotter conditions than usual such as during a heat wave, be gradually acclimatized to the work over a period of between seven and 14 days.*



I. Such standards shall require each employer to provide effective training that is:

1. For employees:

a. In a language the supervisor or employee understands;

b. Provided to each supervisor and non-supervisory employee before the employee begins work that may reasonably result in exposure to the risk of heat illness; and

c. On the following topics:

(1) The environmental and personal risk factors that contribute to or may increase the susceptibility to heat-related illness, including, but not limited to, medical conditions, water consumption, alcohol use, use of medications that affect the body's response to the heat, and burden caused by personal protective equipment;

(2) The employer's procedures for complying with the requirements of this standard, including the employer's responsibility to provide water, shade or climate controlled environment, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without retaliation;

(3) The importance of frequent consumption of water, up to four cups per hour, when the work environment is above 80 degrees and employees are likely sweating more than usual;

(4) The importance of acclimatization;

(5) The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and emergency responses to the different types of heat illness;

(6) The importance of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in coworkers; and

(7) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be contacted and provided should they become necessary; and

2. For supervisors:

a. Provided to supervisors prior to supervising employees performing work that may reasonably result in exposure to the risk of heat illness; and

b. On the following topics:

(1) The topics required to be provided to employees listed in subdivision 1 c;

(2) The procedures the supervisor is required to follow to implement the applicable provisions in this section;

(3) The procedures the supervisor is required to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures; and

(4) The procedures for moving or transporting an employee to a place where the employee can be reached by an emergency medical service provider, if necessary.

J. The standards established pursuant to this section shall take into consideration the NIOSH Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published by the National Institute for Occupational Safety and Health in 2016.

K. The rules and regulations adopted by the Safety and Health Codes Board pursuant to this section shall be enforced as specified in §§ 40.1-49.3 through 40.1-49.7.

L. It is a violation of § 40.1-51.2:1 to discharge or discriminate in any other manner against employees for exercising their rights under this or any other provision offering occupational safety and health protection to employees.

M. A person may bring in an appropriate court of the Commonwealth (i) an action based on a violation of this section or the regulations hereunder to enjoin such a violation, (ii) an action to recover actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or (iii) both such actions.

**ATTACHMENT H: House Bill No. 1785, 2021 General Assembly Session**

Source: <https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+HB1785>

# 2021 SESSION

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21101346D

## HOUSE BILL NO. 1785

Offered January 13, 2021

Prefiled December 31, 2020

*A BILL to amend the Code of Virginia by adding a section numbered 40.1-44.2, relating to employment health and safety standards; heat illness prevention.*

-----  
Patrons-- Ward and Kory  
-----

Referred to Committee on Labor and Commerce  
-----

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered **40.1-44.2** as follows:

§ **40.1-44.2**. *Standards for heat illness prevention.*

*A. As used in this section, "heat illness" means a serious medical condition resulting from the body's inability to cope with a particular heat load and includes heat cramps, heat exhaustion, heat syncope, and heat stroke.*

*B. The Safety and Health Codes Board shall adopt regulations establishing standards as provided in this section that are designed to protect employees from heat illness in indoor and outdoor work.*

*C. This section applies to the control of risk of occurrence of heat illness. These standards shall apply to all indoor and outdoor places of employment and to all employers that come within the jurisdiction of the Virginia Occupational Safety and Health (VOSH) Program.*

*D. The standards established pursuant to this section shall take into consideration Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments published by the National Institute for Occupational Safety and Health (NIOSH).*

*E. Such standards shall contain requirements for provision of drinking water, access to shade or climate-controlled environments, rest periods, effective emergency response procedures, acclimatization to working in heat, training to employees and supervisors, and other standards related to heat illness protection.*

*F. In addition to any penalties provided by this title, and without regard to any exhaustion of alternative administrative remedies provided for in this title, an employee may bring in an appropriate court of the Commonwealth (i) an action based on a violation of this section or the regulations hereunder to enjoin such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or (ii) both such actions in clause (i). An employee who brings suit and prevails under this section shall be entitled to reasonable attorney fees and costs. If the court finds that the employer knowingly violated the standards, the court shall award the employee an amount equal to triple the amount of damages due under clause (ii) and reasonable attorney fees and costs.*



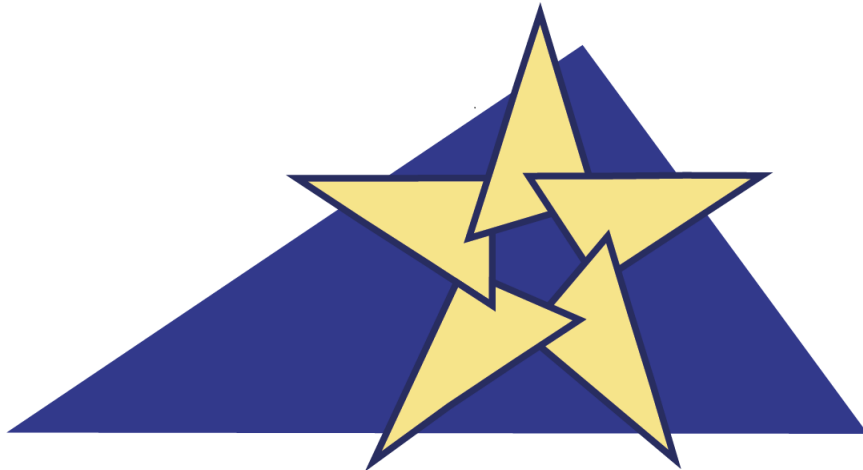
**DRAFT: NOVEMBER 22, 2021**

**DRAFT Proposed Heat Illness Prevention Standard**

As Adopted by the

Virginia Safety and Health Codes Board

on **To be Determined**



**DEPARTMENT OF LABOR AND INDUSTRY**

**VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM**

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY (DOLI)**

**Effective Date: To be Determined**

**16VAC25-210**

## **Background**

On August 30, 2021, the Department provided an initial draft proposed standard to the Heat Illness Prevention Regulatory Advisory Panel to be used as a working draft for identification of issues to be addressed, discussed and commented upon. The draft was developed primarily relying on existing language in other State Plan standards currently being enforced (Oregon, Washington, California and Minnesota), and NIOSH's Criteria for a Recommended Standard.

The August 30<sup>th</sup> draft was color coded to reference the source document as follows:

Oregon Heat Illness Prevention, 437-002-0155

Washington Outdoor Heat Exposure, WAC 296-62-095

California Heat Illness Prevention in Outdoor Places of Employment, 3395

California Heat Illness Prevention in Indoor Places of Employment, §##### [DRAFT]

NIOSH language

VOSH language

The current draft proposed standard of November 22, 2021 reflects input from the Regulatory Advisory Panel and comments from VOSH staff.

**Track Changes was used to indicate substantive changes made to the August 30<sup>th</sup> draft.**


**NOTE: Footnotes are provided for ease of reference to the source material used for regulatory language. The footnotes are not part of the actual regulatory text.**

## **Chapter 210. Heat Illness Prevention Standard**

### **16VAC25-210-10. Purpose, scope, and applicability.**

A. This standard is designed to establish requirements for employers to prevent heat illness among employees, and shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program as described in 16VAC25-60-20 and 16VAC25-60-30.

B. This standard is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to heat illness hazards such as, but not limited to, those dealing with personal protective equipment, respiratory protective equipment, sanitation, medical services and first aid, training, subsection A of § 40.1-51.1 A of the Code of Virginia, etc. Should this standard conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.

C. This standard applies whenever an employee performs work activities and the heat index (apparent temperature) equals or exceeds  F (29.4° C). This standard does not apply to incidental exposure that exists when an employee is not required to perform covered work activity for more than 15 minutes in any sixty-minute period.

**16VAC25-210-20. Effective dates.**

A. The requirements for this chapter shall take effect on [DATE] except where otherwise noted.

B. The heat illness prevention plan requirements for 16VAC25-210-90 shall take effect on [insert DATE 30 days after the effective date of this chapter].

C. The training requirements in 16VAC25-210-100 shall take effect on [insert DATE 60 days after the effective date of this chapter].

## 16VAC25-210-30. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Acclimatization" means the physiological changes that occur in response to a succession of days of exposure to environmental heat stress and reduce the strain caused by the heat stress of the environment; and enable a person to work with greater effectiveness and with less chance of heat injury.

"Administrative control" means any procedure that significantly limits daily exposure to heat illness related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. Examples of administrative controls that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to, acclimatizing employees, rotating employees, scheduling work earlier or later in the day, using work-rest schedules, reducing work intensity or speed, changing required work clothing, and using relief workers. The use of personal protective equipment is not considered a means of administrative control.

"Clothing that restricts heat removal" means full-body clothing covering the arms, legs, and torso that is any of the following:

1. Waterproof;
2. Designed to protect the wearer from a chemical, biological, radiological, or fire hazard; or
3. Designed to protect the wearer or the work process from contamination.

"Cool-down area" means an indoor or outdoor area that is blocked from direct sunlight and shielded from other high radiant heat sources and is either open to the air or provided with ventilation or cooling. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. A cool-down area may include an air-conditioned vehicle in locations that do not restrict motor idling. A cool-down area does not include a location where:

1. Environmental risk factors defeat the purpose of allowing the body to cool; or
2. Employees are exposed to unsafe or unhealthy conditions; or
3. Employees are deterred or discouraged from accessing or using the cool-down area.

"Double-layer woven clothing" means clothing worn in two layers allowing air to reach the skin (e.g., coveralls worn on top of regular work clothes).

"Drinking water" is potable water that is suitable to drink and suitably cool in temperature. Suitably cool drinking water packaged as a consumer product and electrolyte-replenishing beverages that do not contain caffeine (for example, sports drinks) are acceptable substitutes; however, electrolyte-replenishing beverages shall not completely replace the required water. Drinking water and electrolyte-replenishing beverages that are cool (66°F - 77°F, 19°C - 25°C ) or cold (35°F - 65°F, 2°C - 18°C) will be considered to be in compliance with this chapter.

"Duration and frequency of employee exposure" means how long ("duration") and how often ("frequency") an employee is potentially exposed to heat illness related hazards or job tasks. Generally, the greater the frequency or length of time of the exposure, the greater the probability is for potential heat illness to occur.

"Economic feasibility" means the employer is financially able to undertake the measures necessary to comply with one or more requirements in this chapter. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this chapter has occurred. If an employer's level of compliance lags significantly behind that of its industry, an employer's claim of economic infeasibility will not support a VOSH decision to decline to take enforcement action.

"Elimination" means a method of exposure control that removes the employee completely from exposure to heat illness related workplace hazards and job tasks.

"Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this chapter also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

"Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to heat illness related workplace hazards and job tasks. Examples of engineering controls that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to, isolation of hot processes, isolation of employees from sources of heat, air conditioning, cooling fans, cooling mist fans, evaporative coolers (also called swamp coolers), natural ventilation where the outdoor temperature or heat index is lower than the indoor temperature or heat index, local exhaust ventilation, shielding from a radiant heat source, and insulation of hot surfaces.

“Environmental risk factors for heat illness” means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, protective clothing and personal protective equipment worn by employees.

"Feasible" as used in this chapter includes both technical and economic feasibility.

"Heat cramp" means a heat-related illness characterized by spastic contractions of the voluntary muscles (mainly arms, hands, legs, and feet), usually associated with restricted salt intake and profuse sweating without significant body dehydration.<sup>1</sup> Symptoms of heat cramp include muscle cramps, pain, or spasms in the abdomen, arms, or legs.<sup>2</sup>

"Heat exhaustion" means a heat-related illness characterized by elevation of core body temperature above 38°C (100.4°F) and abnormal performance of one or more organ systems, without injury to the central nervous system. Heat exhaustion may signal impending heat stroke.<sup>3</sup> Symptoms of heat exhaustion include headache, nausea, dizziness, weakness, irritability, thirst, heavy sweating, elevated body temperature, decreased urine output.<sup>4</sup>

"Heat illness" means a medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat syncope, rhabdomyolysis, heat exhaustion, and heat stroke.

"Heat index," also known as the apparent temperature, is what the temperature feels like to the human body when relative humidity is combined with the air temperature. The heat index is calculated using equations published by the National Oceanic and Atmospheric Administration's National Weather Service. It can be readily determined using the OSHA-NIOSH Heat Safety Tool App (<https://www.cdc.gov/niosh/topics/heatstress/heatapp.html>) or the online calculator available from the National Weather Service (<https://www.wpc.ncep.noaa.gov/html/heatindex.shtml>). For the purposes of this chapter, the heat index in an indoor space can be calculated by substituting the measured indoor temperature in the calculation and leaving the humidity unchanged or by substituting both the measured indoor temperature and the measured indoor humidity.

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<sup>1</sup> <https://www.cdc.gov/niosh/docs/2016-106/default.html>

<sup>2</sup> <https://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html>

<sup>3</sup> <https://www.cdc.gov/niosh/docs/2016-106/default.html>

<sup>4</sup> <https://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html>

"Heat rash" looks like a red cluster of pimples or small blisters that usually appear on the neck, upper chest, groin, under the breasts or in elbow creases.<sup>5</sup>

"Heat stroke" means an acute medical emergency caused by exposure to heat from an excessive rise in body temperature above 106°F (41.1°C) or core body temperature above 104°F (40°C),<sup>6</sup> and failure of the temperature-regulating mechanism. Injury occurs to the central nervous system characterized by a sudden and sustained loss of consciousness preceded by vertigo; nausea; headache; cerebral dysfunction; bizarre behavior; excessive body temperature;<sup>7</sup> hot, dry skin or profuse sweating. Hot, dry skin always indicates heat stroke, although it is not always present.

"Heat syncope" means collapse and/or loss of consciousness during heat exposure without an increase in body temperature or cessation of sweating, similar to vasovagal fainting except that it is heat induced.<sup>8</sup> Symptoms of heat syncope include fainting (short duration), dizziness, or lightheadedness during prolonged standing or suddenly rising from a sitting or lying position.<sup>9</sup>

"High heat" means when the ambient heat index equals or exceeds 95° F (35° C).

"Indoor" refers to a space that is under a ceiling or overhead covering that restricts airflow; and is enclosed along its entire perimeter by walls, doors, windows, dividers, or other physical barriers that restrict air flow, whether open or closed. All work areas that are not indoor are considered outdoor.

"Occupational exposure" means the state of being actually or potentially exposed to heat illness related hazards at the work location or while engaged in work activities at another location.

"Outdoor" means not indoor.

"Personal heat-protective equipment" means equipment worn to protect the user against heat illness. Examples of personal heat-protective equipment that may be effective at minimizing the risk of heat illness in a particular work area include, but are not limited to, water-cooled

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<sup>5</sup> <https://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html>

<sup>6</sup> NIOSH definition of "hyperpyrexia," page xx; NIOSH definition of "hyperthermia," page xx; "heat stroke levels of body temperature (40°C or 104°F)," page 80; "...a core body temperature of 40°C (104°F) is accepted as the threshold temperature at which a worker is in imminent danger of fatal or irreversible heat stroke..." page 97, <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

<sup>7</sup> <https://www.cdc.gov/niosh/docs/2016-106/default.html>

<sup>8</sup> <https://www.cdc.gov/niosh/docs/2016-106/default.html>

<sup>9</sup> <https://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html>



garments, air-cooled garments, cooling vests, wetted over-garments, heat reflective clothing, and supplied-air personal cooling systems.

"Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological, or other workplace hazards.

"Personal risk factors for heat illness" means factors such as an individual's age, degree of acclimatization, health, water consumption, alcohol consumption, caffeine consumption, and use of prescription medications that affect the body's water retention or other physiological responses to heat.

"Preventative cool-down rest" means a rest taken in a cool-down area to prevent overheating.

"Radiant heat" means heat transmitted by electromagnetic waves and not transmitted by conduction or convection. Sources of radiant heat include the sun, hot objects, hot liquids, hot surfaces, and fire.

"Rhabdomyolysis" means a medical condition associated with heat stress and prolonged physical exertion, resulting in the rapid breakdown of muscle and the rupture and necrosis of the affected muscles.<sup>10</sup> Symptoms of rhabdomyolysis include muscle cramps/pain, abnormally dark (tea or cola colored) urine, weakness, exercise intolerance, asymptomatic.<sup>11</sup>

"Relative humidity" means the amount of water vapor present in air expressed as a percentage of the amount needed for saturation at the same temperature.

"Respirator user" means an employee who in the scope of their current job may be assigned to tasks that may require the use of a respirator in accordance with this chapter or required by other provisions in the VOSH and OSHA standards.

"Shielding" means a physical barrier between radiant heat sources and employees that reduces the transmission of radiant heat.

"Signs of heat-related illness" means medical conditions that can be objectively observed and may include, but are not limited to, hot, red dry or damp skin; confusion, heavy sweating; cold, pale and clammy skin, vomiting, fainting, blisters on the skin or heat rash.<sup>12</sup>

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<sup>10</sup> <https://www.cdc.gov/niosh/docs/2016-106/default.html>

<sup>11</sup> <https://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html>

<sup>12</sup> <https://www.cdc.gov/disasters/extremeheat/warning.html>

"Symptoms of heat-related illness" means medical conditions that are subjective to the person and not observable to others and may include, but are not limited to, high body temperature (103° F, 39.4° C or higher); headache, dizziness, nausea, muscle cramps; tiredness or weakness; muscle pain or spasms.

"Technical feasibility" means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances that can be applied to one or more requirements in this chapter with a reasonable possibility that employee exposure to heat-related hazards will be reduced. If an employer's level of compliance lags significantly behind that of the employer's industry, allegations of technical infeasibility will not be accepted.

"Temperature" means the dry bulb temperature in degrees Fahrenheit/Centigrade obtainable by using a thermometer freely exposed to the air without considering humidity or radiant heat, to measure the temperature in the immediate area where employees are located. When employees are working outside, the temperature measurement must be taken in an area with full sunlight. The bulb or sensor of the thermometer should be shielded while taking the measurement, e.g., with the hand or some other object, from direct contact by sunlight.

"Vapor barrier clothing" means clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

"VOSH" means Virginia Occupational Safety and Health.

"Work area" means a site (including outdoor and indoor areas, a structure, or a group of structures) or an area within a site where work or any work-related activity (e.g., taking breaks, going to the restroom, eating, entering, or exiting work) occurs. A work area includes the entirety of any space associated with the site (e.g., the cab of a vehicle, workstations, hallways, stairwells, breakrooms, bathrooms, elevators) and any other space that an employee might occupy in arriving, working, or leaving.<sup>13</sup>

"Work practice control" means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to heat-related workplace hazards and job tasks through such

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<sup>13</sup> Definition of "work area" derived from OSHA definition of "physical location" in OSHA COVID-19 ETS, 1910.502. <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.502>

methods as changing work habits, and hygiene practices, or making other changes in the way the employee performs the job.



**16VAC25-210-40. Drinking water.**

A. Employers whose work activities are covered by this chapter shall ensure that an adequate supply of additional drinking water to that already required by VOSH laws, standards and regulations is readily accessible to employees at all times and at no cost when the heat index in the work area equals or exceeds 85° (29.4° C).

B. Where drinking water is not plumbed or otherwise continuously supplied, employers shall supply each employee enough water to enable them to consume 32 ounces per hour. Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established to replenish the water consumed during the shift.

C. The drinking water shall be located as close as feasible to the areas where employees are working and in a manner and location that ensures it remain suitably cool. Drinking water shall not be located in close proximity to toxic or hazardous substances or materials.

D. Employers shall encourage employees to frequently consume drinking water to ensure hydration.

E. Employers shall ensure that all employees have the opportunity to drink 32 ounces of drinking water per hour.

F. Employees are responsible for monitoring their own personal risk factors for heat illness, including consumption of sufficient quantities of drinking water.

## 16VAC25-210-50. Employee access to cool-down areas.

A. Employers whose work activities are covered by this chapter shall establish and maintain one or more cool-down areas when the heat index temperature in the work area equals or exceeds 85° F (29.4° C). Cool-down areas may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use.

B. A cool-down area must meet the following requirements:

1. The cool-down area must either be open to the air or provide ventilation for cooling (see definition of "engineering control)."
2. The amount of cool-down area present must be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the cool-down area.
3. The cool-down area must be located as close as feasible to the areas where employees are working.

C. The available space of the cool-down area present during meal periods must be large enough to accommodate the number of employees on the meal period that remain onsite.

D. Employees shall be allowed and encouraged to take a preventative cool-down rest period in the cool-down area when they feel the need to do so to protect themselves from overheating.

1. Such access to a cool-down area shall be permitted at all times.
2. An individual employee who takes a preventative cool-down rest period:
  - a. Shall be observed for signs of heat-related illness and asked if he or she is experiencing symptoms of heat-related illness;
  - b. Shall be encouraged to remain in the cool-down area.
  - c. Shall not be ordered back to work until at least 5 minutes have passed in addition to the time needed to access the cool-down area.
3. If an employee exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest period or during a cool-down rest period taken in response to heat illness signs or symptoms, the employer shall provide appropriate first aid or emergency response according to 16VAC25-210-70. Such employees shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time needed to access the cool-down area.

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F. When the employer can demonstrate that providing access to a cool-down area is not safe or feasible in a particular situation (e.g., where an air-conditioned vehicle cannot be used as a cool-down rest area in locations that restrict motor idling, during high winds, when an employee is walking through range land, etc.), employers shall identify and implement alternative cooling measures that provide equivalent protection.



## **16VAC25-210-60. Acclimatization.**

A. Except as otherwise noted in 16VAC25-210-60.B, an employee who has been newly assigned to any of the following shall be closely observed by a supervisor or designee for the first 14 days of the employee's employment:



A1. To a work area where the ambient heat index equals or exceeds 85° F (29.4° C); or

B2. To work involving the use of clothing that restricts heat removal (e.g., **double-layer woven clothing, vapor barrier clothing**, etc.) where the ambient heat index equals or exceeds 85° F (29.4° C); or

C3. To a high radiant heat work area where the ambient heat index equals or exceeds 85° F (29.4° C).

**B. The requirements of 16VAC25-210-60.A do not apply to a newly hired temporary employee or migrant laborer who has worked for another employer in substantially similar heat index conditions to their current work area within the previous seven calendar days, provided the current employer maintains for one year a written certification record documenting the employee's name, their date of initial employment with the current employer, the name of the previous employer, the date of the employee's last day of work with the previous employer, and the date it determined the prior working conditions were substantially similar to current working conditions .**

**C. An employee who has returned to work after an absence of seven calendar days or more<sup>15</sup> to any of the work situations referenced in 16VAC25-210-60.A.1-3 shall be closely observed by a supervisor or designee for the first 4 days after return to work.**

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<sup>15</sup> <https://www.osha.gov/heat-exposure/protecting-new-workers>

**16VAC25-210-70. High heat procedures.**

**A. In addition to complying with the other provisions of this chapter, employers shall develop and implement high heat procedures when the ambient heat index equals or exceeds 95° F (35° C).**

**B. The high heat procedures shall include:**

- 1. Employers shall ensure that effective communication by voice, observation, or electronic means (e.g., walkie-talkies) is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.**
- 2. Employers shall ensure that employees are observed for alertness, signs and symptoms of heat illness and monitored to determine whether medical attention is necessary by implementing one or more of the following:**
  - a. Regular communication with employees working alone, such as by radio, cellular phone, or other alternative means, or**
  - b. Create a mandatory buddy system, or**
  - c. Implement other equally effective means of observation or communication.**
- 3. Employers shall designate and equip one or more employees on each worksite as authorized to call for emergency medical services, and must allow other employees to call for emergency services when designated employees are not immediately available (such a practice supplements existing requirements to ensure that emergency medical care is immediately available in all workplaces).**
- 4. Employers shall ensure that each employee takes a minimum ten-minute preventative cool-down rest period in the shade at least every two hours, regardless of the overall length of the shift. The preventative cool-down rest period required by this section may be provided concurrently with any other meal or rest period required by policy, rule or law if the timing of the preventative cool-down rest period coincides with the otherwise required meal or rest period. Except when such a rest period coincides with the existing unpaid meal break, the preventative cool-down rest period is a work assignment and must be compensated accordingly.**





## 16VAC25-210-80. Emergency response procedures.

A. Employers covered by this chapter shall develop and implement effective emergency response procedures.

B. The emergency response procedures shall include and address the following:

1. Ensuring that effective communication by voice, observation, or electronic means (e.g., walkie-talkie) is maintained so that employees at the work site can contact a supervisor when necessary; or emergency medical services as soon as physically possible. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable. If an electronic device will not furnish reliable communication in the work area, the employer will ensure a means of summoning emergency medical services.

2. The employer shall designate a person to be available to ensure that emergency procedures are invoked when appropriate.

23. Responding to signs and symptoms of possible heat illness, including but not limited to, first aid measures and how emergency medical services will be provided if a supervisor observes, or any employee reports, any signs or symptoms of heat illness in any employee.

The supervisor must take immediate action appropriate to the severity of the illness:

. If a supervisor observes signs or an employee reports symptoms of heat illness, the employee must be relieved from duty and provided with a sufficient means to reduce body temperature.

i. For heat illness other than heat stroke, methods to reduce body temperature include, but are not limited to use of shaded or air conditioned cool rest areas, fans, loosening or removing clothing, providing cold water, etc.

ii. For suspected severe heat illness (e.g., heat stroke), or in any instance where the employee is not alert, methods to reduce body temperature include, but are not limited to, pouring water and ice directly on the individual and complying with procedures in 16VAC25-210-80.B.3.b.

b. If the signs or symptoms are indicators of severe heat illness (such as, but not limited to, confusion, decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior or convulsions, or hot, dry skin), immediately implement the emergency response procedures, including obtaining immediate emergency medical care.

c. An employee exhibiting signs or symptoms of heat illness must be monitored and must not be left alone or sent home without being offered onsite first aid and/or being provided with emergency medical services in accordance with the employer's procedures.

34. Contacting emergency medical services and, if necessary and instructed to do so by the medical professionals, transporting employees to a place where they can be reached by an emergency medical provider.

45. Ensuring that, in the event of an emergency, clear and precise directions to the work site are provided for first responders to quickly navigate to the location of the affected worker.

**16VAC25-210-90. Heat illness prevention plan.**

A. Employers covered by this chapter shall establish, implement, and maintain, an effective heat illness prevention plan.

B. For employers with eleven or more employees, the plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of VOSH upon request; and shall, at a minimum, contain:

1. Procedures for the provision of water and access to cool-down areas.
2. Acclimatization methods and procedures referred to in 16VAC25-210-60.
3. High heat procedures referred to in 16VAC25-210-70.
4. Emergency response procedures referred to in 16VAC25-210-80.

## 16VAC25-210-100. Training.

### A. Employee training.

1. Employers covered by this chapter shall provide effective training in the following topics to each supervisory and non-supervisory employee before the employee begins work and annually thereafter, that should reasonably be anticipated to expose employees to a heat index equal to or in excess of 85° F (29.4° C):

- a. The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.
- b. The employer's procedures for complying with the requirements of this standard, including, but not limited to, the employer's responsibility to provide drinking water, cool-down areas, access to first aid, and the employees' right to exercise their rights under this chapter without retaliation.
- c. The importance of frequent consumption of small quantities of water, up to 32 ounces (4 cups) per hour, when the work environment is hot and employees are likely to be sweating more than usual in the performance of their duties.
- d. The concept, importance, and methods of acclimatization pursuant to the employer's procedures under subsection 16VAC25-210-60.A.
- e. The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and emergency responses to the different types of heat illness.
- f. That heat illness may progress quickly from mild symptoms and signs to serious and life threatening heat stroke, which requires immediate first aid and access to emergency medical care.
- g. The importance to employees of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers.
- h. The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.
- i. The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider.
- j. The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. These

procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

2. An employer may rely on training conducted by another employer, provided the current employer maintains for one year a written certification record documenting the employee's name, the name of the employer that provided the training, and indicating the date it determined the prior training was adequate rather than the date of actual training.

B. Employers covered by this chapter shall provide effective training to supervisors on the following topics:

1. The information required to be provided by subsection A. above.
2. The procedures the supervisor is to follow to implement the applicable provisions in this section.
3. The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures.
4. How to determine or measure the heat index (apparent temperature), monitor weather reports and respond to hot weather advisories.

**16VAC25-210-110. Discrimination against an employee for exercising rights under this chapter is prohibited.**

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this chapter, Title 40.1 of the Code of Virginia, and implementing regulations under 16VAC25-60-110 for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about heat illness hazards to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

C. Nothing in this chapter shall limit an employee from refusing to do work or enter a location because of a reasonable fear of illness or death. The requirements of 16VAC25-60-110 contain the applicable requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of illness or death.

**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 an 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]

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.

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 Heat. 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 too 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[1] – numbers that are in all likelihood vast underestimates due to underreporting.[2] Indeed, more than 600,000 Virginians work in outdoor and indoor jobs with heat hazard risks.[3]

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.[4]

### 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.[5] 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.[6]

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.[7] Norfolk and Charlottesville had their hottest summers on record in 2020.[8] 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.[9]

### 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,[10] and crop workers die from heat stress at a rate 20 times greater than the rest of the U.S. workforce.[11] 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.[12] While Black Americans only make up 12.1% of the total workforce, they make up 25% of postal workers and 23% of UPS drivers.[13] 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.[14] Grounds maintenance workers are more than 44% Latinx, while roofers are more than 53% Latinx.[15] 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 rehydrate 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

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY  
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**Heat Illness Prevention Regulatory Advisory Panel Comments**

**[ATTACHED]**

RAP01 – Bernard, Letter with Attachment 2021-10-15

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/Bernard-Letter-w-Attachment-20211015.pdf>

RAP02 – Fletcher, AFL-CIO\_VA Heat Advisory Panel Comments on Draft Rule, October 15, 2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/FLETCH1.pdf>

RAP03 – Fulcher, Virginia Heat Standard Comments 10-15-2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/FULCHE1.pdf>

RAP04 – Jenkins, Heat Illness Prevention Advisory Panel Meeting 3 Comments, October 1, 2021

RAP05 – McFarland, Heat Stress RAP Comment, October 15, 2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/McFarland-Heat-stress-RAP-comment.pdf>

RAP06 – Rowe, October 15, 2021 Comments of the Virginia Farm Bureau Federation

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/ROWEOC1.pdf>

RAP07 – Sivin, Comments on Virginia Heat Standard, October 15, 2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/Sivin-Comments-on-VA-heat-standard.pdf>

RAP08 – Sokas, Advisory Board Member Comments for Proposed Heat Illness Prevention Standard, October 15, 2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/SOKAS-1.pdf>

RAP09 – Stanley, VAC Comments Heat Illness Standard RAP 10-15-21

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/STANLE1.pdf>

RAP10 – West, Regulatory Advisory Panel Comments DOLI Heat Standard 10-15-21

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/WEST-R1.pdf>

RAP01 – Bernard, Letter with Attachment 2021-10-15

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/Bernard-Letter-w-Attachment-20211015.pdf>



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15 October 2021

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RE: Comments Regarding the Proposed Heat Illness Prevention Standard

Dear Mr. Withrow:

First, I would like to thank you for the opportunity to serve the Commonwealth of Virginia as a member of Regulatory Advisory Panel Member for heat stress prevention standard. The background you provided and the interactions with other panel members provided me with fresh insights to managing heat stress through a regulation. This letter and the attached comments are for the record. The foundation is my 40 years of research and practice in industrial hygiene with a strong interest in heat stress as well as the experience working with the panel of stakeholders. While I am an employee of the University of South Florida and involved with funded programs, professional organizations, and general practice, the opinions expressed here are my own and should not be interpreted as those with whom I am associated.

Heat stress is a serious workplace hazard and its effects are seen in heat-related illness, acute injury and accidents, and lost productivity. The probability of heat stress impacting the health and well-being of workers increases with the level of heat stress and raised with recent previous exposures (i.e., a carryover effect from at least the previous day and likely the previous few days).

Following a public health model, heat stress thresholds that have been described by Federal and state governments and professional organizations (e.g., NIOSH, ACGIH, ISO) are designed to protect most healthy, hydrated workers in a way that the heat stress exposure can be safely sustained for hours. This criterion carries the implicit understanding that many workers can safely work above the threshold; and it is this fact that may cause problems with fully understanding the risks involved. We cannot know who the less heat tolerant healthy person is. It is also important to understand that there are employees who have a lower heat tolerance than the limits would prescribe. These employees carry personal risk factors that may be inherent such as genetic and capacity factors as well as chronic or acute disease with the associated treatments.

To protect those whose heat stress tolerance is less than the heat stress criteria, the General Controls described in the attached comments become a floor in the prevention of heat-related illness. This floor centers around appreciating that heat stress can be a hazard for at least some workers and being prepared to deal with heat-related disorders, especially heat stroke, as they might occur. As a foundation, a written program of heat stress

management that includes policy statements, training, heat stress hygiene practices, and an emergency response plan becomes essential.

Once again, thank you for the opportunity to participate and to submit my written comments. I remain available to you if I can provide any assistance in preparing any of the technical aspects of the regulation.

Sincerely,

A handwritten signature in blue ink, appearing to be 'TB', written over a faint, illegible background.

Thomas E. Bernard  
Professor

Attachment: Bernard Comments on Core HSMP VOSH 20211015



## **Comments for the Record: Core Elements of Heat Stress Management**

Thomas E. Bernard  
College of Public Health  
University of South Florida

### **Introduction**

Individuals exhibit a broad range of ability to tolerate heat stress. There is no reliable way of knowing how personal factors like aerobic capacity and obesity as well as chronic and acute disease affect the degree of heat tolerance. Assessment schemes have a threshold exposure with a goal of protecting most healthy, hydrated workers. The implication of protecting most healthy, hydrated workers with a prescribed limit is that most workers can safely work above those limits. The problem is knowing who those workers are and how much above the limit they can safely work. The other implication is that those with less heat tolerance may have a greater probability of over-exposure.

Heat stress assessment often includes environmental conditions, work demands and clothing requirements. In general, the environmental threshold is adjusted inversely to the metabolic rate and then further adjusted by the degree to which clothing affects heat exchange. Prescribed exposure limits also adjust for acclimatization state.

The following is a framework for a heat stress management program (HSMP) to consider in the VOSH regulation.

### **Trigger Point**

A trigger point is a working condition at which the regulation would apply. The practical importance is informing employers who never have operations above the trigger point that heat stress is not a likely hazard. For those employers who can anticipate regular occurrences, the trigger point establishes the recognition threshold that heat stress may be a hazard and that the employer health and safety program should address heat stress. Consequently, the trigger point should not be viewed as a condition that should be evaluated on an hourly or daily basis.

Two case series reports by OSHA investigators of OSHA citations provides insight to when a heat-related illness may occur. The investigators have suggested a value for Heat Index or air temperature below which heat illnesses did not result in a citation. An important feature of this lower point is that includes workers with low heat tolerance including comorbidities. The recommended trigger point for outdoor work is an air temperature or Heat Index of 80 °F.

Indoor heat stress conditions may use the simple consideration of air temperature. Heat Index requires the measurement of humidity in the workplace that is not difficult. In most cases the outside triggers can be used.

As a note, a Heat Index of 82 °F in the sun is approximately the limit for unacclimatized workers working at a moderate metabolic rate using the wet bulb globe temperature (WBGT) schemes of NIOSH, ACGIH and ISO.

### **Written Heat Stress Program**

When the trigger conditions are reasonably expected, the employer should have a written heat stress program that establishes the policies and actions described below.

- Assignment of responsibilities. The person responsible for developing and managing the heat stress program is identified. This person is responsible for knowing the heat stress hazards, developing the program to comply with the regulation, and advising others on the program implementation.
- Include policy statements
  - Self-determination
  - Acclimatization
- Include General Controls
- Consider Job Specific Controls as needed

## General Controls

General Controls are those actions that should be taken once heat stress is identified as a workplace hazard. General Controls include

- **Heat Stress Training.** Pre-placement and periodic training with re-enforcement.
  - Causes of heat stress
  - Heat-related disorders including causes, recognition and first aid
  - Heat stress hygiene practices
  - Local risk mitigation strategies including a heat-related disorder response plan
- **Heat Stress Hygiene Practices.** Heat-stress hygiene practices are the actions taken by an individual to reduce the risks of a heat disorder. The individual is responsible for practicing good heat stress hygiene but management needs to support and minimize barriers.
  - *Self-determination.* The individual should seek relief from a heat stress exposure once extreme discomfort or the initial symptoms of a heat-related disorder are sensed. Often an employee can have significant physiological strain before they report that they are very uncomfortable or have the symptoms of heat exhaustion or stroke. Thus, the early recognition is important. Recovery should be long enough that the employee reports being recovered. (Note: Self-directed recovery may leave residual heat strain.)
  - *Fluid replacement.* Because thermal regulation depends on sweating and the necessary loss of water, the water must be replaced at frequent intervals to maintain acceptable hydration.
  - *Lifestyle and diet.* Practicing a generally accepted healthy lifestyle (getting adequate sleep, limiting non-work exposures to heat stress, exercising, not abusing alcohol or drugs, and eating a well-balanced diet) reduces the risk of heat-related disorders.
  - *Health status.* Those with any chronic disease should inform their provider of occupational exposures to heat stress and follow the recommendations. Those with an acute illness should report the condition to a supervisor, and the heat stress exposures should be restricted or reduced.
  - *Acclimatization.* Because acclimatization requires at least 4 days, allowances must be made for those workers who are not acclimatized to the heat, and performance expectations should therefore be reduced. (Note: Some professionals and literature would include acclimatization under administrative controls rather than a hygiene practice.)

There are several acclimatization schedules that circulate in the literature. As a general principle full acclimatization takes 7 to 14 days, but NIOSH and ACGIH propose a schedule of 4 days to reach a practical improvement. Some employers use a work practice of increasing the job demands by starting with tasks that have low demands and move employees up to tasks with higher demands.

The following is a scheme that effectively says that unacclimatized employees can be ramped up by considering the improvement in heat tolerance over 4 days. The value is a plus-up on Heat Index to show the effective level of heat stress. For an unacclimatized employee working at Heat Index of 90 °F is effectively exposed to a Heat Index of 100 °F.

State		Day 1	Day 2	Day3	Day 4
<b>Unacclimatized</b>	New employee; Away for a week or more due to illness; Absent for 3 weeks	+10 °F	+8 °F	+4 °F	Practically Acclimatized
<b>Mostly Unacclimatized</b>	Away for less than a week due to illness; Absent for 2 weeks	+8 °F	+4 °F	Acclimatized	Acclimatized
<b>Somewhat Unacclimatized</b>	Absent for 1 week	+4 °F	Acclimatized	Acclimatized	Acclimatized

Some Caution	Absent less than 1 week	Reduce Expectations	Acclimatized	Acclimatized	Acclimatized
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- Surveillance
  - Environmental. If the written plan calls for specific actions at different heat stress levels (see below), supervisors need a means to assess the environment.
  - Medical. Beyond recommendations to employees with chronic disease to seek counseling from their healthcare provider, monitoring of sentinel health events is recommended. These sentinel events are heat-related disorders, patterns of accidents, absenteeism, and chronic fatigue.
    - If the employer finds that an employee has lower heat tolerance than others based on sentinel events or advice of a healthcare provider, then interventions can be designed for them (e.g., adjust work requirements during high levels of heat stress).
- **First aid and emergency response plan.** The plan should include the ability to recognize early symptoms of heat-related disorders by first line supervisors and workers. In the event of a suspected heat stroke, a method for immediate emergency cooling of the person (ice water immersion or other aggressive method) and arrangements for transport to the hospital are necessary. It is crucial to start cooling immediately and not to wait for an emergency service to arrive.
  - While the prevalence of heat stroke is very low, it is life threatening. The buddy system is important for the recognition of heat stroke, especially because the person may not have the cognitive function to understand the risk and to take any protective steps. In addition to recognizing the signs of heat stroke, the observing employee needs to take aggressive action to cool the person experiencing symptoms and execute the emergency response plan including calling 911. These steps also require training.
- **Pre-Job Briefings.** These should follow the usual practice but may include readiness for work. For heat stress, readiness for work would include questions about quality of sleep and appetite as well as symptoms of acute illness.

### Heat Stress Limits for Job Specific Controls

First, it is worthwhile to discuss severity of a heat stress exposure in terms of outcomes. The following table suggests levels of severity for moderate work demands (300 W) in ordinary woven cloth work clothing outside in direct sun (lowers the threshold Heat Index by 6 °F).

Level	WBGT	Heat Index In Sun	Description
Acceptable	< 25 °C	< 82 °F	Low probability (< 1%) of unsustainable heat stress for anyone
Caution	25 – 28 °C	82 – 92 °F	Low probability (< 1%) of unsustainable heat stress for anyone who is acclimatized
Moderate	28 – 31 °C	92 – 106 °F	Low probability (< 1%) of rapid heat gain
High	31 – 34 °C	106 – 125 °F	Significant probability (up to 10%) of rapid heat gain
Extremely High	> 34 °C	> 125 °F	Likelihood (> 10%) of rapid heat gain

Taking the Caution Level as the point to implement job specific controls, the following table illustrates how metabolic rate affects the threshold Heat Index for work in direct sun.

Work Demands	V Light	Light	Moderate
Heat Index In Sun and Steady Work	118	106	92

While not presented here, the effects of other clothing can be accounted for.

The recommended Severity level is Caution. Once this level is exceeded, Job Specific Controls are needed to bring the exposure within the limit.

Note: For those suggesting a 90 °F High Heat Stress level, the above table supports this decision for work in the sun or other radiant heat source.

### **Job Specific Controls**

Job Specific Controls are those that apply to specific situations. While not all job specific controls apply to specific work places, they are provided here as an opportunity to think about possibilities. The job specific controls follow the traditional hierarchy of engineering controls followed by administrative controls, and then personal protection, usually in the form of personal cooling.

Specific Controls follow.

- **Engineering Controls.** Engineering controls change the conditions so that the level of heat stress is reduced, ideally below the exposure thresholds.
  - *Reduce the metabolic rate.* A very effective means to reduce heat stress is to reduce the amount of internal heat generation.
  - *Change clothing requirements.* This generally applies to protective clothing so that the clothing provides adequate protection from the hazard but is not over-specified and thus add an unnecessary heat stress burden.
  - *Reduce temperature and humidity.* Reductions of air temperature and humidity are frequently achieved through spot or dilution ventilation. This is another method to significantly reduce the level of heat stress in the workplace. The ventilation systems can be temporary or permanent and may include mechanical cooling.
  - *Increase air motion.* Increasing air speed via fans is a time-honored method to enhance evaporative cooling, but it is of limited value once air speed exceeds 2 m/s. When air temperature is greater than 40 °C (104 °F), increasing air motion may actually increase heat stress.
  - *Control radiant heat.* When radiant heat is high, the effects can be reduced through combinations of insulating exterior surfaces and reducing surface emissivity. In addition, shields can be very effective.
- **Administrative Controls.** Administrative controls manage the risk through work practices. They are relatively easy to implement, although they may not be as cost-effective as other controls.
  - *Planned work time.* Limiting the heat stress exposure to a time period that would ensure that most workers are not overexposed is one way to limit the risk. The work time limit can be based on the WBGT or ISO methods of estimating safe exposure times.
  - *Self-determination.* Giving employees the opportunity to subjectively control the pace of work and the work time is frequently used as a means of controlling heat stress exposures. Self-pacing is a valuable means of reducing the physiological strain and improving efficiency. Subjective self-limitation, however, may not be reliable. Physiological monitoring to provide objective information on heart rate and body temperature will improve the reliability. The advantage of personal monitoring is that it allows the more heat-tolerant workers more exposure time. In this way, personal monitoring can improve productivity while controlling the risk of heat-related disorders.
  - *Recovery allowances.* It is important to provide adequate recovery from heat stress exposures. Including recovery times and locations in the analysis of overall evaluation of heat stress exposure provides insight as to whether or not the recovery allowance is adequate.

The following work and recovery table using Heat Index is an example of work outside in the sun with regular work clothing and rest occurs in a shaded area.

Work/Rest	Work Demands		
	V Light	Light	Moderate
60/0	118	106	92
45/15	119	107	97
30/30	120	113	104
15/45	122	119	113
No Work	125	125	125

- *Scheduling work.* To the extent possible, scheduling work to times when the heat stress levels may be lower (e.g., night) is a useful way to control exposures.
- **Personal Protection.** Personal protection for heat stress exposures means providing a microenvironment around the worker that allows a greater loss of heat.
  - *Circulating air systems.* Venting air from supplied-air hoods or supplying breathing grade air directly under clothing enhances evaporative and convective cooling. Many times, the cooling is sufficient to virtually eliminate heat strain. The major disadvantage is that worker mobility is restricted with the airline.
  - *Liquid cooling systems.* This type of personal cooling is based on circulating cooling liquid (e.g., water) around some portion of the body within enclosed tubes or channels. The rate of cooling depends on the surface area of the body covered. The heat is taken up by a heat sink that is usually composed of ice but could theoretically be another material. The service time depends on the size of the heat sink or the ability to replenish the heat sink. The major disadvantage to these systems is the cost.
  - *Ice cooling (phase change) garments.* Ice cooling and phase change garments cool the body by direct transfer of heat from the body to the heat sink by conduction. These are sometimes referred to as passive systems because there is no mechanical movement of air or liquid.
  - *Forearm immersion in cold water.* By placing the forearms in a cold/ice water bath, the recovery from a heat stress exposure can be accelerated.

### WBGT Alternative

Wet bulb globe temperature (WBGT) index is a widely recognized metric for environmental contributions to heat stress as recommended by NIOSH and ACGIH. The WBGT-based exposure assessment is more representative of how workers are affected by heat stress. The NIOSH RAL and ACGIH Action Limit can be substituted for the trigger limit and the NIOSH REL and ACGIH TLV can be used as the high heat stress limit.

RAPO2 – Fletcher, AFL-CIO\_VA Heat Advisory Panel Comments on Draft Rule,  
October 15, 2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/FLETCH1.pdf>





# AFL-CIO

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October 15, 2021

Jay Withrow

Director, Legal Support, VPP, ORA, OPP, and OWP

Virginia Department of Labor and Industry

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Dear Mr. Withrow,

It is important for the Virginia Department of Labor and Industry and the Safety and Health Codes Board to move forward with a rule to protect workers from heat illness. The background information provided to the regulatory advisory panel, including data on the significant issue and impact of heat illness among workers in Virginia and the current limitations to protect workers under existing regulations, supports the need for a standard in Virginia to protect outdoor workers, indoor workers, and those who perform mobile work.

The AFL-CIO has long standing expertise in the development, promulgation and implementation of OSHA standards and regulatory and enforcement actions, including programmatic safety and health standards. Our affiliated unions have been addressing heat illness prevention hazards directly with employers and together, we have been actively involved in developing occupational heat illness prevention rules in other states and nationally. We are pleased to serve on the regulatory advisory panel and provide our expertise on behalf of the more than 300,000 union members and their families in the Commonwealth of Virginia.

According to the National Oceanic and Atmospheric Administration, Virginia's temperatures throughout January–June 2021 were hotter than 75% of years in the 20th century with an average temperature of 96°F.<sup>1</sup> Dangerously hot working conditions cause heat illness and death for workers in many industries, and

<sup>1</sup> NOAA National Centers for Environmental Information, State of the Climate: National Climate Report for July 2021, published online August 2021, retrieved on October 13, 2021 from <https://www.ncdc.noaa.gov/sotc/national/202107>.

contribute to other injuries due to slippery sweat, fogging personal protective equipment, dizziness and hot tools.

Preventing occupational overexposure to heat is straightforward when employers have a plan to assess the temperature and compounding occupational factors that contribute to heat illness, and to implement workplace control measures to mitigate heat exposure and train workers and supervisors. We support Virginia's approach of incorporating existing state heat illness prevention standard provisions, as employers have been able to implement these protections to keep workers safe from extreme heat. This initial draft is a good start, but there are multiple areas that must be maintained and strengthened in order to address and reduce the significant risk that workers face to heat exposures on the job.

### Heat Index and Other Risk Factor Triggers

The draft provision utilizing an 80-degree heat index trigger to a written plan, water, cool down areas, acclimatization and training should be maintained, key components to a comprehensive heat illness prevention model.

The draft provision creating high heat procedures at a 90-degree heat index is also appropriate. However, DOLI should also require employers to take into account other risk factors that contribute to overexposure to heat such as radiant heat, workload and clothing, and use them to trigger high heat procedures. While there are complex formulas for incorporating these risk factors into an estimated heat index, it would be straightforward for employers and workers alike for Virginia to have a provision that requires the implementation of high heat procedures when these defined risk factors are present. We strongly encourage DOLI to incorporate the definition of these risk factors and use them as a basis to trigger high heat provisions.

DOLI should require additional procedures for extreme heat conditions. This is typically defined as heat above 100 degrees heat index or triggered by a lower heat index with radiant heat exposures, workloads or clothing that increase the risk of heat illness similar to extreme heat temperatures. DOLI should consider the necessity of additional rest breaks, monitoring for heat illness symptoms and other precautions during extreme heat conditions. Additionally, there will be extreme heat conditions where work cannot be performed safely and work must be stopped and rescheduled for a cooler time.

### Written Plan

Provisions requiring a written plan must be maintained. Employers must create and implement a written plan to control the risks for overexposure to heat. The plan must be written to ensure that both employers and workers know the risk factors that are being considered and the actions to take to control heat exposures. The control measures must be based on the foundational concept of the hierarchy of controls—implementing the most effective controls first to reduce heat overexposures as much as possible. This includes access to air conditioning, shielding or



blocking of radiant heat, and scheduling work at cool times of day. Additionally, workers and their representatives must be involved in every step of the process to ensure that all the risks are identified, proper control measures are implemented in their workplace and access to adequate rest breaks are provided and encouraged.

### Acclimatization

Acclimatization is an essential control measure to reduce heat exposure for the first assignment periods of hot work. The written plan must include the acclimatization procedures, but also, DOLI must strengthen the draft acclimatization provisions. The current sole provisions to closely observe newly assigned employees is not sufficient to reduce the magnitude of the risk faced by newly assigned workers. The provisions must be strengthened to require employers to implement a scheduled acclimatization plan to reduce heat exposure within the first days of assigning work in hot conditions. Employers should be able to tailor their acclimatization plan to their specific workplace, but the plan must include reduced workloads and reduced work hours in hot conditions for at least the first five days. Additionally, commonly used and recommended schedules can be provided to employers in an appendix to help them develop their plan.

### Rest Breaks

Access to cool down areas must not only be provided, but employers must require periodic rest breaks, and encourage rest breaks and drinking of water as necessary for all workers in hot conditions. Currently the draft language only requires employers to schedule at minimum a ten-minute break once every two hours in high heat conditions. However, the duration and frequency of breaks should be based on both the temperature and other risk factors (e.g., radiant heat, workload, PPE). DOLI should require employers to schedule breaks specific for heat illness prevention during all hot working conditions covered by the standard. Additional breaks in high heat conditions, and if work is permitted in extreme heat conditions, additional and extended breaks should be required.

In addition to scheduled breaks, DOLI should strengthen language concerning access to cool down areas when employees need a preventative rest break to cool down and drink water. Employees should be encouraged to take a preventative break when they feel the need to do so to prevent overheating and should remain in the shade for as long as necessary until they are no longer experiencing signs or symptoms of heat illness. The California standard has provisions (8 CCR 3395(d)(3) and (4)) to address preventative breaks that should be incorporated into the proposed standard.

When the worker, due to either a scheduled break or preventative break, takes rest breaks, the employee must not be penalized through loss of pay or benefits. Any time spent in a rest break, or time spent acclimatizing to hot work, must be paid to ensure that workers are not discouraged from taking breaks when needed to prevent heat illness. California has clarified that all required breaks to prevent heat illness must be paid for all workers under their labor codes, including

workers who are compensated on a piece-rate basis.<sup>2,3</sup> DOLI should incorporate similar paid break protections into the proposed standard.

### Drinking Water and Electrolytes

Cool drinking water and replenishing electrolytes is essential to preventing heat illness and an adequate supply must be available for workers as necessary. DOLI should strengthen the drinking water provisions to include employer-provided access to cool water and electrolytes.

### Training

The training provisions drafted by DOLI must be included in the proposed standard. Training for workers ensures that they have information about the signs, symptoms and risk of heat illness, the risk factors in their workplace, the actions their employer is taking to protect them, and how to safely perform their job tasks, including when and where to safely take a scheduled or preventative break. To ensure training is effective, employers must document who has received training and ensure that participatory training is done by a knowledgeable person using methods and language that all workers understand and ensure workers are able to ask questions.

Additionally, supervisors must be provided specific heat illness prevention training on awareness and implementation. The provisions in the draft document should be strengthened to add training that ensures supervisors encourage workers to take a preventive break if they are experiencing signs or symptoms of heat illness. Supervisors and workers should be rewarded for identifying signs and symptoms of heat illness and taking preventative action before a worker falls ill.

Thank you for the opportunity to comment on the draft proposed heat illness prevention standard and serve on the regulatory advisory panel. Please contact me with any questions or additional information.



MK Fletcher, MSPH

Safety and Health Specialist

AFL-CIO

<sup>2</sup> [https://www.dir.ca.gov/pieceratebackpayelection/AB\\_1513\\_FAQs.htm](https://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm)

<sup>3</sup> <https://law.justia.com/codes/california/2011/lab/division-2/200-243/226.7/>

RAPO3 – Fulcher, Virginia Heat Standard Comments 10-15-2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/FULCHE1.pdf>



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October 15, 2021

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**RE: Comments Regarding the Proposed Heat Illness Prevention Standard**

Dear Mr. Withrow:

Thank you for the opportunity to serve on the Virginia Heat Illness Prevention Advisory Panel and contribute to the process of creating a comprehensive heat standard that will protect workers from heat illness, injury and death. I would be delighted to continue to help in this process as it progresses.

As you know, Public Citizen is a consumer and health advocacy group with approximately half a million members and supporters nationwide and more than 16,400 members and supporters in Virginia. We applaud the efforts of the Virginia Department of Labor and Industry's Safety and Health Codes Board to implement a much-needed Heat Illness Prevention Standard.

**Heat Stress Is a Significant Risk to Workers**

More than 600,000 Virginians work in outdoor and indoor jobs with heat hazard risks.<sup>1</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>2</sup>

Heat stress causes dizziness, fatigue, distraction, cramps and reduced cognitive performance and decision-making. This, in turn, can cause potentially fatal or debilitating injuries from accidents — such as falling from heights, wounds from power tools or machinery, being struck by a moving vehicle, or mishandling dangerous chemicals. An analysis of more than 11 million

workers' compensation injury reports in California over the past two decades found that high temperatures likely caused about 20,000 additional injuries per year in that state alone.<sup>3</sup>

### **Indoor heat stress**

An analysis of 7 years of worker heat complaints in Virginia reveals a similar pattern. Data from Virginia Occupational Safety and Health (VOSH), the administrator of Virginia's OSHA-approved State Plan, revealed 229 heat complaints, or Unprogrammed Activity (UPA) Notifications, from August 2014 to August 2021, including 50 hospitalizations and four deaths.<sup>4</sup>

Of those cases 142 (62%) involved indoor stress, 21 of which resulted in hospitalizations. The number of indoor heat stress complaints was nearly double the number of outdoor heat stress complaints. Also, four of the UPAs involved jobs with both an indoor and outdoor component and 9 UPAs involved delivery workers/delivery truck drivers. Three of the delivery worker cases resulted in hospitalizations.

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

Twenty of the last 21 years were the hottest on record, and extremely 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 2021 was the hottest in recorded history, just edging out the Dust Bowl of 1936.<sup>7</sup> Virginia set heat records, as well. For example, here have been 53 days when the temperature was above 90°F in Lynchburg this year, exceeding the previous record of 44 days in 1988.<sup>8</sup>

With accelerating global warming, extreme high temperatures are projected to increase, as are the frequency, length and intensity of heat waves.<sup>9</sup>

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

There is a profound racial and economic injustice component to workplace heat hazard risks. Research shows that the dangers of occupational heat stress are overwhelmingly borne by low-income workers, with the lowest-paid 20% of workers suffering five times as many heat-related injuries as the highest-paid 20%.<sup>10</sup> Heat stress also disproportionately burdens workers of color. A recent review by Columbia Journalism Investigations of records relating to workplace heat injuries -- including workplace inspection reports, death investigation files, depositions, court records, and police reports -- found that since 2010, Hispanics have accounted for a third of all heat fatalities, despite representing only 17% of the U.S. workforce.<sup>11</sup> Among construction workers deaths over the the 25 years covering 1992-2016, Black construction workers were 51% more likely to die from heat exposure and the rate for construction workers born in Mexico was a whopping 91% higher than the average.<sup>12</sup>

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>13</sup> Crop workers die from heat stress at a rate 20 times greater than the rest of the U.S. workforce.<sup>14</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>15</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>16</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>17</sup> Grounds maintenance workers are more than 44% Latinx, while roofers are more than 53% Latinx.<sup>18</sup> All of these are high heat risk jobs.

### **Productivity requirements and incentives contribute to heat stress**

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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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 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.<sup>23</sup> 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.<sup>24</sup> In the United States we lose approximately \$100 billion per year per year in lost worker productivity as compare to prior to 1985.<sup>25</sup> Some counties in Virginia lose up 1% of gross value added (GVA)<sup>26</sup> due to heat-related worker productivity losses which can possibly add up to millions of dollars per county.<sup>27</sup> Heat-related injuries and illnesses increase workers’ compensation costs and hospital-related expenses.<sup>28</sup>

The good news is that the economic impacts of heat stress can be mitigated by the same protections that manage 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.<sup>29</sup> California also saw a significant reduction in workers' compensation claims after putting a state heat standard in place in 2005.<sup>30</sup>

### **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.<sup>31</sup> Still, OSHA has not issued a heat standard.

Unable to rely on federal rules Oregon and Washington state were forced to issue Emergency Temporary Standards in July following the June, 2021 Pacific Northwest heat wave. California, Minnesota and Washington have issued permanent heat standards of their own as has the U.S. military. Maryland<sup>32</sup> and Colorado 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.

On September 20, 2021, the White House announced an initiative to address heat stress in the workplace and communities. Among the planned efforts was an announcement of a National Proposed Rulemaking (ANPRM) for an OSHA heat standard.<sup>33</sup> While this is a welcome, long-overdue step forward, but we are still a long way from the finish line. On average, it takes OSHA eight years to promulgate a rule. Even with the support of the White House, we are at least four years away from a final rule from OSHA. Virginia can, and should, move faster to protect Virginia workers from heat illness, injury and death.

I look forward to assisting in the process of developing that standard.

Sincerely,

Juley Fulcher, J.D., Ph.D.

Please see comments below on the Proposed Heat Illness Prevention Standard draft dated August 30, 2021, as provided to the Virginia Heat Advisory Panel.

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

The Virginia Heat Illness Prevention Standard should, at a minimum, include the elements described below, based largely on NIOSH's latest (2016) iteration of its criteria for a recommended standard for occupational exposure to heat:<sup>34</sup>

### **Chapter 210. Heat Illness Prevention Standard**

*Public Citizen strongly encourages the name of the Heat Illness Prevention Standard be changed to the Heat Illness and Injury Prevention Standard*

An analysis of more than 11 million workers' compensation injury reports in California from 2001 through 2018 found that hotter temperatures significantly increase injuries on the job and days with temperatures above 80°F have likely caused about 20,000 additional injuries per year in that state alone.<sup>35</sup> The study demonstrated that working on a day with temperatures above 90°F leads to a 5-9% increase in same-day injury claims, while a day above 100°F leads to a 10-15%.<sup>36</sup> Using Bureau of Labor Statistics workforce estimates and extrapolating from the California data, Virginia may be experiencing more than 4,500 heat-related injuries per year.<sup>37</sup>

Heat-related injuries are a significant problem requiring education, regulation and enforcement. Virginia has the opportunity to do that. Heat-related injuries caused by hot days were cut by 30% in the years following California's issuance of their heat standard in 2005.<sup>38</sup> Thus, an effective heat standard has value.

### **16VAC25-210-10. Purpose, scope, and applicability.**

*Public Citizen strongly supports the proposed trigger temperature of 80°F for applicability of the Heat Illness Prevention Standard.*

There are a number of factors that contribute to heat stress in the body. These include the ambient temperature, humidity, radiant heat (direct sunlight, ovens and other heat-generating machinery, road surfaces, etc.), air movement, the person's metabolic rate (impacted by workload, fitness, and personal risk factors) and clothing that may or may not allow the body to release heat.<sup>39</sup>

Sophisticated measurements and tables are useful in determining when and how adjustments must be made to protect a person from heat illness. However, there are limits to what can be expected of employers in identifying the risks and making the necessary adjustments.

In order to protect workers in a way that's practical and economical for employers, a heat standard must rely on the best estimates of when the risk of heat illnesses, injuries and death increase. Using the simple Heat Index (HI), which combines air temperature and humidity, 80°F HI as a reasonable point to begin taking precautions against heat stress in the workplace. Ninety-six percent of all civilian heat-related deaths occur with a Heat Index of 80°F and above.<sup>40</sup> While some workers may experience heat illness at a lower Heat Index than 80°F, especially when working in direct sunlight doing very strenuous work, this "trigger" point is a reasonable generalization of increased risk for employers to rely upon. The 80°F trigger point is used in the Oregon Emergency Temporary Standard issued in July, 2021 after the deadly Pacific Northwest



heatwave that occurred in late June.<sup>41</sup> It is also used in the California Heat standard that has been in place since 2005.<sup>42</sup>

#### **16VAC25-210-40. Drinking water.**

*Public Citizen supports the proposed drinking water requirements, but it is essential to also include a requirement for easily and consistently accessible, clean and safe restrooms.<sup>43</sup>*

In order to keep the body cool, workers must consume lots of water. Making it easily available is essential. However, if employees have limited access to restrooms or the available restrooms are unclean, employees may restrict their own water intake. Additionally if workers feel harassed or unsafe using the restrooms, they may likewise reduce water intake. While other Virginia regulations may address restroom facilities at the workplace, it's important to add clear provisions the the Heat Illness Prevention Standard that may be more effective in encouraging workers to drink sufficient water under high heat conditions.

#### **16VAC25-210-70. High heat procedures.**

*Public Citizen supports a Heat Index of 90°F as an appropriate “trigger” for a “high heat” condition requiring additional safety measures. However, we encourage the inclusion of a minimum of a ten (10) minute break every hour in high heat conditions.*

As the environmental heat increases, the risk to workers also increases. Beyond the use of work/rest schedules (described below), employers must take extra actions to protect workers from heat illness, injury and death when the Heat Index reaches highly dangerous levels.

The Work/Rest Schedules created by the National Institute of Occupational Safety and Health (NIOSH) at the Centers for Disease Control and Prevention (CDC)<sup>44</sup> is one of the simpler charts available to determine safe work/rest schedules. It uses the heat index to recommend appropriate breaks for those doing “light,” “medium” and “heavy” workloads and provides examples of workloads. The chart was developed on an assumption that the relative humidity is 30% and the ambient temperature is measured in the shade. It also assumes workers are physically fit, well-rested, fully hydrated and under age 40 — making the scale optimistic at best for the average worker without even considering things such as caffeine intake, medications, pre existing conditions or lack of air-conditioning in the home. Adjustments for working outdoors on sunny and cloudy days, as well as higher levels of humidity are provided.

Here is some information on the average humidity during hot weather months (May-September) for cities in different parts of Virginia.

City	Relative Humidity Range
Richmond <sup>45</sup>	68%-74%
Norfolk <sup>46</sup>	74%-78%
Charlottesville <sup>47</sup>	71%-76%
Bristol <sup>48</sup>	76%-78%
Manassas <sup>49</sup>	72%-76%
Roanoke <sup>50</sup>	72%-77%

According to the NIOSH Work/Rest Schedules, an additional 9°F should be added to the heat index to determine the appropriate break schedule when the humidity exceeds 60%. An additional 6°F should be added if working outdoors on a cloudy day and 13°F on a sunny day. Though the CDC chart doesn't address it, OSHA recommends adjusting for clothing that make it difficult for the body to release heat, such as double layer clothing or impermeable PPE use to protect workers from a variety of other workplace hazards. Though consistently described throughout NIOSH and OSHA materials, the NIOSH Work/Rest Schedules does not mention adjustments for radiant heat sources, such as ovens, machinery and road surfaces. However, working next to these heat sources would also require an upward adjustment.

Based on these factors a heat index of 90°F in Virginia would be adjusted to 99°F based on humidity alone. Any additional adjustment based on radiant heat or clothing would move it to more than 100°F. Working in direct sunlight would send it up to 112°F, for example. Based on a moderate workload, the NIOSH recommends a minimum of a 15 minute break every hour at a 90°F Heat Index with a Heat Index adjustment for Virginia humidity and any additional adjustments needed.

**A Heat Index of 100°F should trigger an “extreme heat” condition with additional safety requirements.**

Using the NIOSH charts, a heat index of 100°F would be adjusted to 109° based on Virginia humidity alone. At that point, the CDC recommends that even light load workers be taking a 30 minute rest period for every 30 minutes of work. And those doing moderate or heavy work are beyond the point where a modified work/rest schedule can protect workers from the dangers of heat stress, with only extreme caution indicated.

“Extreme heat” should incorporate the requirements of “high heat” conditions and add the additional requirements of

- 1) Signage and alerts - Employers must give verbal alerts and post signage in the languages workers speak alerting employees of the extreme heat risk and need to take extra precautions and carefully monitor themselves and others. The verbal alerts and signage should remind employees to rest in a cool down area if they are feeling any symptoms of heat illness and to inform at least one other employee or supervisor that they are feeling ill.
- 2) Employers shall ensure that each employee take a minimum 30-minute paid preventative rest period in a cool down space for for every 30 minutes of work during the hours of the day when the Heat Index exceeds 100°F.
- 3) Employers shall further reduce the risk of employee heat illness and injury by:
  - a. changing work hours to cooler times of the day, avoiding the hours of (1pm-5pm ET);

- b. changing work responsibilities to have employees work in the shade or inside a space where there is adequate ventilation or air conditioning during the hottest hours of the day;
- c. reducing the metabolic load on employees during the hottest hours of the day by changing work responsibilities to a “light workload” [should be defined] or reducing the pace of work by at least 50%; or
- d. cancelling work for the day.

The “extreme heat” condition should be incorporated in other areas on the proposal where appropriate such as in **16VAC25-210-90. Heat illness prevention plan** and **16VAC25-210-30. Definitions.**

#### **16VAC25-210-100. Training.**

*Information about heat-related injuries and how to avoid them should be included in the required training of employees and supervisors.*

As noted above, injuries in the workplace caused by the symptoms of Heat stress that employees suffer in high heat are a serious concern. How to protect against heat-related injuries is a central element to any effective training program.

#### **16VAC25-210-110. Discrimination against an employee for exercising rights under this chapter is prohibited.**

*The prohibition of retaliation against a worker for exercising their rights under the Heat Illness Prevention Standard should reflect the realities of employee circumstances and best practices in anti-retaliation language. We support the addition of the following language in sections A. and B.*

No person shall discharge, demote, blacklist, prejudice by any action or lack of action, or otherwise discriminate against in any way (including in the hiring process and including by the threat of any such action or inaction) against an employee, or a family member of such employee who is also an employee, because the employee has exercised rights under the safety and health provisions of this chapter, Title 40.1 of the Code of Virginia, and implementing regulations under 16VAC25-60-110 for themselves or others.

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<sup>1</sup> Based on data from *May 2020 State Occupational Employment and Wage Estimates — Virginia*, BLS (2020) [https://www.bls.gov/oes/current/oes\\_va.htm](https://www.bls.gov/oes/current/oes_va.htm).

<sup>2</sup> Brian Curwin, NIOSH, CHRONIC KIDNEY DISEASE OF UNKNOWN ETIOLOGY: NIOSH PESTICIDE EXPOSURE STUDY IN EL SALVADOR SUGARCANE WORKERS (Sept 27, 2016), <https://bit.ly/3bX3wHf>.

<sup>3</sup> R. Jisung Park, Nora Pankratz & A. Patrick Behrer, *Temperature, Workplace Safety, and Labor Market Inequality*, IZA INSTITUTE OF LABOR ECONOMICS DP No. 14560 3 (July 2021), <https://bit.ly/2V3Wrij> [hereinafter R. Jisung Park et al., *Temperature, Workplace Safety, and Labor Market Inequality*]. Injury rates were compared on hot days above 80° with injuries occurring on cooler days and found significantly more injuries on hot days, with injury rates increasing as temperatures rose to 85°, 90°, 95° and 100°.

<sup>4</sup> The data was acquired from the VOSH OSHA Identification System (OIS). Unprogrammed Activity (UPA) Notifications include complaints, referrals, employer reported cases, hospitalizations, deaths. UPAs were identified using the search term “heat” and may not be inclusive of all heat-related cases.

<sup>5</sup> RS Vose, DR Easterling, KE Kunkel, et al., 2017: *Temperature changes in the United States*, CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT I 185 (2017); Umair Irfan, Eliza Barclay & Kavya Sukumar, *Weather 2050*, VOX (July 19, 2020), <http://bit.ly/3fnV3Pp>.

<sup>6</sup> Emma Newburger, *Heat waves are becoming more deadly as nights warm faster than days*, CNBC (Sep. 12, 2020), <https://cnbc.com/2020/09/12/heat-waves-are-becoming-more-deadly-as-nights-warm-faster-than-days.html>.

<sup>7</sup> Chris Dolce, *Summer 2021 Was the Hottest on Record in the Contiguous U.S., NOAA Says*, WEATHER.COM (Sep 9, 2021), <https://bit.ly/3nNjk65>; *Assessing the U. S. Climate August 2021*, NOAA (Sep 9, 2021), <https://bit.ly/NOAA921>.

<sup>8</sup> Sydney Welch, *Lynchburg's current full year count for days over 90 is at 53. Summer brings record number of 90-degree days to Central Virginia*, WSET (Sep. 15, 2021), <https://wset.com/weather/weather-extra/summer-2021-record-heat-lynchburg-roanoke-central-virginia/>.

<sup>9</sup> RS Vose, DR Easterling, KE Kunkel, et al., 2017: *Temperature changes in the United States*, CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT I 185 (2017); Umair Irfan, Eliza Barclay & Kavya Sukumar, *Weather 2050*, VOX (July 19, 2020), <http://bit.ly/3fnV3Pp>.

<sup>10</sup> R. Jisung Park et al., *Temperature, Workplace Safety, and Labor Market Inequality*, 4.

<sup>11</sup> Julia Shipley et al., *Heat is Killing Workers in the U.S. -- and There Are No Federal Rules to Protect Them*.

<sup>12</sup> Xiuwen Sue Dong, Gavin West, Alfreda Holloway-Beth, Xuanwen Wang & Rosemary Sokas, *Heat-Related Deaths Among Construction Workers in the United States*, 62(12) AMERICAN JOURNAL OF INDUSTRIAL MEDICINE 1047-1057 (Dec. 2019), <https://bit.ly/3CWYd6J>.

<sup>13</sup> *Farm Labor*, UNITED STATES DEPARTMENT OF AGRICULTURE ECONOMIC RESEARCH SERVICE (data from 2018), <https://bit.ly/339Ks4E>.

<sup>14</sup> *Heat Related Deaths Among Farmworkers, United States — 1996-2006*, CDC, <https://bit.ly/3i9XgMw>.

<sup>15</sup> *Labor Force Statistics from the Current Population Survey*, BLS (2020), <http://bit.ly/3bV3xvn>; *Labor Force Statistics from the Current Population Survey*, BLS (2020), <http://bit.ly/3hVdRaj>.

<sup>16</sup> *Labor Force Statistics from the Current Population Survey*, BLS (2020), <http://bit.ly/3hVdRaj>; *Who We Are*, UPS (2015), <https://bit.ly/3n0FKOo>.

<sup>17</sup> *Labor Force Statistics from the Current Population Survey*, BLS (2020), <https://bit.ly/3bV3xvn>; Cole Rosengren and E.A. Crunden, *Risk and Race Concerns Fuel Ongoing Debate around Hazard Pay During Pandemic*, WASTE DIVE (July 9, 2020), <https://bit.ly/2S3Iz39>; Juliana Feliciano Reyes, *Trash is Piling Up but People Aren't Blaming Philly Sanitation Workers*, PHILADELPHIA INQUIRER (Aug. 4, 2020), <https://bit.ly/3kXoV5o>.

<sup>18</sup> *Labor Force Statistics from the Current Population Survey*, BLS (2020), <https://bit.ly/3bV3xvn>.

<sup>19</sup> *Rising Temperatures Intensify Risks for Florida Farmworkers*, CLEO INSTITUTE (May 28, 2021), <https://bit.ly/3FXCBIO>.

<sup>20</sup> *Id.*

<sup>21</sup> CALIFORNIA DEP'T OF INDUS. REL., *Frequently Asked Questions: Piece Rate Compensation - Labor Code § 226.2 (AB 1513)*, [https://www.dir.ca.gov/pieceratebackpayelection/AB\\_1513\\_FAQs.htm](https://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm) (last accessed June 2, 2021).

<sup>22</sup> See, e.g., Annie Palmer, *Amazon Has Resumed Policies That Penalize Workers for Taking Too Many Breaks, Just in Time for Prime Day*, CNBC (Oct. 14, 2020), <https://www.cnbc.com/2020/10/14/amazon-resumes-policy-that-dings-workers-for-taking-too-many-breaks.html> (last accessed June 2, 2021).

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- <sup>23</sup> *Climate Change and Labor: Impacts on Health in the Workplace*, UNITED NATIONS DEVELOPMENT PROGRAMME, 27 (Apr. 28, 2016), <http://bit.ly/3hQsnjQ>.
- <sup>24</sup> John P. Dunne *et al.*, *Reductions in Labour Capacity from Health Stress under Climate Warming*, NATURE CLIMATE CHANGE 3 6 563-566 (2013); INTERNATIONAL LABOUR ORGANIZATION, WORKING ON A WARMER PLANET: THE IMPACT OF HEAT STRESS ON LABOUR PRODUCTIVITY AND DECENT WORK, 26 (2019), <http://bit.ly/2Sv61JY>.
- <sup>25</sup> ATLANTIC COUNCIL: ADRIENNE ARSHT ROCKEFELLER FOUNDATION RESILIENCE CENTER AND VIVID ECONOMICS, EXTREME HEAT: THE ECONOMIC AND SOCIAL CONSEQUENCES FOR THE UNITED STATES (August, 2021), <https://bit.ly/3D8FGDA>, [hereinafter ATLANTIC COUNCIL 2021].
- <sup>26</sup> The GVA is a productivity measure that reflects the value of goods and services produced in the area, industry, or sector of the economy. It is the output of the area, industry or sector minus immediate consumption.
- <sup>27</sup> ATLANTIC COUNCIL 2021.
- <sup>28</sup> Sidney Shapiro & Katherine Tracy, Public Law and Climate Disasters Occupational Health and Safety Law (Rosemary Lyster *et al.* eds., 1<sup>st</sup> ed., Edward Elgar Pub, 2018), <https://amzn.to/2QTBWxJ>; U.S. GLOBAL CHANGE RESEARCH PROGRAM, *Fourth National Climate Assessment, Volume II* (Nov. 2018), <https://nca2018.globalchange.gov/>.
- <sup>29</sup> Ronda McCarthy, Francis Shofer & Judith Green-McKenzie, *Occupational Heat Illness in Outdoor Workers Before and After Implementation of a Heat Stress Awareness Program*, JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINES 75 A505 (April 24, 2018) <https://bit.ly/32j3XFA>.
- <sup>30</sup> R. Jisung Park *et al.*, *Temperature, Workplace Safety, and Labor Market Inequality*.
- <sup>31</sup> NIOSH [2016]. NIOSH criteria for a recommended standard: occupational exposure to heat and hot environments. By Jacklitsch B, Williams WJ, Musolin K, *et al.* Cincinnati, OH: U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, DHHS (NIOSH) Publication 2016-106. <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf>.
- <sup>32</sup> MARYLAND GENERAL ASSEMBLY, Labor and Employment – Occupational Safety and Health - Heat Stress Standards (Oct. 1, 2020), <https://bit.ly/2PDpzur>.
- <sup>33</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/20/fact-sheet-biden-administration-mobilizes-to-protect-workers-and-communities-from-extreme-heat/>.
- <sup>34</sup> NIOSH 2016 Criteria Recommendations.
- <sup>35</sup> R. Jisung Park *et al.*, *Temperature, Workplace Safety, and Labor Market Inequality* at 2.
- <sup>36</sup> *Id.*
- <sup>37</sup> According to the Bureau of Labor Statistics, California makes up 11.655% of the U.S. labor force, which is currently estimated to be around 161.35 million, while Virginia makes up approximately 2.632% of the U.S. labor force. Thus, the California labor force is 4.43 times the size of Virginia's. 20,000 divided by 4.43 is just over 4,500.
- <sup>38</sup> R. Jisung Park *et al.*, *Temperature, Workplace Safety, and Labor Market Inequality*, 27.
- <sup>39</sup> *Id.*
- <sup>40</sup> Saw Maung and Aaron W. Tustin, *The Heat Death Line: Proposed Heat Index Alert Threshold for Preventing Heat-related Fatalities in the Civilian Workforce*, NEW SOLUTION: A JOURNAL OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH POLICY (June 17, 2020), <https://bit.ly/2WKWFMs>.
- <sup>41</sup> OAR 437-002-0155 and OAR 437-004-1130.
- <sup>42</sup> California Code of Regulation §3395
- <sup>43</sup> See, e.g., *Bathroom Breaks*, CDC NIOSH SCIENCE BLOG (viewed Oct. 15, 2021), <https://blogs.cdc.gov/niosh-science-blog/2019/11/22/bathroom-breaks/>.
- <sup>44</sup> <https://www.cdc.gov/niosh/mining/UserFiles/works/pdfs/2017-127.pdf>
- <sup>45</sup> [https://www.weather-us.com/en/virginia-usa/richmond-climate#humidity\\_relative](https://www.weather-us.com/en/virginia-usa/richmond-climate#humidity_relative)
- <sup>46</sup> [https://www.weather-us.com/en/virginia-usa/norfolk-climate#humidity\\_relative](https://www.weather-us.com/en/virginia-usa/norfolk-climate#humidity_relative)
- <sup>47</sup> [https://www.weather-us.com/en/virginia-usa/charlottesville-climate#humidity\\_relative](https://www.weather-us.com/en/virginia-usa/charlottesville-climate#humidity_relative)
- <sup>48</sup> [https://www.weather-us.com/en/virginia-usa/bristol-climate#humidity\\_relative](https://www.weather-us.com/en/virginia-usa/bristol-climate#humidity_relative)
- <sup>49</sup> [https://www.weather-us.com/en/virginia-usa/manassas-climate#humidity\\_relative](https://www.weather-us.com/en/virginia-usa/manassas-climate#humidity_relative)
- <sup>50</sup> [https://www.weather-us.com/en/virginia-usa/roanoke-climate#humidity\\_relative](https://www.weather-us.com/en/virginia-usa/roanoke-climate#humidity_relative)

RAPO4 – Jenkins, Heat Illness Prevention Advisory Panel Meeting 3 Comments,  
October 1, 2021

## Jay Withrow

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**From:** info valoggers.org <info@valoggers.org> on behalf of info valoggers.org  
**Sent:** Friday, October 1, 2021 4:06 PM  
**To:** Jay Withrow  
**Subject:** Re: Heat Illness Prevention Advisory Panel Meeting 3 - Thursday, October 7, 2021 at 9AM - SMALL GROUPS REPORT BACK

Hi Jay,

On behalf of the Virginia Loggers Association, we would like to submit our thoughts on the heat illness prevention advisory work.

We will be travelling next week and not sure whether it will be possible to participate in my small group (#4).

VLA is a trade association made up of workers engaged in harvesting our forests, processing trees into useful paper and wood products, and many supporting businesses.

VLA applauds the work of DOLI in keeping workers safe and healthy. VLA has been fortunate to have DOLI submit articles on safety in our magazines until recently.

The following describes our thoughts on pursuing regulations for heat illness in workers.

- Virginia climate and work environments would be a better choice for models than western states.
- Suggest DOLI review existing Virginia business conditions and use findings in VA for developing regulations.
- All businesses in our industry provide potable water and ways for employees to cool down if needed.
- Suggest COV give business owners extensive latitude for judgment calls in any future regulations.
- Suggest practicable solutions for small family-owned business owners to keep costs down.
- Provide a suite of ways and tools for employers to prevent and handle heat illness issues and allow them to choose which options are best for their work environments.
- Most small family-owned businesses have limited staff and most take on multiple responsibilities. We ask that DOLI not make burdensome administrative requirements, but instead keep it simple.
- Instead of regulations now, we suggest DOLI provide general guidelines on keeping employees subject to heat contact as safe as possible. Allow businesses to make the best decisions.
- If this non regulatory approach does not work, DOLI can review this approach again.

- By keeping a voluntary approach to using best management practices to prevent heat illness, DOLI will still have a role but much less than a full-scale regulatory way.
- VLA believes business owners will buy in much better and take a responsible role to prevent heat illness issues in their employees.

Thank you.

**Ron Jenkins**  
**Executive Director**  
**Virginia Loggers Association**  
**cell: 804 - 677 - 4290**  
**email: info@valoggers.org**

***We work in an industry responsibly using renewable natural forest resources while helping people and the environment!***

**The Virginia Loggers Association proudly endorses Forestry Mutual Insurance as the preferred provider of Virginia worker's compensation insurance. Contact Chris Huff at [chuff@forestrymutual.com](mailto:chuff@forestrymutual.com) or 919 - 810 - 9485.**

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**From:** Jay Withrow <jay.withrow@doli.virginia.gov>  
**Sent:** Tuesday, September 14, 2021 3:50 PM  
**To:** Phil Abraham <pabraham@vectrecorp.com>; daheron@nationwidecustomhomes.com <daheron@nationwidecustomhomes.com>; toddatkins@superiorpaving.net <toddatkins@superiorpaving.net>; Elizabeth.barnette@damuth.com <Elizabeth.barnette@damuth.com>; Matt@mdbstrategies.com <Matt@mdbstrategies.com>; Dale Bennett <dbennett@vatrucking.org>; tbernar2@usf.edu <tbernar2@usf.edu>; Andrew Clark <AClark@hbav.com>; cconnors@vaforestry.org <cconnors@vaforestry.org>; ajerskine@bevansoyster.net <ajerskine@bevansoyster.net>; MK Fletcher <mffletcher@aflcio.org>; jfulcher@citizen.org <jfulcher@citizen.org>; Sandra.Genter@allanmyers.com <Sandra.Genter@allanmyers.com>; randy@vammha.org <randy@vammha.org>; Robert Harris <robert.harris@shirleycontracting.com>; CHRIS.HUGHES@gapac.com <CHRIS.HUGHES@gapac.com>; info@valoggers.org <info@valoggers.org>; Bob Kitchen <bobkitchen1@gmail.com>; Lynn.Lunze@virginiaabc.com <Lynn.Lunze@virginiaabc.com>; Rachel McFarland <rmcfarland@justice4all.org>; bmizula@iupat.org <bmizula@iupat.org>; Johnny Nugent <johnny.nugent@dhrm.virginia.gov>; brian.rizzo@hourigan.group <brian.rizzo@hourigan.group>; Ben.rowe@vafb.com <Ben.rowe@vafb.com>; Scott Schneider <hardhatscott@gmail.com>; cskelly@ibewlocal666.com <cskelly@ibewlocal666.com>; dsimmons@vmdaec.com <dsimmons@vmdaec.com>; dsivin@uaw.net <dsivin@uaw.net>; Rosemary Sokas <sokas@georgetown.edu>; beck@va-agribusiness.org <beck@va-agribusiness.org>; GStewart2@gilbaneco.com <GStewart2@gilbaneco.com>; VVega@msv.org <VVega@msv.org>; David.velazquez@hii-nns.com <David.velazquez@hii-nns.com>; Walters, Gary <gwalters@smithfield.com>; gwest@cpwr.com <gwest@cpwr.com>; frank wheatley <fwheatley@colonnaship.com>; Kwilkinson@msv.org <Kwilkinson@msv.org>; jonathan.williams@easterassociates.com <jonathan.williams@easterassociates.com>; pjoneswroblewski@nisource.com <pjoneswroblewski@nisource.com>; Vanessa Patterson <vanessa.patterson@ramca.info>  
**Cc:** Princy Doss <princy.doss@doli.virginia.gov>; Cristin Bernhardt <crstin.bernhardt@doli.virginia.gov>  
**Subject:** Heat Illness Prevention Advisory Panel Meeting 3 - Thursday, October 7, 2021 at 9AM - SMALL GROUPS REPORT BACK

**To Regulatory Advisory Panelists,**

**The best laid plans....**



RAP05 – McFarland, Heat Stress RAP Comment, October 15, 2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/McFarland-Heat-stress-RAP-comment.pdf>

15, October 2021

Jay Withrow  
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**RE: Regulatory Advisory Panel Member Comments Regarding the Proposed Heat Illness Prevention Standards**

Dear Mr. Withrow,

I would like to thank the Department of Labor and Industry and the Safety and Health Codes Board for the opportunity to serve on the Regulatory Advisory Panel for the heat stress standards (16 VAC 25-210) and the opportunity to submit these comments. These new proposed standards have the potential to create real and lasting change to help protect not only Virginia's most vulnerable workers, but workers across industries. Heat stress is a pervasive problem that can have fatal results; indeed, heat kills more people than any other weather-related hazard.<sup>1</sup> Workers are at risk of heat stress in both outdoor work *and* indoor work, particularly when engaged in strenuous activities or where there is inadequate air conditioning.<sup>2,3</sup> Even when heat illness is not a problem, productivity can suffer.<sup>4</sup> There is no comprehensive standard to protect workers against heat stress federally or in Virginia, making this proposed rulemaking especially important.

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

Virginia must continue its own efforts to enact heat stress standards and cannot wait for OSHA to take possible future action. There was much talk in the regulatory advisory panel suggesting that Virginia no longer needs to enact its own standards because of the new federal interagency

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<sup>1</sup> 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).

<sup>2</sup> Brenda Jacklitsch et al., Dept. of Health and Human Serv., Criteria For A Recommend Standard: Occupational Exposure to Heat and Hot Environments 7 (2016), <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf> (last accessed June 2, 2021);

<sup>3</sup> Letter from Sammy Almashat, M.D., M.P.H., Staff Researcher, Public Citizen's Health Research Group et al., to Hon. Dr. David Michaels, Ph.D, M.P.H., Asst. Sec. of Labor for Occupational Safety and Health, Dept. of Labor 21 (Sep. 1, 2011), <https://www.citizen.org/wp-content/uploads/petition-for-a-heat-standard-090111.pdf> (last accessed June 2, 2021).

<sup>4</sup> International Labour Organization, Working on a Warmer Planet: The Impact of Heat Stress on Labour Productivity and Decent Work 15 (2019), [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_711919.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_711919.pdf) (last accessed June 2, 2021).

initiative to address the impacts of heat.<sup>5</sup> This is misguided. As a part of the federal initiative, OSHA will be issuing an Advance Notice of Proposed Rulemaking regarding heat stress standards.<sup>6</sup> Importantly, however, this does not guarantee that standards will ultimately be adopted, and even if they are, OSHA normally takes eight to ten years to complete its rulemaking (and even under the best of circumstances, it takes more than four years).<sup>7</sup> Rather than waiting for OSHA, several states—California, Washington, and Minnesota—have long since enacted their own standards.<sup>8</sup> In 2020, Maryland enacted a law that requires Maryland Occupational Safety and Health to promulgate protections by October 2022.<sup>9</sup> Earlier this year, Oregon enacted emergency temporary standards to protect against heat.<sup>10</sup> Each of these states, state-plan states like Virginia, have shown that waiting for OSHA is not the best way to protect workers. In fact, it is reasons like this that are exactly why a state might choose to be a state-plan state – in recognition that the state *can* and *should* take additional efforts to protect its workers.

Simply put, Virginia must continue to do its own work to protect workers and not rely on a slow federal process that has hardly even begun. By contrast to OSHA’s lengthy remaining process, Virginia is now largely through its process and can have protections in place by next year.

## II. The General Duty Clause Is Insufficient to Protect Workers.

There has also been much chatter in the advisory panel about there being sufficient coverage through the general duty clause. This, however, is misguided, as OSHA’s use of the general duty clause has proven insufficient and illustrated why specific standards are essential.

Workers can currently only seek protection from employers’ failure to protect them from heat stress through the general duty clause,<sup>11</sup> which requires employers to “furnish to each of [their]

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<sup>5</sup> The White House, *FACT SHEET: Biden Administration Mobilizes to Protect Workers and Communities from Extreme Heat*, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/20/fact-sheet-biden-administration-mobilizes-to-protect-workers-and-communities-from-extreme-heat/> (last visited October 12, 2021).

<sup>6</sup> *Id.*

<sup>7</sup> Rich Fairfax, *OSHA’S Rulemaking Process: Why Does It Take So Long?*, ORCHSE, <https://www.orchse-strategies.com/orc-hse-blog/oshas-rulemaking-process-why-does-it-take-so-long/#1550099583530-b09200f0-06e8> (last accessed October 12, 2021).

<sup>8</sup> 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 1 (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).

<sup>9</sup> Occupational Health and Safety, *Maryland Enacts AIHA-Support Bill Protecting Workers from Heat Stress* (May 18, 2020), <https://ohsonline.com/articles/2020/05/18/maryland-enacts-aihasupport-bill-protecting-workers-from-heat-stress.aspx> (last accessed June 2, 2021).

<sup>10</sup> Andrew Selksy, *Oregon Adopts most protective heat rules for workers in US*, Associated Press (July 8, 2021), <https://apnews.com/article/business-science-health-government-and-politics-environment-and-nature-ecea3ed406610f352f5e3f64850b32f0> (last accessed October 14, 2021).

<sup>11</sup> Center for Agriculture and Food Systems, *Essentially Unprotected: A Focus on Farmworker Health Laws and Policies Addressing Pesticide Exposure and Heat-Related Illness 10-11* (2021), <https://www.vermontlaw.edu/sites/default/files/2021-04/Essentially-Unprotected-FINAL.pdf> (last accessed June 2, 2021).

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.”<sup>12</sup> Though hazards can be “recognized” by common-sense, it is much harder to show the existence of a hazard not covered by regulations.<sup>13</sup> 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.’”<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> OSHA had relied on heat index levels created by the National Weather Service.<sup>17</sup> 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.<sup>18</sup> 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,<sup>19,20</sup> and thereby reversed the citations.<sup>21,22</sup>

### **III. The Board Should Ensure That the Standards Protect Workers to the Maximum Extent Possible.**

Because specific, clear standards will result in better compliance and protections, the Board should 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

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<sup>12</sup> Va. Code § 40.1-51.1(A); *see also* 29 U.S.C. § 654(a)(1).

<sup>13</sup> Center for Agriculture and Food Systems, *supra* note 11, at 11-12.

<sup>14</sup> Secretary of Labor v. A.H. Sturgill Roofing, No. 13-0224, slip op. at 3 (O.S.H.R.C. Feb 23, 2015), [https://www.oshrc.gov/assets/1/18/A.H. Sturgill Roofing Inc.%5E13-0224%5EComplete\\_Decision\\_signed%5E022819%5EFINAL.pdf?8324](https://www.oshrc.gov/assets/1/18/A.H._Sturgill_Roofing_Inc.%5E13-0224%5EComplete_Decision_signed%5E022819%5EFINAL.pdf?8324) (internal citations omitted) (last accessed June 2, 2021).

<sup>15</sup> Center for Agriculture and Food Systems, *supra* note 11, at 12.

<sup>16</sup> Bruce Rolfsen, *Judge Rejects Five OSHA Heat Danger Cases Against Postal Service*, Bloomberg Law (July 20, 2020), <https://news.bloomberglaw.com/safety/judge-rejects-5-osha-heat-danger-cases-against-postal-service> (last accessed June 2, 2021).

<sup>17</sup> Secretary of Labor v. USPS, No. 16-1813, slip op. at 53 (O.S.H.R.C. July 29, 2020), [https://www.oshrc.gov/assets/1/6/16-1813\\_Decision\\_and\\_Order\\_-\\_dated.pdf](https://www.oshrc.gov/assets/1/6/16-1813_Decision_and_Order_-_dated.pdf) (last accessed June 2, 2021).

<sup>18</sup> *Id.* at 56.

<sup>19</sup> *Id.* at 64-65.

<sup>20</sup> A.H. Sturgill Roofing, slip op. at 8 (judge made a similar observation).

<sup>21</sup> USPS, slip op. at 65.

<sup>22</sup> *Id.* at 70 (The judge also discussed how OSHA had an obligation to show economic feasibility, but OSHA produced no witnesses as to feasibility. By engaging in a rulemaking process to *create* standards, the Board will be able to ensure feasibility for the requirements under the new standard.)

heat illness reduces productivity,<sup>23</sup> these standards help employers, too. What is more, though some employers may argue the standard is not necessary because they are already taking precautions, it should be noted that first, if they are indeed already taking these measures, the standard has no real impact on them, and second, the standard is essential to protect workers with employers who are *not* taking these precautions, a costly shortcut not only to workers' safety, but also to those employers who are taking the precautions and being undercut.

Although the following is **not** an exhaustive list, the Board should consider the following regarding the proposed standard as presented to the Regulatory Advisory Panel:

a. Definitions

- i. Drinking water – the definition should be re-written to note that water should be cool *or* cold in temperature.
- ii. Heat index – there was some discussion by industry representatives that heat index was an unnecessary and/or overly complicated metric. This fails to account for the incredible impact humidity has on how hot it is, and any determination of heat without heat index is grossly inadequate *unless* either the base line temperatures are substantially lowered, or employers use Wet Bulb Globe Temperature measurements instead.
- iii. Heat stroke – the definition should be corrected to note that heat stroke occurs at 104 degrees Fahrenheit (40 degrees Celsius), not 106 degrees Fahrenheit (41.1 degrees Celsius).<sup>24</sup>
- iv. High heat – the definition should be expanded to include instances when workers are exposed to additional factors such as radiant heat, heavy work, and clothing that restricts heat removal, as these factors increase risk to workers beyond the risks from the heat index. Such a definition is seen in the draft indoor heat illness prevention standards for California in Sections (a)(2)(C) and (D).<sup>25</sup>
- v. Personal risk factors – the definition should be expanded to include not having air conditioning at home as a risk factor.<sup>26</sup>

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<sup>23</sup> Jacklitsch, *supra* note 2, at 1.

<sup>24</sup> "Heatstroke," Mayo Clinic, <https://www.mayoclinic.org/diseases-conditions/heat-stroke/symptoms-causes/syc-20353581> (last accessed October 14, 2021).

<sup>25</sup> California Permanent Standard on Heat Illness Prevention in Indoor Places of Employment, § \_\_\_\_\_, Draft April 19, 2019, 1, <https://dir.ca.gov/dosh/doshreg/Heat-Illness-Prevention-Indoors/Draft-revisions-Apr-22-2019.pdf> (last accessed October 12, 2021).

<sup>26</sup> Univ. of Washington School of Public Health, Heat Education and Awareness Tools 15 (June 2020), <https://deohs.washington.edu/pnash/sites/deohs.washington.edu.pnash/files/2020-06/HeatTrainingBook-English.pdf> (last accessed June 2, 2021).



- vi. *Additional notes* – in addition to the above, the definitions should also include a definition for “extreme heat,” defined as when the ambient heat index equals or exceeds 100 degrees Fahrenheit or when the ambient heat index equals or exceeds 90 degrees Fahrenheit, and the worker is exposed to additional factors.

b. Drinking water

Water—provided by the employer—is essential to mitigate heat stress; one should drink 8 ounces of water every 15 to 20 minutes.<sup>27</sup> If a worker has been working for more than 2 hours, she should be provided water *and* electrolytes.<sup>28</sup> Because, as discussed *infra* in III.j.ii, workers may have incentives to not stop for water, the Board should consider how to ensure workers take advantage of water breaks, such as insuring no dock in pay or other penalty.<sup>29</sup> Finally, as with in the definitions, the language should be modified to note that water should be “cool” or “cold.”

c. Access to cool down areas

Breaks in cool, shady areas are necessary.<sup>30</sup> Taking breaks helps slow down the accumulation of heat.<sup>31</sup> For the base-level category at 80 degrees Fahrenheit, the Board should consider a paid 10-minute break every 2 hours. For the “high heat” category, the Board should consider a paid 15-minute break every hour to allow workers to rest and recuperate. For the “extreme heat” category, the Board should strongly consider mandating no work during that time period as it is simply too hot to safely work.

Breaks should occur every one to two hours, as applicable, regardless of if the worker feels it necessary, but workers should be entitled to *additional* breaks if they feel they need one. One important consideration is that some workers may feel it makes them seem weak to take a break, and thus breaks should be mandatory.

Of note, fire departments around the country are encouraged to adopt procedures that would call for 10-minute breaks every 30 minutes;<sup>32</sup> the heat firefighters encounter is of course extraordinarily high, but the stakes are also extraordinarily high, and the recommendations to still take such frequent breaks shows the importance of breaks to maintain health.

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<sup>27</sup> Wolfe, *supra* note 8, at 3, 28.

<sup>28</sup> *Id.* at 28.

<sup>29</sup> *Rising Temperatures Intensify Risks for Florida Farmworkers*, Cleo Institute (May 28, 2021), <https://cleoinstitute.org/rising-temperatures-intensify-risks-for-florida-farmworkers/> (last accessed June 2, 2021).

<sup>30</sup> Wolfe, *supra* note 8, at 28.

<sup>31</sup> Jacklitsch, *supra* note 2, at 75.

<sup>32</sup> Hamilton Lempert, “NFPA 1584: Recommended Practice on the Rehabilitation of Members Operating at Incident Scene Operations and Training Exercises,” p. 38, PowerPoint file accessible at <https://media.cdn.lexipol.com/rehabilitation%20nfpa%201584.ppt> (last accessed October 12, 2021).

Additionally, it may be useful to provide examples of alternative cooling measures. Finally, as with water, how to ensure workers take advantage of breaks should be considered (*see* III.b and III.j.ii for more).<sup>33</sup>

d. Acclimatization

Acclimatization—the gradual adaptation to high temperatures—is necessary to help tolerating exposure to high heat.<sup>34</sup> NIOSH recommends limiting heat exposure for unacclimatized workers, and for acclimatized workers if the temperatures are higher than those for which they are acclimatized.<sup>35</sup> Additionally, employers should have an acclimatization plan.<sup>36</sup>

e. High heat procedures

In addition to the notes *supra* regarding frequency and length of breaks, employers should ensure workers have sufficient information at hand to call emergency services if needed.

Extreme heat procedures should also be implemented, maintaining those for high heat, but adding additional medical monitoring and stopping work until it is cooler.

f. Emergency response procedures

Employers must have an emergency plan—that is known to workers—to use in the event of heat illness.<sup>37</sup> 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.).<sup>38</sup>

g. Heat illness prevention plans

As with emergency response procedures, heat illness response plans are a necessity to ensure workers know what to do in the event of heat illness. Translation, however, should be provided no matter the size of the employer, as employers may have small workforces made up entirely of non-English speaking employees.

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<sup>33</sup> Cleo Institute, *supra* note 29.

<sup>34</sup> Wolfe, *supra* note 8, at 5.

<sup>35</sup> Jacklitsch, *supra* note 2, at 2.

<sup>36</sup> Wolfe, *supra* note 8, at 29.

<sup>37</sup> *Id.* at 31.

<sup>38</sup> *Id.*

#### h. Training

Workers can best protect themselves and their coworkers when properly trained about risks and prevention measures.<sup>39</sup> Train-the-trainer programs are useful because they reinforce the material through teaching workers how to teach their coworkers.<sup>40</sup>

#### i. Discrimination

Ensuring protection for workers who speak up against violations is essential to making sure workers feel safe in protecting themselves and their coworkers.

#### j. Additional considerations

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

It is important for workers to have a cool environment at home;<sup>41</sup> To allow workers to recover from the heat adequately, employers who provide housing should also provide air conditioners. Oregon has already adopted similar considerations in their emergency temporary standards, wherein when the rooms where people sleep cannot be kept below 78 degrees Fahrenheit and the heat index is above 80 degrees Fahrenheit, employers must provide cooling areas and take additional measures to keep the rooms where workers sleep as cool as possible.<sup>42</sup>

##### ii. Implementing 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.<sup>43</sup> If they take a break, they get paid less. There are reports of workers wearing diapers to not have to stop for bathroom breaks.<sup>44</sup> 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.<sup>45</sup> Similarly, many workers in factories are subject to a system wherein they receive points or warnings for so-called

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<sup>39</sup> See *id.* at 31.

<sup>40</sup> *Trend Watch: Top 6 Benefits of Train-the-Trainer Programs*, Powers Research Center (Apr. 18, 2019), <https://www.powersresourcecenter.com/trend-watch-top-6-benefits-of-train-the-trainer-programs/> (last accessed June 2, 2021).

<sup>41</sup> Univ. of Washington School of Public Health, *supra* note 26, at 15.

<sup>42</sup> Oregon OSHA's Temporary Amendment OAR 437-004-1120 to Address High Ambient Temperatures in Labor Housing, <https://osha.oregon.gov/OSHARules/adopted/2021/temp-amendment-437-004-1120-high-temp-ah.pdf> (last accessed October 12, 2021).

<sup>43</sup> Cleo Institute, *supra* note 29.

<sup>44</sup> *Id.*

<sup>45</sup> California Dep't of Indus. Rel., *Frequently Asked Questions: Piece Rate Compensation - Labor Code § 226.2 (AB 1513)*, [https://www.dir.ca.gov/pieceratebackpayelection/AB\\_1513\\_FAQs.html](https://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.html) (last accessed June 2, 2021).



infractions, which can include break times.<sup>46</sup> 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.

Thank you for the opportunity to submit comments. Please do not hesitate to contact me at [rncfarland@justice4all.org](mailto:rncfarland@justice4all.org) for further information.

Sincerely,



Rachel C. McFarland  
Senior Litigation Attorney

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<sup>46</sup> See Annie Palmer, *Amazon Has Resumed Policies That Penalize Workers for Taking Too Many Breaks, Just in Time for Prime Day*, CNBC (Oct. 14, 2020), <https://www.cnbc.com/2020/10/14/amazon-resumes-policy-that-dings-workers-for-taking-too-many-breaks.html> (last accessed June 2, 2021).

RAP06 – Rowe, October 15, 2021 Comments of the Virginia Farm Bureau Federation  
<https://www.doli.virginia.gov/wp-content/uploads/2021/10/ROWEOC1.pdf>

**Submitted Electronically October 15, 2021**

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RE: Comments of the Virginia Farm Bureau Federation on the Heat Illness Prevention Standard [under development] [16 VAC 25 - 210]

Dear Mr. Withrow:

The Virginia Farm Bureau Federation (VFBF) appreciates the opportunity that has been provided to us to participate in the Heat Illness Prevention Advisory Panel. We have provided comments and suggestions throughout the process, and further submit these additional comments.

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 provides 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.

Speaking to the draft standard we have seen so far in the Heat Illness Prevention Advisory Panel, we would like to reiterate the following comments:

- Aa heat index threshold of 80-degrees for additional-mandatory-breaks, shade requirements without other risk factors, and other requirements would be burdensome to the industry. The overwhelming majority of harvest days in Virginia are regularly over 80 degrees. This would make harvesting perishable crops challenging, and create consequences related to food quality & security, and farm viability.
- In the proposed section 16VAC25-210-40, the requirements call for employers to provide 32-ounces of water per hour per day. However, we question why this proposed standard specifically requires 32oz per worker per hour. Symptomatic hyponatremia can occur when one drinks 3-4 L of water<sup>1</sup>. Severe hyponatremia occurs when too much water, more than what the kidney can excrete, is inhaled. The water excretion rate of a healthy adult is about 20 L/day and does not exceed 800-1,000 mL/hr<sup>2</sup>. Thus, the maximum amount of water that a person with normal renal function can drink is 800-1,000 mL/hr to avoid hyponatremia symptoms. The proposed requirement of 32 oz. (946ml) is at the far upper reaches of what is safe to consume, particularly if electrolytes are not being replenished. The existing VOSH requirement of "an adequate supply of potable water" being required is sufficient to safeguard workers' hydration needs, and does not encourage consumption of a potentially unsafe volume of water.
- We question why heat index is being used rather than actual temperature. How does an employer accurately determine heat index in outdoor work sites?
- In the proposed section 16VAC25-210-60 it states that an employee who has been newly assigned or has returned to work after an absence of seven calendar days shall be closely observed by a supervisor or

<sup>1</sup> 8. Jose CJ, Perez-Cruet J. Incidence and morbidity of self-induced water intoxication in state mental hospital patients. *Am J Psychiatry*. 1979;136:221-222.

<sup>2</sup> 9. Verbalis JG, Goldsmith SR, Greenberg A, Schrier RW, Sterns RH. Hyponatremia treatment guidelines 2007: expert panel recommendations. *Am J Med*. 2007;120(11 Suppl 1):S1-S21.

designee for the first 14 days of the employee's employment. Given the definition of "employee" used for this proposed standard, an exception should be added to address migrant or contract workers who are fully acclimatized from previous job sites.

- The proposed section 16VAC25-210-100 does not address migrant or temporary workers who have received the training at a previous work site.
- The proposed section 16VAC25-210-50 requires employers to encourage and allow employees to take a preventative cool-down rest in the cool down area when they feel the need to do so to protect themselves from overheating. Will this time be considered paid time? What recourse does an employer have if an employee decides to take an unreasonable amount or length of breaks considered to be unnecessary to prevent heat illness?

However, in addition to existing heat illness protections in place, in September 2021, the Biden Administration and OSHA announced they are initiating enhanced measures to further protect workers in hot environments and reduce the dangers of exposure to ambient heat. As part of this initiative, OSHA Area Directors across the nation (including Region 3 which includes Virginia) will institute the following:

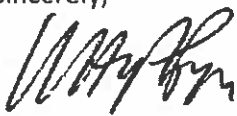
- Prioritize inspections of heat-related complaints, referrals and employer-reported illnesses and initiate an onsite investigation where possible.
- Instruct compliance safety and health officers, during their travels to job sites, to conduct an intervention (providing the agency's heat poster/wallet card, discuss the importance of easy access to cool water, cooling areas and acclimatization) or opening an inspection when they observe employees performing strenuous work in hot conditions.
- Expand the scope of other inspections to address heat-related hazards where worksite conditions or other evidence indicates these hazards may be present.

Additionally, OSHA will begin work this month to develop a federal heat standard to ensure protections in workplaces across the country by issuing an Advance Notice of Proposed Rulemaking on heat injury and illness prevention in outdoor and indoor work settings. The advance notice will initiate a comment period allowing OSHA to gather diverse perspectives and technical expertise on topics including heat stress thresholds, heat acclimatization planning, exposure monitoring, and strategies to protect workers.

Based on Virginia's relatively few heat illness investigations compared with the national average, and the advanced steps being taken at the national level, we believe the most prudent step forward for the Heat Illness Prevention Advisory Panel is to recommend waiting for that federal standard to be developed rather than developing a state program. Developing a state standard while knowing a federal standard is in development on the same or similar timeline would create confusion and a burden for employers, employees, and enforcement agencies.

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, relevant data from verifiable sources, and look to the national standard already under development to determine if current regulations are sufficient, or if a heat illness prevention standard is necessary to prevent heat-related-injuries.

Sincerely,



Wayne Pryor  
President & CEO  
Virginia Farm Bureau

RAP07 – Sivin, Comments on Virginia Heat Standard, October 15, 2021

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/Sivin-Comments-on-VA-heat-standard.pdf>

15, October 2021

Jay Withrow  
Director, Division of Legal Support, ORA, OPPPI, and OWP  
Virginia Department of Labor and Industry  
600 E. Main Street, Suite 207  
Richmond, VA 23219

Submitted via email to: [jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov) and [princy.doss@doli.virginia.gov](mailto:princy.doss@doli.virginia.gov)

**RE: Regulatory Advisory Panel Member Comments Regarding the Proposed Heat Illness Prevention Standards**

Dear Mr. Withrow,

I would like to thank the Department of Labor and Industry and the Safety and Health Codes Board for the opportunity serve on the Regulatory Advisory Panel for the heat stress standards (16 VAC 25-210) and the opportunity to submit these comments.

According to the National Institute for Occupational Safety and Health (NIOSH), prolonged exposure to heat, even a few hours, can exacerbate chronic health conditions or cause exhaustion. Continued exposure can cause death if someone is not removed from heat and treated. Workers are at risk of heat stress in both outdoor work *and* indoor work, particularly when engaged in strenuous activities or where there is inadequate air conditioning<sup>1</sup>. Climate change may well increase the severity of heat hazards to workers. The Union of Concerned Scientists projects that the Southwest region of the United States will experience at least a hundred deadly heat days annually by 2036<sup>2</sup>. There is no comprehensive standard to protect workers against heat stress federally or in Virginia, making this proposed rulemaking especially important.

According to the Bureau of Labor Statistics<sup>3</sup>, heat-related occupational morbidity is on the rise in Virginia. It has risen 60% from 0.3 cases per 10,000 full time workers in 2011 to 0.5 in 2019 (Figure 1). Among public sector employees, whose only protection can come through a state standard because Federal OSHA lacks jurisdiction, rates have risen more dramatically. The increase is 275% from 0.4 cases per 10,000 full time workers in 2011 to 1.1 in 2019. (Figure 2).

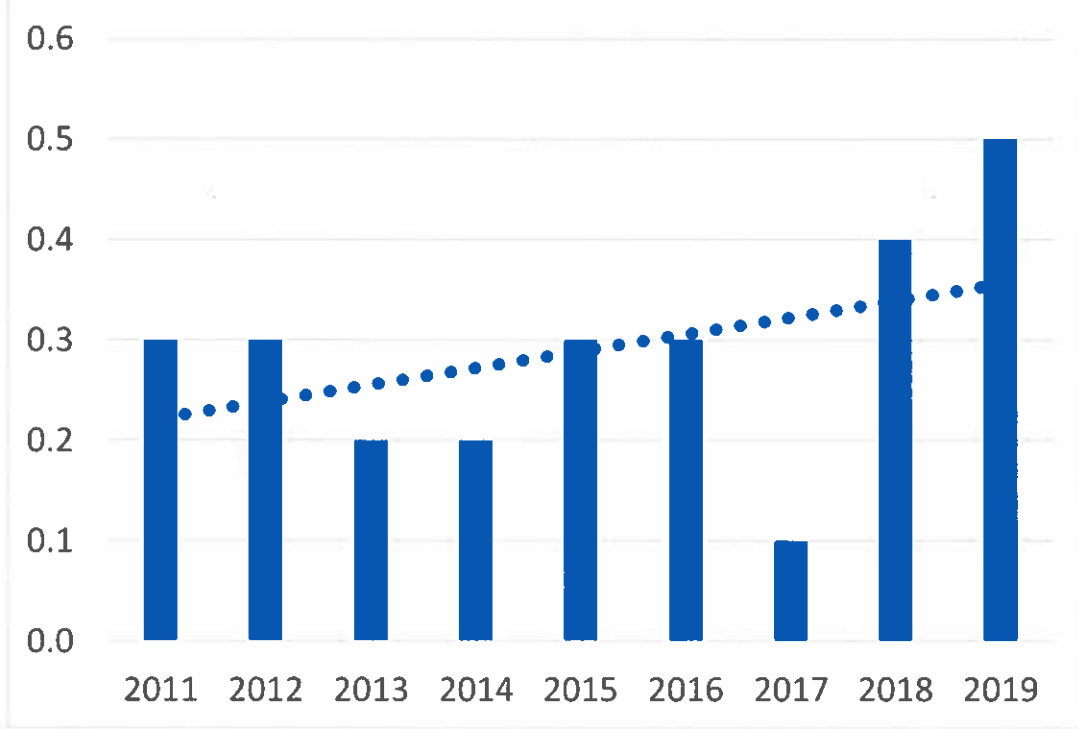
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<sup>1</sup> Jacklitsch B, Williams WJ, Musolin K, Coca A, Kim JH, and Turner N (2016). *Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments*. Washington DC: DHHS, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health.

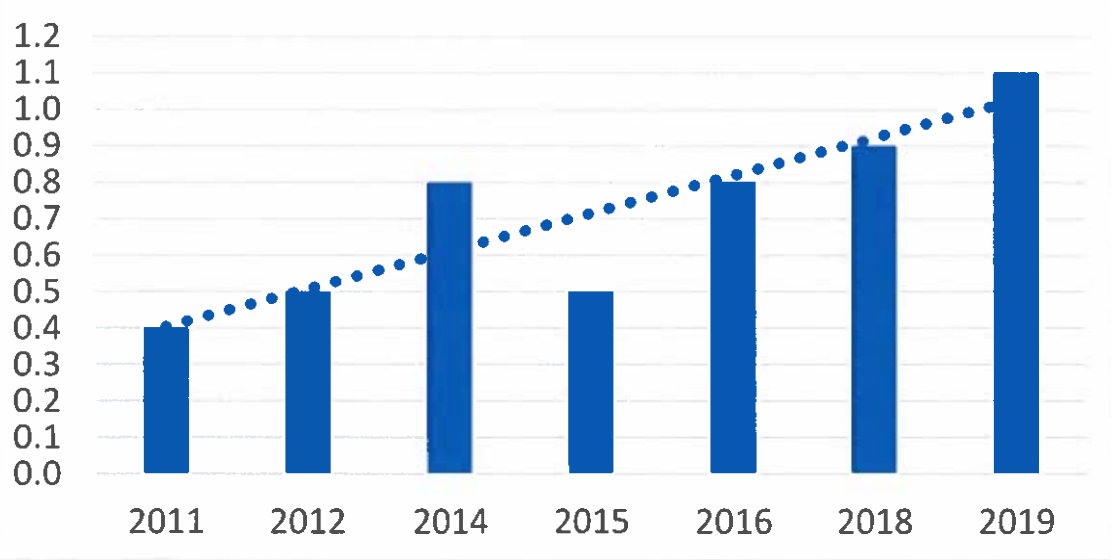
<sup>2</sup> Union of Concerned Scientists (2019). *Killer Heat in the United States: Climate Choices and the Future of Dangerously Hot Days*. <https://www.ucsusa.org/sites/default/files/attach/2019/07/killer-heat-analysis-full-report.pdf>

<sup>3</sup> Bureau of Labor Statistics, *Survey of Occupational Injuries and Illnesses*. <https://www.bls.gov/iif/data.htm> (Data extracted 10/15/2021)

**Figure 1: Heat-Related Injuries and Illnesses per 10 Thousand Full-Time VA Workers**



**Figure 2: Heat-Related Injuries and Illnesses per 10 Thousand Full-Time Public Sector (state and local) VA Workers**



## Virginia Should Follow the Lead of States that Have Enacted Their Own Occupational Heat Standards

California<sup>4</sup>, Washington<sup>5</sup>, and Minnesota<sup>6</sup> already have occupational heat standards. In 2020, Maryland enacted a law that requires Maryland Occupational Safety and Health to promulgate protections by October 2022.<sup>7</sup> Earlier this year, Oregon enacted emergency temporary standards to protect against heat.<sup>8</sup> The existence of a new the new federal interagency initiative to address the impacts of heat<sup>9</sup> is not a reason for Virginia to abandon its own heat stress standard. As noted above, rates of heat-related morbidity are higher and rising faster among public sector employees in Virginia. Only the State of Virginia can protect these employees. Federal OSHA has no authority to do so. In addition, the fact that OSHA will be issue an Advance Notice of Proposed Rulemaking for heat stress<sup>10</sup> does not guarantee that standards will ultimately be adopted. Even if they are, OSHA normally takes eight to ten years to complete rulemaking (and even under the best of circumstances, it takes more than four years).<sup>11</sup> By contrast, Virginia is now largely through its process and can have protections in place by next year.

### The General Duty Clause Does not Offer Adequate Protection Against Heat

Without a heat-specific standard, workers can seek protection from occupational heat stress only through the general duty clause, 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.”<sup>12</sup> Unfortunately, in 2020, the Occupational Safety and Health Review Commission in 2020 rejected Federal OSHA’s reliance on the general duty clause to cite the United States Postal Service for failure to provide sufficient protections against heat stress.<sup>13,14,15</sup>

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<sup>4</sup> <https://www.dir.ca.gov/title8/3395.html>

<sup>5</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=296-62&full=true#296-62-095>

<sup>6</sup> <https://www.revisor.mn.gov/rules/5205.0110/>

<sup>7</sup> Occupational Health and Safety, *Maryland Enacts AIHA-Support Bill Protecting Workers from Heat Stress* (May 18, 2020), <https://ohsonline.com/articles/2020/05/18/maryland-enacts-aihasupport-bill-protecting-workers-from-heat-stress.aspx> (last accessed June 2, 2021).

<sup>8</sup> Andrew Selksy, *Oregon Adopts most protective heat rules for workers in US*, Associated Press (July 8, 2021), <https://apnews.com/article/business-science-health-government-and-politics-environment-and-nature-ecea3ed406610f352f5e3f64850b32f0> (last accessed October 14, 2021).

<sup>9</sup> The White House, *FACT SHEET: Biden Administration Mobilizes to Protect Workers and Communities from Extreme Heat*, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/20/fact-sheet-biden-administration-mobilizes-to-protect-workers-and-communities-from-extreme-heat/> (last visited October 12, 2021).

<sup>10</sup> *Id.*

<sup>11</sup> Rich Fairfax, *OSHA’S Rulemaking Process: Why Does It Take So Long?*, ORCHSE, <https://www.orchse-strategies.com/orchse-blog/oshas-rulemaking-process-why-does-it-take-so-long/#1550099583530-b09200f0-06e8> (last accessed October 12, 2021).

<sup>12</sup> Va. Code § 40.1-51.1(A); see also 29 U.S.C. § 654(a)(1).

<sup>13</sup> Bruce Rolfsen, *Judge Rejects Five OSHA Heat Danger Cases Against Postal Service*, Bloomberg Law (July 20, 2020), <https://news.bloomberglaw.com/safety/judge-rejects-5-osha-heat-danger-cases-against-postal-service> (last accessed June 2, 2021).

<sup>14</sup> USPS, slip op. at 65.

<sup>15</sup> *Id.* at 70 (The judge also discussed how OSHA had an obligation to show economic feasibility, but OSHA produced no witnesses as to feasibility. By engaging in a rulemaking process to *create* standards, the Board will be able to ensure feasibility for the requirements under the new standard.)



## Comments on Specific Provisions of the Standard

- 80° is the appropriate Heat Index (HI) trigger for the written plan, training, provision of water, rest breaks and shade. At this trigger level, there should be a minimum of one 10-minute rest break every 2 hours.
- A 90° Heat Index should trigger for high heat precautions including more breaks, and closer supervision from management and a “buddy.” At this level, there should be a minimum of one 15-minute rest break every hour.
- The standard should account for radiant heat, heavy workload and protective or otherwise hot clothing. This could be done by using the presence of these factors at specific levels and/or in specific combinations to trigger high heat protections even when the HI does not exceed 90°.
- There should be an extreme heat category, triggered by an HI above 100° or an HI above 90° with radiant heat, heavy workload and/or hot clothing. Extreme heat category would require additional rest breaks in a cool shady area and additional monitoring and precautions. Work may have stop entirely when the HI becomes too extreme.
- The standard must address acclimatization. Acclimatization schedules, such as those used in the military, should be included.
- In addition to providing water, electrolytes should also be required.
- Non-English speakers need to receive training in a language they understand. Signs should be multilingual, and it should be readily apparent who on the site speaks more than one language and what those languages are so non-English speakers can get help quickly and communicate effectively if there is a problem.
- Whistleblower provisions are essential. Supervisors need to encourage workers to stop work if they experience any symptoms and seek help for co-workers who are experiencing symptoms. There should be no hint of retaliation for doing so. Taking precautions should be rewarded.
- Apply the industrial hygiene hierarchy of controls. The following example of the hierarchy as applied to heat stress comes from SafeWork New South Wales in Australia<sup>16</sup>

### Eliminate the hazard

Consider whether the work can be done at an alternate time or place to remove the work away from the risk.

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<sup>16</sup> <https://www.safework.nsw.gov.au/hazards-a-z/working-in-extreme-heat/content-page-blocks/managing-extreme-heat-at-your-workplace>

## **Designing better work systems and workplaces**

To eliminate risks of exposure to extreme heat when designing a new indoor workplace:

- ensure construction materials used for walls and roofs reduce or eliminates heat build-up inside the workplace.
- incorporate good air flow for all work areas. consider potential for air flow within a workplace to be blocked or obstructed (e.g., from deliveries received, delivery vehicles, etc.)
- select and position heat generating equipment to reduce or eliminate heat build-up inside the workplace
- consider the velocity and direction of hot air (natural and artificial), including air movement from any heat generating equipment

## **Isolate the hazard**

Examples:

- Isolate workers in air-conditioned control rooms away from the hot work environment where applicable
- Enclose or insulate equipment
- Isolate hot processes and/or heat-producing equipment.
- Install shields, barriers or guards to limit exposure to radiant heat
- Insulate buildings and clad sources of radiant heat
- Where possible, relocate workstations away from hot areas

## **Engineering controls**

Examples:

- Provide air-conditioning. Ensure adequate airflow so that the air flow reaches all areas in the workplace. Perform preventive maintenance on air conditioning
- Install local mechanical exhaust ventilation to increase air movement and remove hot or heated air/ steam from hot plant, processes and areas where heat can build up or where there is little air movement
- Install reflective or light-colored external wall cladding and roofing to the building
- place reflective shields or coatings on radiant heat spots
- provide mechanical equipment to reduce the need for strenuous physical work
- provide screens, umbrellas, canopies or awnings over sections of the site to create shade where work is being carried out
- provide suitable communication systems that function in black spots, and remote and isolated areas (e.g., mobile telephone, satellite phone, personal duress alarm, emergency beacon)

- provide suitable technology and other tools to help overcome the hazards faced by isolated and/or solitary workers.

### **Administrative controls**

Administrative controls should only be used to provide a systematic framework to support the higher controls that you have implemented.

Administrative actions include:

- Monitor environmental conditions
- Provide easy access to cool drinking water and encourage workers to drink often
- Provide regular and frequent breaks away from hot work areas and processes in air-conditioned or cool, well-ventilated areas
- Ensure the first aid room is air-conditioned, where relevant
- Implement an effective 'buddy system' where workers check each other frequently
- Organize work to minimize physically demanding tasks
- Ensure the work is paced to meet the conditions
- Ensure workers are acclimatized.
- Reduce the length of shifts

### **Information and training for workers**

Suitable information and training must be provided to all workers – regardless of whether they are full time, part-time, casual workers, shift workers, labor-hire workers, or contractors. Ensure the information and training is understood by all workers – including those from culturally and linguistically diverse (CALD) backgrounds.

### **Personal protective equipment (PPE)**

PPE is the last and least effective control in the hierarchy and should only be used to manage any risk that is leftover after all higher-level controls have been implemented, so far as is reasonably practicable.

Thank you for the opportunity to submit comments. Please do not hesitate to contact me at [dsivin@gmail.com](mailto:dsivin@gmail.com)

Sincerely,



Darius D. Sivin, PhD

**RAPo8 – Sokas, Advisory Board Member Comments for Proposed Heat Illness Prevention Standard, October 15, 2021**

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/SOKAS-1.pdf>



*School of Nursing & Health Studies  
Department of Human Science*

October 15, 2021

Jay Withrow, JD  
Director  
Division of Legal Support, ORA, OPPPI, and OWP  
Virginia Department of Labor and Industry

Dear Mr. Withrow:

Thank you for providing me the opportunity to serve on the advisory panel for the proposed heat illness prevention standard and for the opportunity to submit these comments. The draft proposal is a very strong start and promises to improve working conditions significantly for a wide variety of Virginia's workers. I have cared for patients with heatstroke, reviewed and supported OSHA compliance efforts when workers died from heatstroke, and co-authored an epidemiologic study demonstrating an increase in heatstroke mortality among construction workers associated with increases in summer temperatures (Dong et al). These experiences have shaped the following recommendations, with a specific focus on preventing heatstroke mortality:

First, the Virginia standard is urgently needed and should not wait for federal OSHA to act. Virginia is much farther along, has a much more nimble process, and has the ability to address the full range of workers, including agricultural workers.

The existing language concerning heat-related illness has been complicated in a number of foundational documents and could be simplified here. The 2007 Navy Environmental Health Technical Manual places the cut-off core temperature for heatstroke at 40 °C (104 °F) (p 84). As noted in my earlier edits, this is a level supported by recent peer reviewed publications and by my own experience. However, I would simplify the definition of heatstroke for training, first aid, and emergency response to include any form of confusion – this could range from confused responses to simple questions about place or date to other forms of central nervous system dysfunction described in the draft, including bizarre behavior, seizures or convulsions, coma, or any loss of consciousness longer than a brief fainting spell (heat syncope, a brief fainting spell with complete recovery, is not included). Confusion is the key point, and requires immediate response with immediate first aid with rapid cooling, preferably with ice and water, and immediate transportation to emergency medical care. Similarly, anyone who has stopped sweating – is “hot and dry” – by definition has heatstroke and requires the same immediate care. Note that either confusion or cessation of sweating are enough, you do not need both. As described in the draft document, other heat related symptoms, such as headache, fatigue, muscle

cramps, warrant removal from heat, provision of cool water and close monitoring, but please highlight the urgency for responding to confusion as the hallmark of heatstroke. The suggested edits in the draft Mr. Clark forwarded to you are my attempts to incorporate wording changes to address this.

Exposure to additional stressors, including high levels of exertion, work in direct sunlight, and work requiring protective clothing should be factored into control measures, both by lowering the heat index level at which protections are implemented and by including work/rest requirements.

Most of the heatstroke fatalities investigated by OSHA occur among workers who have not appropriately acclimatized or who have other underlying factors. These are difficult challenges, since “working into” the job to acclimatize requires both performing the level of work expected in the heat but, at the same time, significantly limiting the duration of that level of work. It would be useful to specify some amount of gradual increase over the first week of work. The question of underlying conditions is even more challenging.

In the NIOSH Updated Criteria Document (2016), the recommendation is to provide medical monitoring, which I believe should be offered, but is likely to be perceived as infeasible. An alternative would be to provide extensive guidance for worker and supervisor training as well as for workers to provide to their health care professionals. This guidance needs to be very detailed and complete, including both chronic and acute illnesses and conditions, OTC and prescription and recreational drugs, etc. While the condition itself should remain confidential, workers should be encouraged to notify supervisors of the presence of chronic or acute conditions that increase risk, and this should be treated with the same modifications made for working in direct sunlight or other additional environmental stressors noted above. Non-mandatory guidance, similar to the nonmandatory sections in the OSHA lead standard appendix C, might also include the preferred option of having pre-placement medical evaluations to provide the information about whether modified acclimatization or work schedules are warranted for an individual, and whether the limitations are temporary and the anticipated duration (CFR 1910.1025. App C: “Recommendations may be more stringent than the specific provisions of the standard.” <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1025AppC> ). A copy of the standard should be provided to the health care professional and a template for reporting short term or long-term restrictions.

While the provision of adequate quantities of cool, clean drinking water is extremely important, workers should be encouraged to drink smaller amounts (8 oz) up to four times an hour, rather than attempting to drink all at once. This pacing, as well as the need to modify work schedules at high heat levels or with exacerbating environmental or individual factors, will be more difficult to implement in situations where workers are financially penalized for taking these measures, such as under piece-rate pay systems. Approaches to prevent this are needed.

Please don't hesitate to contact me if you have any questions, and thank you once again for your leadership in protecting Virginia's workers.

Sincerely,

A handwritten signature in cursive script that reads "Rosemary Sokas".

Rosemary Sokas, MD, MOH  
Professor of Human Science  
(202) 687-3501 (office)  
(312)-848-9410 (cell)  
[sokas@georgetown.edu](mailto:sokas@georgetown.edu)

RAP09 – Stanley, VAC Comments Heat Illness Standard RAP 10-15-21

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/STANLE1.pdf>





October 15, 2021

Mr. Jay Withrow  
600 East Main Street, Suite 207  
Richmond, VA 23219

Re: Comments regarding Heat Illness Prevention Standard [under development] [16 VAC 25 - 210]

Dear Mr. Withrow,

The Virginia Agribusiness Council appreciates this opportunity to provide further comment on proposed draft heat illness standard. We have appreciated the opportunity to participate in the Regulatory Advisory Panel (RAP)'s deliberations. However, in light of the recent announcement by the Biden Administration, we believe that Virginia should wait for that federal standard to be developed rather than to move forward with a state program. Moving forward with a state standard, only to have to reconvene the Safety and Health Codes Board to evaluate how the state standard would comply with the federal standard is unnecessary and provide confusion to employers to implement should the requirements differ between the two. This would also allow employers that operate in multiple states to have one set of policies and training across jurisdictions rather than a patchwork of differing materials and messages.

Moreover, the Commonwealth still has relatively few heat illness investigations compared with the national average and a state specific standard is unnecessary at this time. The investigations presented during the RAP suggest that increased training and planning could prevent a vast majority of cases in the Commonwealth.

Should the Department move forward with a heat illness standard, the proposed regulation is overreaching and would be nearly impossible for our industry to comply. Specifically, having a heat index threshold of 80-degrees for mandatory breaks and access to shade without other risk factors would significantly hamper planting and harvesting seasons. Most harvest days for major Virginia crops such as tobacco, apples, soybeans, peanuts, and grains are done in days that are regularly over 80 degrees. This would make harvesting these crops, which in most cases are perishable with limited harvesting windows, impossible with the amount of work stoppages required. Similarly, the agriculture industry already uses acclimatization schedules for their temporary migrant labor. However, 80-degree threshold is lower than needed for such procedures or schedules and the Department should consider raising the threshold to that of high heat procedures.

In the proposed section 16VAC25-210-40, the requirements call for 32-ounces of water per hour per day. This amounts to nearly a case of water per day for each worker. Regarding any mandated amount of water provision, it is noted by medical experts – and was discussed during the workgroup’s deliberations – that slowly consuming smaller amounts over a period of time is a better way to combat heat illnesses. In the same section, employers are to ensure workers have the opportunity to consume 8 ounces of water per hour. This language is contradictory and we would suggest the current potable water standard is sufficient to safeguard workers hydration needs.

The Council is supportive of employers having proper emergency response procedures to ensure the health of their employees. However, we are concerned that employers operating in rural areas may have difficulty contacting emergency personnel if the worksite is in areas of low cell phone reception. We would suggest language be included requiring the employer contact the necessary emergency medical personal as soon as physically possible.

We have more than 400 members and have spoken with many who reiterated to us their existing commitment to the safety of their workers in every way, not just regarding heat illness. Our members have policies and training regarding heat illness not just for their employees in the United States, but around the world. 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. In closing, we would reiterate that the board defer action on such a regulation until the federal government has had ample time to implement a standard nationwide.

Thank you for this opportunity to comment and participate in this regulatory process.

Sincerely,

Beck Stanley  
Director of Government Affairs  
Virginia Agribusiness Council  
[beck@va-agribusiness.org](mailto:beck@va-agribusiness.org)

RAP10 – West, Regulatory Advisory Panel Comments DOLI Heat Standard 10-15-21

<https://www.doli.virginia.gov/wp-content/uploads/2021/10/WEST-R1.pdf>

October 15, 2021

Jay Withrow  
Director, Legal Support, VPP, ORA, OPP, and OWP  
Virginia Department of Labor and Industry  
Main Street Centre  
600 East Main Street, Suite 207  
Richmond, VA 23219

Submitted via email to: [jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov) and [princy.doss@doli.virginia.gov](mailto:princy.doss@doli.virginia.gov)

**RE: Regulatory Advisory Panel Member Comments on the Proposed Heat Illness Prevention Standard**

Dear Mr. Withrow,

I appreciate this opportunity serve on the Regulatory Advisory Panel for the draft proposed Heat Illness Prevention Standard (16 VAC 25-210) and would like to thank the Virginia Department of Labor and Industry (DOLI) and the Safety and Health Codes Board for the opportunity to submit these comments. The opinions expressed here are my own.

It is imperative for this rulemaking to proceed in a timely manner to protect workers in Virginia from extreme heat, a serious occupational hazard that can result in heat-related illness or death, traumatic injury, and decreased productivity. Background information provided to the Regulatory Advisory Panel shows that the general duty clause offers insufficient protection, and that the toll of heat illness among Virginia's workforce has been substantial, including lives lost. Moreover, it is widely recognized that heat-related illnesses and deaths are undercounted. There is no guarantee that a federal heat standard will be enacted, a process that could take many years. Waiting for a federal heat standard puts Virginia's workers at risk, when a state-based standard could be put in place much sooner. Effective heat illness prevention measures are known and have been adopted by other states, demonstrating their feasibility. The ability to draw upon existing state standards is beneficial. DOLI should ensure that the standard adopted in Virginia is at least as protective as other state standards.

**16VAC25-210-40. Drinking water.** Hydration is a cornerstone of heat illness prevention. Fluids lost through sweat must be replaced frequently to allow the body to cool itself. The provisions in this section are appropriate and are essential to retain.

**16VAC25-210-50. Employee access to cool down areas.** Provisions in this section are critical to retain. The requirement to allow and encourage employees to take a preventative cool-down rest in the cool down area when they feel the need to do so to protect themselves from overheating is important because workers may experience significant physiological strain before they feel the need to report symptoms of heat illness and seek relief. An additional provision requiring potable water to be present in or near cool down areas should be considered.

**16VAC25-210-60. Acclimatization.** Provisions in this section need to be stronger and more specific to ensure that acclimatization plans are effective in preventing heat illnesses, which often occur during the first week of work involving potential for heat stress. Employers must be required to develop an acclimatization plan that allows employees to gain heat tolerance and physiologically adapt to working in hot conditions. This can be achieved by gradually increasing physical demands and/or the amount of time spent working in the heat over a period of at least

4 days, although full acclimatization takes 7 to 14 days. Employers should be permitted to tailor acclimatization plans to their jobsites, though it may be helpful to provide examples of acclimatization schedules, such as those used by the U.S. military or those found in guidance from NIOSH and ACGIH.

**16VAC25-210-70. High heat procedures.** Provisions in this section are essential to retain, although some changes are needed. High heat procedures should require hourly scheduled rest breaks, whereas scheduled rest breaks should be provided every two hours when the ambient heat index is between 80-90 °F. Frequency and/or length of rest breaks should increase as the risk of heat illness increases. Rest breaks are critical for preventing heat illness and should be paid, whether scheduled or preventative. High heat procedures should also be triggered when the ambient heat index is between 80-90 °F and heat stress is significantly elevated due to radiant heat exposure, clothing, physical work demands, or some combination of those factors. The 80 °F heat index threshold is an appropriate trigger for the written plan, training, provision of water, rest breaks, and shade, but it should also trigger a mandatory buddy system, when feasible, instead of making the buddy system a high heat procedure only. Given that 19 of the 20 warmest years on record have occurred since 2000, DOLI might consider a third trigger level for additional safeguards during extremely hot days.

**16VAC25-210-80. Emergency response procedures.** These provisions must be retained and should emphasize, when severe heat illness is suspected, the importance of immediate first aid with rapid cooling and immediate transport to emergency medical care.

**16VAC25-210-90. Heat illness prevention plan.** Provisions in this section are essential to retain. The written plan should incorporate and emphasize the hierarchy of controls and should be developed with input from employees and their representatives.

**16VAC25-210-100. Training.** The training provisions are important and must be kept. DOLI should consider operationalizing what is meant by “effective training” in this section. For example, training needs to be provided in a language that employees understand.

**16VAC25-210-110. Discrimination against an employee for exercising rights under this chapter is prohibited.** Provisions in this section are essential and must be retained. Lives can be saved by empowering workers to exercise their rights and raise their concerns about heat illness hazards without fear of retaliation.

Thank you again for the opportunity to participate in the Regulatory Advisory Panel and to submit these comments. Please contact me if you have questions or for additional information.

Sincerely,

*Gavin H. West*

Gavin H. West, MPH

Director, Nanomaterials Research

CPWR – The Center for Construction Research and Training



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

**C. Ray Davenport**  
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**VIRGINIA SAFETY AND HEALTH CODES BOARD**  
**BRIEFING PACKAGE**  
**FOR DECEMBER 3, 2021**

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**DRAFT NOTICE OF PERIODIC REVIEW OF CERTAIN EXISTING REGULATIONS**

**I. Action Requested**

The Department requests the permission of the Board to proceed with the periodic review process of the Board's regulations listed in Section II, below.

**II. Background and Basis**

The Administrative Process Act (§2.2-4017 of the Code of Virginia) and Executive Order 14 (2018), "Development and Review of State Agency Regulations," govern the periodic review of existing regulations. Executive Order 14 requires that state agencies conduct a periodic review of regulations every four years. Six regulations of the Safety and Health Codes Board have been identified for review in 2021. They are as follows:

1. 16VAC25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees;
2. 16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporated by Reference 40 CFR 61.140 through 61.56;
3. 16VAC25-40, Standard for Boiler Pressure Vessel Operator Certification;
4. 16VAC25-70, Virginia Confined Space Standard for the Telecommunications Industry;

5. 16VAC25-97, Reverse Signal Procedures- General Industry- Vehicles/Equipment Not Covered by Existing Standards; and
6. 16VAC25-160, Construction Industry Standard for Sanitation.

### **III. Current Status and Process**

These six regulations of the Safety and Health Codes Board have been identified for review in 2021. If approval to proceed is granted by the Board, the process of periodic review begins with publication of a Notice of Periodic Review in the Virginia Register. With publication of this Notice of Periodic Review, a public comment period of at least 21 days, but not longer than 90 days, begins.

Subsequently, the Department will review these regulations and related public comments, then prepare a briefing package with recommendations to be presented for the Board's consideration at the next meeting. Based on the decision of the Board, the Department of Labor and Industry will post a report on the Virginia Regulatory Town Hall website indicating for each regulation that the Board will either retain the regulation as is, or will begin a regulatory action to amend or repeal the regulation.

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### **RECOMMENDED ACTION**

The Department of Labor and Industry recommends that the Safety and Health Codes Board approve the publication of a Notice of Periodic Review in the Virginia Register for 16VAC25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees; 16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporated by Reference 40 CFR 61.140 through 61.56; 16VAC25-40, Standard for Boiler Pressure Vessel Operator Certification; 16VAC25-70, Virginia Confined Space Standard for the Telecommunications Industry; 16VAC25-97, Reverse Signal Procedures- General Industry- Vehicles/Equipment Not Covered by Existing Standards; and 16VAC25-160, Construction Industry Standard for Sanitation.

The Department also recommends that the Board state in any motion it may make regarding the periodic review of these regulations that it will receive, consider and respond to petitions by any interested person at any time with respect to the periodic review which will be conducted in accordance with the above-cited § 2.2-4017 of the Administrative Process Act and Executive Order 14 (2018), “Development and Review of State Agency Regulations”.