**DRAFT**

July [tk], 2018

Loren Sweatt

Acting Assistant Secretary of Labor for Occupational Safety and Health

U.S. Department of Labor

200 Constitution Ave. NW

Washington, D.C. 20210

Dear Ms. Sweatt,

Public Citizen, a consumer and health advocacy group with more than 400,000 members and supporters nationwide, Farmworker Justice, United Farm Workers, [tk add others], hereby petition the Occupational Safety and Health Administration (OSHA), pursuant to section 6(c) of the Occupational Safety and Health Act, 29 U.S.C. § 655(c), to initiate the rulemaking process for the first national standard that would protect U.S. workers from the dangers of heat stress.

It is now more than 47 years since OSHA went into effect and three states with their own state OSHA plans—California, Washington and Minnesota—have implemented some form of protective heat standards for their workers. But approximately 130 million workers in the rest of the country have no protection from a national OSHA heat standard. The National Institute for Occupational Safety and Health (NIOSH), a component of the Centers for Disease Control and Prevention that provides research-based evidence to support OSHA’s regulatory mission, explained it is generally estimated that 2 in 1000 workers are at risk for heat stress.[[1]](#footnote-1) This suggests that approximately 260,000 workers outside of California, Washington, and Minnesota are at risk with no standard in place to protect them.

The proposed standard should include the following elements, based largely on NIOSH’s latest (2016) iteration of its criteria for a recommended standard for occupational exposure to heat and hot environments:[[2]](#footnote-2)

* **Heat stress thresholds**: At NIOSH’s Recommended Exposure Limit (REL) for acclimatized workers and Recommended Alert Limit (RAL) for unacclimatized workers, employers would be required to initiate robust protective measures. These include:
	+ **Mandatory rest breaks**: These should range in duration from 15 to 45 minutes per hour, depending on the work-place temperature, away from the hot environment. At certain wet-bulb globe temperatures, work must be stopped entirely.
	+ **Personal protective equipment (PPE)**: At all times when total heat stress load reaches the RAL or REL, especially during mandatory rest breaks, employers must provide PPE (e.g., water-cooled garments, air-cooled garments, or cooling vests) to protect workers from heat-related illness.
	+ **Shade**: In outdoor environments, employers must provide access to sufficient areas of shade during the rest breaks. In addition, shaded areas should be provided to all workers upon request.
* **Hydration:** Workers must be given access—at no cost to themselves—to recommended quantities of water and electrolytes sufficient to maintain adequate levels of hydration at varying levels of heat.
* **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 [indoor or outdoor] heat exposure and employee workloads to ensure that no worker is exposed to heat stress at or above the RAL/REL.
* **Medical monitoring:** Employers must institute a medical monitoring program for all workers who are or may be exposed to heat stress at or above the RAL/REL.
* **Hazard notification:** Employers must post prominent signs, in all relevant languages, in high-heat areas warning of the dangers of heat stress.
* **Heat Alert Program:** 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 in the coming day or days.
* **Worker information and training:** All workers and supervisors who work in areas where there is a reasonable likelihood of heat injury 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 surveillance and recordkeeping:** Employers should proactively obtain and analyze data on all heat-related injuries and deaths, environmental and physiological measurements related to heat, and other heat-related information. This information, in addition to medical monitoring data, acclimatization plans, and other key information related to the recommended heat stress standard should be recorded and made available to OSHA.
* **Whistleblower protection:** Each employer must institute an independent whistleblower protection program for employees and supervisors to report violations of the heat stress standard. OSHA should provide criteria or model language to serve as the basis for the whistleblower protection programs.

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* 1. Background

Global warming is resulting in more frequent days of “extreme” heat, and record-breaking summers are now becoming the norm. 2017 was the second-hottest year on record, surpassed only by 2016.[[3]](#footnote-3) Indeed, 17 of the 18 hottest years on record have occurred since 2001.[[4]](#footnote-4) Along with the rise in mean global temperatures, the number of dangerously hot days is rapidly increasing. During an average year from 1995 to 2005, much of the U.S. southeast did not experience any days of deadly heat—days during which the combined heat and humidity overwhelm human thermoregulatory capacity even for people at rest—although some regions, generally the southernmost coastal areas, ranged up to approximately 50 days per year. On our current greenhouse gas emissions path, by 2100 nearly the entire southeastern U.S., from Richmond, Virginia to the southern tip of Texas, will experience more than 85 deadly heat days per year on average. Large portions of the region will experience more than 150 per year.[[5]](#footnote-5)

Deaths due to heat have been reported in cities and towns across the country. Workers across industries from construction to agriculture are increasingly working full time in extreme heat, often with no precautions taken to protect them from heat exhaustion—and little in the way of federal protection.

According to the Bureau of Labor Statistics, from 1992 through 2016, exposure to excessive environmental heat stress killed 783 U.S. workers and seriously injured 69,374 (Figure 1 and Figure 2).[[6]](#footnote-6) These figures are in all likelihood vast underestimates, due to under-reporting. And with accelerating global warming, the United Nations reported in 2016 that worker injuries and deaths due to excessive heat exposure are projected to increase in the coming years.[[7]](#footnote-7)

In addition to the acute risks of death and injury, heat stress likely poses long-term risks. For example, in recent decades an epidemic of chronic kidney disease of unknown etiology has taken hold in Central America, becoming the second-leading cause of death among men in El Salvador, and chronic heat stress is strongly suspected to be a contributing factor to the illness (see section below on “chronic heat-related illness”). Such illnesses can be expected to migrate northward rapidly as temperatures rise and, indeed, there is already some evidence that rates of kidney disease may be abnormally high among migrant farm workers in California’s Central Valley.[[8]](#footnote-8)

* 1. Health effects of excessive heat exposure

The human body needs to maintain a core, or internal, temperature of 37 degrees Celsius (98.6 Fahrenheit) and can tolerate only small deviations from this temperature.[[9]](#footnote-9) Two sources of heat can raise the body’s temperature: (1) environmental heat, such as that from a hot summer day, and (2) metabolic heat, or the heat that the body generates internally, especially with physical activity.[[10]](#footnote-10) Workers who perform strenuous physical labor while exposed to environmental heat will rapidly increase their body temperature through both mechanisms simultaneously, leaving them especially vulnerable to heat stress.

* + 1. The body’s normal response to high heat levels: The crucial importance of the sweat response

Any increase in the body’s core temperature induces a series of compensatory responses to emit the excess heat and cool the body. In a hot environment, by far the most important response to an increase in core temperature is sweating.[[11]](#footnote-11) The evaporation of sweat from the skin, either from ambient heat or moving air (e.g., wind) removes heat from the body’s surface and serves as the body’s best defense against heat stress. Small arteries in the skin also dilate in response to high temperatures in order to expedite the removal of excess heat through the skin. This shunting of blood away from vital organs, such as the brain and kidneys, causes an increase in heart rate, a key indicator of heat strain.[[12]](#footnote-12)

Several factors can impede the critical sweat response. Certain types of clothing, such as the PPE worn by many agricultural or manufacturing workers, serve as a physical barrier to the evaporation of sweat (although certain types of PPE can actually mitigate the risk of heat stress; see below for more details). Humidity in the air causes an increase in vapor pressure, which also reduces the evaporation of sweat from the skin. Humidity is such a strong influence on the body’s ability to cool itself that at high rates of relative humidity, heat loss from sweating “is virtually nonexistent.”[[13]](#footnote-13) Finally, dehydration (as explained below) depletes the body’s supply of water, which is essential for sweating.

* + 1. Dehydration

Even in the absence of heat exposure, the average person requires approximately a liter of water per day to replace the amount lost through urine, insensible evaporation from the skin, and respiration.[[14]](#footnote-14) Physical exertion and higher temperatures accelerate this water loss. Workers performing physical labor under hot conditions can lose up to 6 to 8 liters of water through sweat throughout the workday.[[15]](#footnote-15) Other factors, including older age, coffee or alcohol consumption, and taking certain drugs (e.g., diuretics) can increase the risk for dehydration.[[16]](#footnote-16) Since merely satisfying thirst is not a sufficient mechanism to replace lost fluids, workers and others at risk for dehydration must proactively consume water or other fluids every 15 to 20 minutes.[[17]](#footnote-17)

Dehydration can have a number of serious effects on the body, including dangerously low blood pressure, heart attacks in those with cardiovascular disease, kidney failure, and severe neurological effects, such as fainting or convulsions. Dehydration also affects the body’s ability to deal with heat stress. As water stores are depleted, dehydrated workers gradually lose the ability to sweat, resulting in a faster increase in core temperature and further dehydration, in a dangerous cycle. Chronic, periodic dehydration that can result from long-term outdoor physical labor also can damage the kidneys, potentially contributing to chronic kidney disease (see section below on “chronic heat-related illness”).[[18]](#footnote-18)

* + 1. Acclimatization

Acclimatization refers to the body’s ability to gradually and partially adapt over time to high environmental heat exposure. When a person is exposed to heat levels higher than he or she is accustomed to, the body gradually adapts, primarily by developing a more robust sweat response, among other physiological adjustments, to emit excess heat more optimally.[[19]](#footnote-19) This process requires exposure to the hot conditions for at least two hours per day[[20]](#footnote-20) over a period of seven to 14 days, with a phased increase in work rate each day.[[21]](#footnote-21),[[22]](#footnote-22) Workers must be adequately hydrated and given adequate rest breaks in air-conditioned surroundings throughout the acclimatization process.[[23]](#footnote-23) Re-acclimatization to higher heat exposure is necessary for any sudden increases in the environmental heat level.[[24]](#footnote-24) Acclimatization is recognized as an absolutely necessary preventive measure against heat stress and strain.

* + 1. Acute heat-related illnesses[[25]](#footnote-25)

Heat syncope is dizziness, light-headedness, or fainting that results from prolonged standing or sudden rising from a sitting or lying position within a hot environment.[[26]](#footnote-26) It is more likely to occur when a person is dehydrated, not acclimatized to hot weather, or both. Heat syncope is treated by sitting or lying in a cool place and slowly drinking fluids.

Heat rash involves skin irritation, which can appear as pimples or small blisters on the neck, chest, groin, among other places.[[27]](#footnote-27) It is treated by getting away from hot and humid areas, keeping the rash dry, and applying powder to the affected area.

Prolonged physical exertion in hot weather can lead to muscle cramps[[28]](#footnote-28) and, in severe cases, a life-threatening condition known as rhabdomyolysis, which involves rapid breakdown and death of muscle tissue and can lead to acute kidney injury.[[29]](#footnote-29) Symptoms of rhabdomyolysis include severe muscle cramps or pain, dark (tea or cola-colored) urine, and weakness. If such symptoms occur, it is essential to stop physical activity, drink fluids, and see a medical professional immediately.

Heat exhaustion results from prolonged exposure to heat and a loss of body fluids and salt, usually through excessive sweating.[[30]](#footnote-30) The symptoms of heat exhaustion are headache, nausea, dizziness, weakness, irritability, thirst, heavy sweating, elevated body temperature, or decreased urination. Heat exhaustion is treated by lying down away from the heat, removing unnecessary clothing, cooling down with cold compresses, washing the head, face, and neck with cold water, and slowly drinking cool fluids.

If heat exhaustion is severe and not adequately treated, then heat stroke, a life-threatening medical emergency, can occur. Heat stroke occurs when the body rapidly loses the ability to control its temperature and is no longer able to sweat.[[31]](#footnote-31) The body’s temperature can rise to 106°F or higher within 10 to 15 minutes. Symptoms of heat stroke include confusion, slurred speech, hot and dry skin or profuse sweating, seizures, or loss of consciousness (coma). Immediate medical attention must be sought by calling 911, while in the meantime giving treatment similar to that recommended for heat exhaustion.

* + 1. Chronic heat-related illnesses

Chronic kidney disease of unknown etiology (CKD-U) is a devastating condition afflicting mainly young male agricultural workers in Central America, certain parts of Asia, and other tropical regions of the world.[[32]](#footnote-32) Its detection has been fairly recent, over the past two decades, but the disease has risen to startling levels in Nicaragua and El Salvador. In the latter, CKD has become the second most common cause of death in men, with males affected three times as frequently as females.[[33]](#footnote-33) The precise causes are not yet fully understood, as the affected patients do not have the traditional risk factors for CKD, such as diabetes or hypertension.[[34]](#footnote-34) It is likely multifactorial, and chronic heat stress and recurrent dehydration from long periods of intensive farm labor are strongly suspected to be contributing factors.[[35]](#footnote-35),[[36]](#footnote-36)

* 1. Reported heat stress deaths and injuries vastly understate the problem

According to data compiled from the Bureau of Labor Statistics (BLS) annual Survey of Occupational Injuries and Illnesses (SOII), exposure to excessive environmental heat stress killed 783 U.S. workers and seriously injured 69,374 workers from 1992 through 2016 (Figure 1 and Figure 2).[[37]](#footnote-37)

Figure 1. Reports of U.S. workers killed by heat stress

Source: Bureau of Labor Statistics (BLS). Includes private sector and state and local government workers.

Figure 2. Reports of serious injuries to U.S. workers from heat stress

Source: BLS database of injuries resulting in at least one day away from work. The BLS database does not have any injury data for state and local government workers prior to 2009.

But the BLS data vastly understate the number of injuries and fatalities, for several reasons. Some of the shortcomings stem from the fact that BLS relies on employer logs of worker injuries and deaths, which BLS obtains from OSHA.[[38]](#footnote-38) The Occupational Safety and Health **(**OSH) Act of 1970 requires most employers to make available to OSHA complete records of injuries and illnesses sustained by their workers on a form known as the Form 300 Log of Injury (or 300 log).[[39]](#footnote-39) But the OSH Act, and therefore the requirements regarding 300 logs, do not apply to federal government agencies, self-employed persons, and household workers.[[40]](#footnote-40) Most critically, small farms with fewer than 11 workers also are exempted, and so the BLS data do not capture heat-related events for a significant number of agricultural workers who are at highest risk of heat stress injuries and deaths. Moreover, OSHA does not require that an injury be reported if it does not lead to one or more of the following: death; days away from work; restricted work or transfer to another job; medical treatment beyond first aid; loss of consciousness; or a diagnosis of significant injury by a health care professional.[[41]](#footnote-41)

Even for employers covered by the OSH Act, the data still fall far short for several reasons, as outlined in a 2009 Government Accountability Office (GAO) review of OSHA and BLS injury data.[[42]](#footnote-42) First, the Form 300 logs rely on self-reports by employers, employees, and company doctors. As GAO noted, employers are likely to underreport because they do not want to increase their workers’ compensation costs or jeopardize their standing as safe workplaces for potential contracts.[[43]](#footnote-43) In addition, some employers hire independent contractors to avoid reporting requirements.[[44]](#footnote-44)

For their part, many employees do not report injuries due to fear of retaliation, including the potential to lose their jobs. Sixty-seven percent of occupational health practitioners surveyed by the GAO reported observing worker fear of disciplinary action for reporting an injury or illness, and 46 percent said workers’ fear had at least a minor impact on injury and illness records.[[45]](#footnote-45) In addition, many employers have adopted incentive programs that reward workers when there are few recordable injuries and illnesses in the workplace. In addition to encouraging safe practices, these programs discourage reporting. Over 75 percent of health practitioners said they believed workers sometimes avoid reporting injuries and illnesses because of incentive programs.[[46]](#footnote-46)

The desire among employers and workers to avoid recording injuries and illnesses also results in pressure on health practitioners to facilitate non-reporting. Over one-third of practitioners said they had been asked to provide limited treatment that would bring an injury or illness below the threshold for recording, but was not sufficient to properly treat the injury or illness. Forty-four percent of providers said that this pressure had at least a minor impact on records, and 15 percent said it had a major impact.[[47]](#footnote-47)

Heat stress injuries are likely prone to even higher rates of under-reporting than injuries generally. First, the industries at highest risk of heat stress injuries and deaths are agriculture and construction, both of which rely heavily on undocumented and otherwise vulnerable workers, who are more likely to avoid reporting injuries themselves or have their injuries or deaths reported by their employers.[[48]](#footnote-48) In addition, heat stress is not always recognized as a cause of heat-induced injuries or deaths because many of the symptoms, such as rash, sweating, headache, and fatigue, are non-specific and overlap with other, more common diseases. Indeed, one recent study of OSHA heat enforcement actions in 2012 and 2013 found that, in five of the 23 cases (21.7 percent) in which there was a fatality, medical examiners attributed the cause to a cardiac event without considering whether heat triggered or contributed to the event.[[49]](#footnote-49) This problem is especially acute in agriculture, where signs of heat stress can be confused with similar symptoms encountered with exposure to pesticides.[[50]](#footnote-50) Heat stress also diminishes performance and makes other accidents and injuries more likely,[[51]](#footnote-51) leading to the possibility that it is the root cause of an additional, untold number of fatalities or serious injuries that are not recorded as having anything to do with heat.

Accurate injury reporting among farm workers also is hindered by unique features of the agricultural workforce and workplace, including the migrant and seasonal nature of the workforce; poor English skills and educational attainment of workers; and economic and social factors that prevent workers from speaking out about workplace conditions.[[52]](#footnote-52) Many agricultural workers with heat-related illness short of severe exhaustion are likely to self-treat, do not report illness, and do not (or are not able to) take time off to recuperate.[[53]](#footnote-53) Many farmworkers are poor, can ill afford to stop working to treat or recover from injuries, fear losing their jobs if they take time off, lack awareness of employment rights, and may perceive that reporting injuries would be construed by employers as complaints and thus result in reprisal. Many are immigrants, often lacking proper work permits and fearful of deportation if they raise concerns about heat stress or request the most basic protections from it.

This underreporting virtually guarantees that the BLS’s injury and fatality data greatly underestimate the devastating effects of extreme heat exposure in workers.

Indeed, a few data points suggest that the BLS numbers may fall short by multiple orders of magnitude. According to NIOSH, it is generally estimated that 2 in 1,000 of all workers are at risk for heat stress, and that those in certain occupations (firefighting, agriculture, construction, forestry, mining, and manufacturing) are at greater risk.[[54]](#footnote-54) There are roughly 155.2 million Americans employed at present.[[55]](#footnote-55) If 2 in 1,000 are at risk, then that gives a figure of more than 300,000 American workers. Of those, more than 260,000 reside in states with no heat stress standard.[[56]](#footnote-56)

Another point for rough comparison is heat stress in the U.S. military. In 2017, there were 2,136 cases of heat stroke or heat exhaustion among active military service members, or a rate of 1.79 per 1000 person-years.[[57]](#footnote-57)

Critically, even the limited BLS data suggest that the rate of heat stress fatalities has been rising since 1992, the first year for which numbers are available. The rise appears to be correlated with the increase in average annual temperature, as shown in Figure 3. (It is not possible to consider the same question for non-fatal injuries, as the BLS lacks injury data for state and local government workers before 2009.)

Figure 3. Average annual temperature (°F) and
rate of reported worker fatalities from heat stress

\* Fatality rate per 1 million workers, derived by dividing reports of fatalities by total U.S. employees in private sector and state and local governments.

Sources: National Oceanic and Atmospheric Administration and BLS.

The available evidence also suggests that, in the absence of standards, employers are falling far short on protecting workers from heat stress. A recent study examined OSHA’s 84 heat enforcement cases in 2012 and 2013 and found that only a single one of the employers had an acclimatization program in place. Only 42 percent had any heat illness prevention program at all. Twenty-three percent did not provide employees water or limited access to it. Only 16 percent used the daily heat index to identify the risk of illness, and 97 percent did not adjust work / rest schedules to allow for heat conditions or intensity of workload.[[58]](#footnote-58) See Figure 4 for the full range of findings from the study.

Figure 4. Employer heat illness prevention programs: percentage of missing components in 84 cases



Source: Arbury S, Lindsley M, Hodgson M. A critical review of OSHA heat enforcement cases: Lessons learned. *J Occup Environ Med*. 2016;58(4):359-363. p. 361, Figure 1.

Another study examined the 38 heat-related illness enforcement cases between 2011 and 2016 in which the Office of Occupational Medicine and Nursing was consulted. It found that, in the cases for which data were available none of the employers (0 of 31) had a heat acclimatization plan, none (0 of 34) enforced mandatory rest breaks above recommended heat stress exposure limits, and only 10 percent (3 of 30) had the ability to monitor environmental heat.[[59]](#footnote-59)

* 1. Current regulatory landscape: Three states, the U.S. military, and other countries have moved ahead with heat protections

Despite NIOSH having issued three separate *Criteria for a Recommended Standard* documents for heat stress, in 1972,[[60]](#footnote-60) 1986,[[61]](#footnote-61) and 2016,[[62]](#footnote-62) OSHA has never promulgated a federal standard to protect workers from heat stress, as recommended by its sister agency.

* + 1. State standards

Three states—California,[[63]](#footnote-63) Minnesota,[[64]](#footnote-64) and Washington[[65]](#footnote-65)—have implemented standards protecting outdoor (CA and WA) or indoor (MN) workers from heat stress. In addition, CA is scheduled to propose a heat stress standard for indoor workers in January 2019.[[66]](#footnote-66) Although these state standards fall short of the NIOSH recommendations, they demonstrate the feasibility of heat stress regulations at the state and federal levels. California’s heat stress standard, although limited to outdoor workers, is the most comprehensive and detailed state standard. A summary of the three state standards is found in Table 1.

Table 1. Comparison of state and military heat standards with NIOSH and ACGIH recommendations

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Key Element of Standard** | **California\*** | **Washington\*\*** | **Minnesota\*\*\*** | **Military**† | **NIOSH**‡ | **ACGIH§** |
| **Worksites** | Outdoor | Outdoor | Indoor | All worksites | All worksites | All worksites |
| **Time of Year** | Year-round | May 1 – Sept. 30 | Year-round | Year-round | Year-round | Year-round |
| **Exposure Monitoring** | No | No | No | Yes | Yes | Yes. |
| **Acclimatization Plan** | “Close supervision” for first 14 days | No | No | Yes | Yes | No, but separate limits for unac-climatized workers. |
| **Heat Stress Thresholds** | Varying requirements at 80°F and 95°F | 89°F, or lower temps for workers wearing insulating clothing | PEL between 77°F and 86°F (WBGT) based on workload. | Navy: PHELsOthers: Work / rest and hydration tables.  | Yes. RAL and REL curves | Yes. Threshold Limit Values. |
| **Ceiling Exposure Limits** | No | No | Yes | Yes | Yes | Yes |
| **Rest breaks** | Mixed. In agriculture, 10 mins every two hours at >95°F. In other industries, only on request. | No | Yes (in the sense that the threshold is a firm PEL) | Yes. Rigorous work-rest cycles based on WBGT thresholds. | Yes. Threshold limit curves differ depending on amount of work per hour. | Indirectly. Temps at which extra pre-cautions needed vary with duration of work per hour. |
| **PPE** | No | No | No | No | Yes | Yes |
| **Hydration** | Yes. Water, 1 qt/hr. | Yes. Water, 1 qt/hr. | No | Yes. Water, 0.5–1.5 qt/hr based on work intensity and WBGT. Salt or sports drinks during >4 hours sweating if salt from meals is insufficient. | Yes. Provide 1 cup cool (50–59°F), potable water every 15–20 mins. For workers sweating more than 2 hours, provide electrolytes. | Yes. Employers should encourage workers to drink 1 cup of cool, palatable water every 20 mins. |
| **Shade Requirements** | Required when temp >80°F. Upon request when temp ≤80°F. | No | N/A | Rest should be given in shade. | Provide air-conditioned or shaded area for rest. | No speciﬁc guidelines on shade. |
| **Hazard Notification** | No | No | N/A | Flag indicating conditions. | Yes | No |
| **Employee Training** | Yes. Upon hiring. | Yes. Upon hiring and annually thereafter. | Yes. Upon hiring and annually thereafter. | Vague guidance on need to educate troops on signs of heat stress and alert them to dangerous heat conditions. | Yes. Upon hiring and continuously thereafter. | No speciﬁc guidelines on training. |
| **Medical Monitoring** | Yes. Proactive monitoring for heat-related illness when temp ≥95°F. | Yes. Reactive monitoring and rest breaks for heat-related injuries. | No | Language on monitoring interspersed throughout guidance, but no strict criteria. | Yes. Medical screening and surveillance program. | Yes. Monitor heat stress [WBGT thresholds] and heat strain [signs and symptoms]. |
| **Injury Surveillance** | Yes | Yes | No | Yes | Yes | No |
| **Record-keeping** | Yes. Written exposure control and emergency response plan. | Yes. Written accident prevention program and worker training. | Yes. Accident prevention program. | N/A | Yes. Written Heat Alert Program; record-keeping of heat measurements, surveillance records. | No speciﬁc guidelines on record-keeping. |

\* Cal/OSHA - Title 8, Section 3395. Heat Illness Prevention. <https://www.dir.ca.gov/title8/3395.html>. Accessed March 14, 2018.

\*\* Washington State Legislature. General Occupational Health Standards. 296-62-095. Outdoor heat exposure. <http://app.leg.wa.gov/WAC/default.aspx?cite=296-62&full=true#296-62-095>. Accessed March 14, 2018.

\*\* Minnesota Administrative Rules. 5205.0110 Indoor Ventilation and Temperature in Places of Employment. <https://www.revisor.mn.gov/rules/?id=5205.0110>. Accessed March 14, 2018.

† Technical Bulletin: Heat Stress Control and Heat Casualty Management. Headquarters, Departments of the Army and Air Force. TB MED 507 / AFPAM 48-152 (I). March 7, 2003.

‡ NIOSH 2016 Criteria Recommendations.

§ ACGIH 2018 Threshold Limit Values. pp. 227–36.

* + 1. California’s enforcement demonstrates the critical importance of having a heat stress standard

California implemented the regulation for its standard as an emergency measure in 2005 in response to a spike in heat-related worker deaths that year,[[67]](#footnote-67) and made the measure permanent in 2006.[[68]](#footnote-68) The main provisions of the standard are summarized in Table 1, and include requirements for employers to: (1) provide one quart of potable drinking water per worker per hour; (2) monitor, and provide shade for, all employees on particularly hot days; (3) provide rest breaks for employees upon request; and (4) train new employees and supervisors on heat-related illness and preventive measures.[[69]](#footnote-69)

In the first five years after implementation of California’s standard in 2005, thousands of inspections were conducted, with millions of dollars in penalties assessed for violations of the standard (Table 2). California targets its inspections at what have traditionally been the highest-risk industries for outdoor heat-related injuries, the agriculture and construction sectors.

Table 2. Cal/OSHA enforcement of its heat illness prevention
standard (presented as obtained from Cal/OSHA)[[70]](#footnote-70)

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Cal/OSHA Action | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| Inspections coded S18 Heat**\*** | 39 | 234 | 1,018 | 2,586 | 3,574 | 3,183 | 1,265 |
| Inspections w/ § 3395 violations\*\* | 9 | 158 | 490 | 899 | 935 | 788 | 195 |
| Citations for violations of § 3395 | 2 | 136 | 614 | 1,121 | 1,163 | 957 | 349 |
| Assessed initial penalties | $7,085  | $535,140  | $822,990  | $1,775,071  | $1,041,527  | $578,995  | $152,890  |
| Heat outreach (enforcement, consultation)**\*\*\*** | 14 | 96 | 284 | 1,145 | 2,562 | 2,482 | 1,065 |

\* Inspections “coded S 18 Heat” refer to the total number of inspections.

\*\* Inspections resulting in at least one violation of the heat standard (§ 3395). The number of § 3395 violations cited is generally higher than the number of inspections with 3395 violations, a single inspection may yield multiple citations. For some years, the number of citations is lower than inspections due to a time lag between inspections and citations.

\*\*\* Cal/OSHA Consultation heat illness outreach activities for CY 2008–2011 include workshops, seminars, training related to on-sites, etc.

Despite the absence of a federal heat standard, OSHA can cite companies for heat stress violations under its General Duty Clause (GDC). As seen in Table 3, in the first six calendar years after enactment of its outdoor heat standard (2006–2011), California conducted over 133 times more inspections resulting in a citation for unsafe heat exposure practices than OSHA during the same period. This alarming disparity clearly shows why a specific, enforceable heat standard is urgently needed on a federal level, rather than relying on the relatively ineffective OSHA GDC. This disparity between the California’s state OSHA (Cal/OSHA) and the Federal OSHA is even more striking given that California represents only one-eighth of the U.S population.

Table 3. Number of inspections resulting in at least one citation
for unsafe heat exposure practices, 2006–2011

|  |  |  |
| --- | --- | --- |
| Calendar Year | Cal/OSHA\* | Federal OSHA\*\* |
| 2006 | 158 | 3 |
| 2007 | 490 | 3 |
| 2008 | 899 | 2 |
| 2009 | 935 | 2 |
| 2010 | 788 | 11 |
| 2011 | 195\*\*\* | 6 |
| Total | 3,465 | 25 |
| Annual Average | 577.5 | 4.2 |
| \* Cal/OSHA inspections conducted under the authority of its outdoor heat exposure standard (Cal/OSHA Standard 3395). Standard 3395 enacted as an emergency measure in 2005 and made permanent in 2006.\*\* Federal OSHA inspections conducted under the authority of the General Duty Clause and include both outdoor and indoor inspections. \*\*\* Cal/OSHA data through July 26, 2011.  |

In the absence of a federal heat stress standard, OSHA relies on the non-specific GDC) to cite employers for failing to provide adequate safeguards against heat stress. In the most recent six-year period (2012 through 2017), OSHA conducted just 153 inspections resulting in at least one citation under the GDC for exposing workers to the risk of occupational heat stress.[[71]](#footnote-71) By comparison, Cal/OSHA completed 3,465 inspections resulting in at least one heat-stress-related citation in the first six-year period (2006 through 2011) following enactment of the state’s outdoor heat stress standard.[[72]](#footnote-72)

* + 1. U.S. military guidelines

The U.S. Navy first developed Physiological Heat Exposure Limit (PHEL) curves based on metabolic and environmental heat load in 1973.[[73]](#footnote-73) The PHELs represent “maximum allowable” exposure limits.[[74]](#footnote-74) See Figure 7 and Table 10 in the Appendix for the Navy’s PHEL curves and a table of time limits for each curve. In addition, the Navy curtails training as wet-bulb globe temperatures (WBGTs) rise, signified by colored flags flown at installations, with all nonessential outdoor activity halting at WBGTs greater than 90°F (Table 4).

The U.S. Marine Corps has issued heat stress guidelines in the past and has been following the Navy’s on an interim basis since 2015.[[75]](#footnote-75) The order issued by Base Quantico to implement Marine Corps guidelines in 2002 noted that “each year” personnel at the base experienced “several heat casualties with many resulting in emergency MEDEVAC” between May and September.[[76]](#footnote-76)

Table 4: U.S. Navy heat/flag index

|  |  |  |
| --- | --- | --- |
| FlagCondition | WBGT Index (°F) | Navy |
| Green | 80.0 – 84.9 | Discretion required in planning heavy exercise for unseasoned personnel. |
| Yellow | 85.0 – 87.9 | Strenuous exercise and activity (e.g., close order drill) should be curtailed for new and unacclimated personnel during the ﬁrst 3 weeks of heat exposure. |
| Red | 88.0 – 89.9 | Strenuous exercise curtailed for all personnel with less than 12 weeks training in hot weather. |
| Black | 90.0+ | Physical training and strenuous exercise suspended for all personnel (excludes operational commitment not for training purposes). |
| Adapted from Manual of Naval Preventive Medicine*.* Department of the Navy. NAVMED P-5010-3 (Rev. 2-2009). p. 3-15, Table 3-3. |

In 2003, the U.S. Army and U.S. Air Force issued a technical bulletin on heat stress and effective measures to prevent heat-related injury in soldiers in both outdoor and indoor workplaces.[[77]](#footnote-77) The main features of the guidelines are outlined in Table 1. The bulletin provides detailed instructions on acclimatization, with gradually increasing workload and environmental heat exposure over a two-week period. A rigorous WBGT threshold is calculated for differing work intensities and environmental temperatures, with a recommended work-rest cycle developed based on these values.[[78]](#footnote-78) The recommendations limit continuous work after temperatures rise above 82°F for “moderate” intensity work and above 78°F for “hard” work (Table 5).

Table 5. U.S. Army and U.S. Air Force fluid replacement and
work/rest guidelines for warm weather training conditions

|  |  |  |  |
| --- | --- | --- | --- |
|  | Easy Work(250 W) | Moderate Work(425 W) | Hard Work(600 W) |
| HeatCategory | WBGT Index (°F) | Work / Rest (minutes) | Water Intake (qt/hr) | Work / Rest(minutes) | Water Intake (qt/hr) | Work / Rest (minutes) | Water Intake (at/hr) |
| 1 | 78 – 81.9 | NL\* | 0.5 | NL | 0.75 | 40/20 (70)\*\* | 0.75 (1)\*\* |
| 2 (green) | 82 – 84.9 | NL | 0.5 | 50/10 (150)\*\* | 0.75 (1)\*\* | 30/30 (65)\*\* | 1 (1.25)\*\* |
| 3 (yellow) | 85 – 87.9 | NL | 0.75 | 40/20 (100)\*\* | 0.75 (1)\*\* | 30/30 (55)\*\* | 1 (1.25)\*\* |
| 4 (red) | 88 – 89.9 | NL | 0.75 | 30/30 (80)\*\* | 0.75 (1.25)\*\* | 20/40 (50)\*\* | 1 (1.25)\*\* |
| 5 (black) | >90 | 50/10(180)\*\* | 1 | 20/40 (70)\*\* | 1 (1.25)\*\* | 10/50 (45)\*\* | 1 (1.5)\*\* |
| Easy Work | Moderate Work | Hard Work |
| * Weapon maintenance
* Walking hard surface at 2.5 mph, < 30 pound (lb) load
* Manual of arms
* Marksmanship training
* Drill and ceremony
 | * Walking loose sand at 2.5 mph, no load
* Walking hard surface at 3.5 mph, < 40lb load
* Calisthenics
* Patrolling
* Individual movement techniques, that is low crawl, high crawl
* Defensive position construction
 | * Walking hard surface at 3.5 mph, ≥ 40 lb load
* Walking loose sand at 2.5 mph with load
* Field Assaults
 |
| \* NL = No limit equals no limit to work time per hour for up to 4 continuous hours. \*\* Use the amounts in parentheses for continuous work when rest breaks are not possible.Sources: Adapted from Technical Bulletin: Heat Stress Control and Heat Casualty Management. Headquarters, Departments of the Army and Air Force. TB MED 507 / AFPAM 48-152 (I). March 7, 2003. p. 13, Table 3-1, p. 17, Table 3-3; Defense Health Agency. Work/Rest Times and Fluid Replacement Guide. Medical Mo’ly Surveillance Report Vol. 25 No. 4. April 2018. p. 12. |

Weaknesses of the military guidelines include the absence of record-keeping requirements to verify compliance, the lack of shade requirements, and the lack of exposure limits, with the exception of the Navy’s PHEL. Also, it is unclear on reading the military materials whether they are merely advisory and, if so, the extent of compliance. Nevertheless, the military’s work-rest cycle and acclimatization protocols, in addition to the Navy’s PHEL, clearly represent rigorous and feasible model provisions on which to base a nationwide federal standard.

* + 1. Heat stress standards in other countries

Other industrialized countries also have implemented heat stress standards. Most Canadian provinces have adopted, as either rules or guidelines, Threshold Limit Values based on those recommended by the American Conference of Governmental and Industrial Hygienists (Table 6).[[79]](#footnote-79) For the basic provisions of the Canadian provinces’ heat stress standards, see Table 9 in the Appendix. Canada’s federal government has established permissible temperature ranges for food service workers[[80]](#footnote-80) and workplace first aid rooms,[[81]](#footnote-81) as well as a temperature at which a heat barrier must be provided to protect the operator of motorized materials handling equipment.[[82]](#footnote-82)

Table 6. Canadian threshold limit values for WBGTs in hot conditions
(based on ACGIH recommendations)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Work/rest ratio (mins per hour) | Light, °C (65–130 W/m2) | Moderate, °C (130–200 W/m2) | Heavy, °C (200–260 W/m2) | Very heavy, °C (>260 W/m2) |
| Acclimatized |
| 60/0 | 29.5 | 27.5 | 26 | – |
| 45/15 | 30.5 | 28.5 | 27.5 | – |
| 30/30 | 31.5 | 29.5 | 28.5 | 27.5 |
| 15/45 | 32.5 | 31 | 30 | 29.5 |
| Not acclimatized |
| 60/0 | 27.5 | 25 | 22.5 | – |
| 45/15 | 29 | 26.5 | 26.5 | – |
| 30/30 | 30 | 28 | 28 | 25 |
| 15/45 | 31 | 29 | 29 | 26.5 |

Assumes an 8-hr working day in a 5-day week. Examples of work rates are standing with moderate arm movements at machine or bench (light); walking with moderate lifting or pushing (moderate); shoveling dry sand or intermittent heavy lifting (heavy); shoveling wet sand or constant heavy lifting (very heavy).

Source: Jay and Kenny. p. 846, Table II.

Japan also has implemented occupational exposure limits for heat stress, setting temperature exposure limits that decline with increased workloads, similar to NIOSH’s recommended RELs for acclimatized workers, as shown in Table 7.

Table 7. Occupational exposure limits for heat stress in Japan compared
with NIOSH’s recommended limits for the same workloads

|  |  |
| --- | --- |
|  | Exposure Limit (WBGT (°C)) |
| Workload | Japan[[83]](#footnote-83) | NIOSH REL | Difference |
| RMR\*–1 (Very light, –130 kcal/h) | 32.5 | 31.6 | 0.9 |
| RMR–2 (Light, –190 kcal/h) | 30.5 | 29.8 | 0.7 |
| RMR–3 (Moderate, –250 kcal/h) | 29.0 | 28.4 | 0.6 |
| RMR–4 (Moderate, –310 kcal/h) | 27.5 | 27.3 | 0.2 |
| RMR–5 (Heavy, –370 kcal/h) | 26.5 | 26.4 | 0.1 |
| \* Relative Metabolic Rate (RMR) = (Metabolic energy expenditure during work—Metabolic energy expenditure at rest)/Basal metabolic rate corresponding to the work period. |

* 1. NIOSH criteria for a recommended standard

In 2016, NIOSH issued the third iteration of its criteria for a recommended standard for occupational exposure to heat and hot environments, which includes the following elements:[[84]](#footnote-84) heat stress threshold; rest breaks; hydration; shade; heat acclimatization plan; PPE; exposure monitoring; hazard notification; worker training; medical monitoring; injury surveillance; and recordkeeping. More detail on each of these recommended provisions, in addition to an additional whistleblower provision, is provided in this section.

* + 1. Heat stress threshold, mandatory rest breaks, shade, and Personal Protective Equipment

NIOSH recommended that no worker be “exposed to combinations of metabolic and environmental heat greater than” the applicable recommended alert limits (RALs) or recommended exposure limits (RELs), for unacclimatized and acclimatized workers, respectively (Figure 5 and Figure 6).

|  |
| --- |
| **Figure 5. Recommended heat stress alert limits (RALs)for unacclimatized workers\*,[[85]](#footnote-85)** |
| \* Values shown are for a “standard man” of 70 kg (154 lb) body weight and 1.8 m2 (19.4 ft2) body surface. The “standard man” is used to normalize the data from the variability found in human beings. Both men and women adapt well to heat exposure, and given the similar physiological ability to tolerate heat, there are no significant differences between the sexes. |

|  |
| --- |
| **Figure 6. Recommended heat stress exposure limits (RELs)for acclimatized workers\*,[[86]](#footnote-86)** |
| \* Values shown are for a “standard man” of 70 kg (154 lb) body weight and 1.8 m2 (19.4 ft2) body surface. The “standard man” is used to normalize the data from the variability found in human beings. Both men and women adapt well to heat exposure, and given the similar physiological ability to tolerate heat, there are no significant differences between the sexes. |

Calculating the total (environmental + metabolic) heat load is relatively straightforward, even for small employers. In most situations, environmental heat loads are obtained most accurately by directly measuring, using a WBGT meter, or by indirectly calculating the WBGT.[[87]](#footnote-87) Metabolic heat loads can be approximated roughly according to the ACGIH metabolic-work-rate guide, presented in Table 8, and recommended by the OSHA Technical Manual on heat stress.[[88]](#footnote-88)

Table 8. Metabolic work rates

|  |  |  |
| --- | --- | --- |
| Work Category | Metabolic Rate (Watts) | Examples |
| Rest | 115 | Sitting |
| Light | 180 | Sitting, standing, light arm/hand work and occasional walking |
| Moderate | 300 | Normal walking, moderate lifting |
| Heavy | 415 | Heavy material handling, walking at a fast pace |
| Very Heavy | 520 | Pick and shovel work |
| Adapted from: ACGIH “2017 TLVs and BEIs” Table 3 and presented here as shown by OSHA’s Technical Manual for heat stress (OSHA Technical Manual: Heat Stress. Section III: Chapter 4. <https://www.osha.gov/dts/osta/otm/otm_iii/otm_iii_4.html#metabolic>. Accessed March 17, 2018.) |

*Mandatory rest breaks*

If the RAL/REL is reached during the work day, employers should initiate various protective measures, including, if necessary, a rest break, which should range in length from 15–45 minutes per hour depending on the total heat load.[[89]](#footnote-89) These rest breaks should be taken away from the hot environment and, for outdoor environments, in the shade.[[90]](#footnote-90)

As can be seen from Table 8, many outdoor workers typically perform at least “moderate” work (normal walking, moderate lifting; 300 Watts per hour) throughout the day on most days. Using NIOSH’s RAL chart, Figure 5, such unacclimatized workers therefore require 15-minute rest breaks every hour once the WBGT reaches approximately 81°F and require progressively longer breaks at higher temperatures, to the point at which they can safely work just 15 minutes per hour at WBGT temperatures of approximately 86°F. (According to NIOSH’s REL chart, temperature thresholds for acclimatized workers are a few degrees higher).

It is likely that most farmworkers perform “heavy” (heavy material handling, walking at a fast pace; 415 Watts per hour) to “very heavy” (pick and shovel work; 520 Watts per hour) work throughout most days. Therefore, per Figure 5, a typical unacclimatized farmworker requires 15-minute rest breaks every hour once the WBGT reaches approximately 75°F and require progressively longer breaks at higher temperatures, to the point that they can safely work just 15 minutes per hour at WBGT temperatures of approximately 82°F (with temperature thresholds a few degrees higher for acclimatized workers).

*Cool area for rest breaks*

NIOSH recommends that workers be given access to a cool area (e.g., air-conditioned or shaded) during rest breaks.[[91]](#footnote-91)

*Personal protective equipment*

Various types of PPE, such as water-cooled garments, air-cooled garments, and cooling vests, can prevent a worker from experiencing heat stress and more rapidly decrease core body temperature for workers suffering from heat strain.[[92]](#footnote-92) NIOSH recommends that such PPE be provided to workers when total heat stress load reaches the RAL/REL.[[93]](#footnote-93)

* + 1. Hydration

All workers should be provided “adequate amounts of cool (i.e., less than 15°C [59°F]), potable water near the work area and encouraging all workers that have been in the heat for up to 2 hours and involved in moderate work activities to drink a cup of water (about 8 oz.) every 15 to 20 minutes.”[[94]](#footnote-94) To prevent the spread of potential infections, workers should be provided this water in individual, not communal cups. Workers who have been in the heat for more than 2 hours and therefore have been sweating for a long time should be provided adequate amounts of both water and electrolytes, such as sports drinks. The concentration of electrolytes and carbohydrates (e.g., added sugars) should not exceed 8% by volume.

* + 1. Heat acclimatization plan

Employers should have a heat acclimatization plan.[[95]](#footnote-95) For new workers, this involves a gradual phase-in to the workload, with 20% of the usual duration of work in the hot environment on the first day, and a maximum of an additional 20% on each subsequent day.[[96]](#footnote-96) For workers with previous experience in the job, the corresponding maximum durations of work are 50% on day one, 60% on day two, 80% on day three, and 100% of the usual duration of work on day four. The process must be repeated if the worker is absent from the job for a week or longer[[97]](#footnote-97) or if there is a sudden, significant increase in the environmental or metabolic heat loads.[[98]](#footnote-98) Throughout the acclimatization process, workers must be given adequate rest in cool, air-conditioned surroundings and be sufficiently hydrated, due to increased sweating brought on by the acclimatization process.[[99]](#footnote-99)

The vital importance of proper acclimatization was demonstrated in a 2016 OSHA study that analyzed all of the agency’s GDC citations for heat stress violations that were issued in 2012 and 2013.[[100]](#footnote-100) In 2012 and 2013, OSHA issued citations in 84 cases, 37 of which were outdoor workplaces and 47 of which were indoor.[[101]](#footnote-101) Twenty-three of the cases involved worker deaths,[[102]](#footnote-102) with 17 of the 23 (74%) occurring within the worker’s first three days on the job and eight (35%) on the very first day of work.[[103]](#footnote-103) This was not surprising given that, with one exception, none of the employers had established heat acclimatization plans.[[104]](#footnote-104)

* + 1. Exposure monitoring

Employers should monitor the environmental heat load “at least hourly, during the hottest portion of each work shift, during the hottest months of the year, and when a heat wave occurs or is predicted.”[[105]](#footnote-105) If two sequential measurements show that the ambient conditions exceed the RAL/REL, then the employer should institute a variety of engineering and work practice controls until two sequential measurements again fall below the RAL/REL[[106]](#footnote-106) Employers also should develop estimates of the metabolic heat load for each worker who is performing light, moderate, or heavy work.[[107]](#footnote-107)

* + 1. Medical monitoring

Employers must institute a medical monitoring program for all workers who are or may be exposed to heat stress at or above the RAL/REL. Comprehensive medical evaluations, which are designed to assess a worker’s risk for heat stress injury, should be given to all workers at the time of hiring and at least annually thereafter. All relevant medical and risk information should be made available to the responsible healthcare provider at the jobsite, with the provider then required to provide to the employer a written report of his or her findings and recommendations regarding the worker’s risk for heat stress injury. Emergency medical care should be given to all workers who develop signs or symptoms of heat exhaustion or heat stroke.[[108]](#footnote-108)

* + 1. Hazard notification

Employers should provide visible warning signs, in all relevant languages, in all work areas in which there is a “reasonable likelihood” of the total heat load exceeding the RAL/REL.[[109]](#footnote-109) The signs should contain information on the risk of heat stress and ways to mitigate the risk, including emergency and first aid instructions.

* + 1. Heat Alert Program

Employers should develop a written Heat Alert Program to be implemented whenever the National Weather Service or other authoritative weather service forecasts a heat wave in the coming day or days.[[110]](#footnote-110) Such a program should involve a committee tasked with planning all necessary procedures to be taken in the event of a heat wave, including postponing non-urgent work, increasing the number of workers on each shift, increasing rest breaks, and heightened medical surveillance of workers.[[111]](#footnote-111)

* + 1. Worker information and training

All workers who may be put at risk of heat injury or illness be informed, through continuing education programs, of heat stress hazards, preventive measures, signs and symptoms of heat-related illness, first aid procedures, and other key information related to heat stress risk and mitigation. A written training program containing all of the aforementioned information should be developed. In addition, a heat stress safety data sheet should be posted in all at-risk work areas.[[112]](#footnote-112)

* + 1. Heat-related surveillance and recordkeeping

Employers should proactively obtain and analyze 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.[[113]](#footnote-113) All of this information, in addition to medical monitoring data, acclimatization plans, and other key information related to the recommended heat stress standard should be recorded and made available to OSHA.[[114]](#footnote-114)

* 1. Whistleblower protections

OSHA should also require each employer to institute a whistleblower protection program for workers and supervisors to report violations of the heat stress standard. The agency should adopt specific criteria for employer whistleblower protection policies, provide model language, or both.

Key criteria for a credible whistleblower protection policy include:

* scope of coverage that includes any employee who disclosed what he or she reasonably believes to be a violation of the heat stress standard;
* a “clear and convincing evidence” standard for employers to prove claims of non-retaliation;
* an option for employees to opt for consensus-selection, shared-cost, independent binding arbitration;
* appropriate relief, including reinstatement with back pay; and
* a provision that rights and remedies under the whistleblower protection policy cannot be waived.

Model language for the agency’s rule is as follows:

No employer shall terminate or in any other way discriminate against any person because the person assists in, discloses, or is about to disclose information that the person reasonably believes to be evidence a violation of this standard; assists in any other action to carry out the purposes of this standard; or objects to or refuses to obey an order that the person reasonably believes would cause violation of this standard or the law.

Each employer shall designate an official to establish and implement the employer’s whistleblower protection policy. The designated official should be free of any real or apparent conflicts of interest in any particular case, and shall be free of pressure from, or the influence of, the employer regarding particular cases or in the official’s general course of administering the whistleblower protection policy and deciding cases.

An employee who believes that he or she has been terminated or otherwise discriminated against in violation of this standard may file a complaint with the designated official by the employer.

The designated official shall conduct a timely, thorough, objective, and competent investigation of the complaint, examining all relevant evidence. The employer shall cooperate fully with the investigation, including but not limited to securing and making available evidence. The confidentiality of all participants in the investigation shall be maintained to the maximum extent possible.

The designated official shall make a final decision whether retaliation occurred. The official shall determine that a violation has occurred if the complainant has demonstrated, by a preponderance of the evidence, that any behavior protected by this section was a contributing factor in the discrimination alleged in the complaint. Relief may not be ordered if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action for independent, lawful reasons in the absence of such behavior.

In response to a complaint, if the designated official finds that an employer was in violation of this standard, the designated official shall determine what remedies are appropriate, including affirmative action to abate the violation; reinstatement of the complainant to the former position with the same pay and terms and privileges of employment; payment of compensatory damages, including back-pay with interest and compensation for any special damages sustained as a result of the retaliation; public or private statements or announcements to restore the whistleblower’s position or reputation; and any other relief necessary to make the employee whole. The designated official may also impose further protections, such as monitoring or disciplinary action for the retaliator.

If the complaint is not satisfied with the result, the employer designated must offer the complainant the opportunity to submit the dispute to consensus-selection, independent, binding arbitration. The arbitration shall be conducted by an arbitrator who is agreed upon by both the complainant and the employer, who has no real or apparent conflicts of interest, and who has no personal or professional relationship with the employer, the whistleblower, the alleged retaliator, or any person who is a subject of the investigation. The employer and the whistleblower shall share the costs of the arbitration, but the arbitration agreement shall specify that the arbitrator shall require the employer to compensate the whistleblower for all of his or her arbitration costs, including attorney fees, if the arbitrator finds in favor of the whistleblower.

The rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a pre-dispute arbitration agreement.

This model language generally reflects best-practice provisions included in OSHA-administered whistleblower statutes enacted since 2000, including the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Moving Ahead for Progress in the 21st Century Act, the Pipeline Safety Improvement Act, the Sarbanes-Oxley Act, Energy Reorganization Act, the Surface Transportation Assistance Act, the Federal Railroad Safety Act, the National Transit Systems Security Act, the Consumer Product Safety Improvement Act, the Seaman’s Protection Act, and the FDA Food Safety Modernization Act.

* 1. Petition Requests

Given the clear evidence on the risks of heat stress for both outdoor and indoor workers and the demonstrated feasibility of a protective regulation protecting workers from these dangers, citing evidence from a state such as Californian and the military, there is no valid, evidence-based reason for OSHA not to immediately initiate the rulemaking process for a federal heat stress standard. We request that such a standard include all of the measures recommended in detail by NIOSH in its 2016 Criteria for a Recommended Standard for heat stress, in addition to a robust whistleblower protection provision to help ensure that the standard’s provisions are complied with. These requested provisions are as follows (see Section V. NIOSH Criteria for a Recommended Standard” section of the petition for details of each provision):

* **Heat stress thresholds**: At NIOSH’s REL/RAL, employers would be required to initiate robust protective measures. These include:
	+ **Mandatory rest breaks**: These should range in duration from 15 to 45 minutes per hour, away from the hot environment. At certain WBGT heat levels, work must be stopped entirely.
	+ **PPE**: Employers must provide PPE (e.g., water-cooled garments, air-cooled garments, or cooling vests) to protect workers from heat-related illness, at all times when total heat stress load reaches the RAL/REL, especially during mandatory rest breaks.
	+ **Shade**: In outdoor environments, employers must provide access to sufficient areas of shade, both during the rest breaks. In addition, we request that shaded areas be provided to all workers upon request.
* **Hydration:** Workers must be given access—at no cost to themselves—to recommended quantities of water and electrolytes sufficient to maintain adequate levels of hydration at varying levels of heat.
* **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 heat stress at or above the RAL/REL.
* **Medical monitoring:** Employers must institute a medical monitoring program for all workers who are or may be exposed to heat stress at or above the RAL/REL.
* **Hazard notification:** Employers must post prominent signs, in all relevant languages, in high-heat areas warning of the dangers of heat stress.
* **Heat Alert Program:** 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 in the coming day or days.
* **Worker information and training:** All workers and supervisors who work in areas where there is a reasonable likelihood of heat injury 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 surveillance and recordkeeping**: Employers should proactively obtain and analyze data on all heat-related injuries and deaths, environmental and physiological measurements related to heat, and other heat-related information. This information, in addition to medical monitoring data, acclimatization plans, and other key information related to the recommended heat stress standard should be recorded and made available to OSHA.
* **Whistleblower protection:** Each employer must institute an independent whistleblower protection program for employees and supervisors to report violations of the heat stress standard. OSHA should provide criteria or model language to serve as the basis for the whistleblower protection programs.
	1. Environmental impact statement

Nothing requested in this petition will have an impact on the environment.

* 1. Certification

We certify that, to the best of our knowledge and belief, this petition includes all information and views on which this petition relies, and that it includes representative data and information known to the petitioners which are unfavorable to the petition.

Sincerely,

Public Citizen

Farmworker Justice

United Farm Workers

[tk list others]

Appendix

Table 9. Heat stress standards of Canadian provinces

|  |  |  |  |
| --- | --- | --- | --- |
| Province/territory | Legislation | Environment | Required controls |
| British Columbia | Part 7(28)of B.C. Occupational Health and Safety Regulation, 2004. Required to adhere to 2003 ACGIH standard (TLVs) | All working environments except firefighting | Administrative and engineering controls must be implemented to reduce exposure of workers to levels below ACGIH criteria |
| Alberta | No legal requirements. Recommended to use 2002 ACGIH standard (TLVs) or Humidex | All workplaces | None required |
| Saskatchewan | Section70 of Saskatchewan Occupational Health and Safety Regulations 1996, requires employers to maintain reasonable thermal conditions for work performed using ACGIH standard (TLVs) | Indoor working environments | “Must use effective measures to protect workers from heat stress disorders” including administrative and engineering controls |
| Manitoba | Part 4.12 of Manitoba General Workplace Requirements Regulation 217/2006.Required to adhere to 2006 ACGIH standard (TLVs) | All workplaces | “Must provide worker with information, instruction and training in heat stress symptoms and precautions to be taken” |
| Ontario | Legally required under section 25(2) h of Ontario Occupational Health and Safety Act to protect workers from heat stress. Recommends adhering to latest “unacclimatized” ACGIH standard (TLVs) | Workers in hot environments due to “hot processes” or hot weather | “Must take every precaution reasonable in circumstances to protect worker . . . including hot environment policies and procedures.” Suggests administrative and engineering controls, and protective clothing |
| Quebec | Section2.1,regulation15 of Quebec Règlement sur la qualité du milieu de travail, requires hot environments to be monitored using WBGT index and adhere to TLVs similar to ACGIH standard | All workplaces | Translated in English: “When individuals are to be exposed to temperatures above those indicated; the following conditions apply: The worker must be submitted to medical surveillance and it must be established that his heat tolerance is better than the average individual” |
| New Brunswick | Section 22 to 23 of New Brunswick Occupational Health and Safety Act (O.C.91-1035) “employer shall ensure 1997 ACGIH standard (TLVs) is followed” | All workplaces | “Ensure a competent person instructs employee in significance of heat stress symptoms and in precautions to be taken to avoid injury” |
| Prince Edward Island | Prince Edward Island Occupational Health and Safety Regulation 42.1 legislatively requires that 2006 ACGIH standard (TLVs) is followed | All workplaces | Where there is a risk of injury or illness from heat, employer is required to take “every reasonable precaution to ensure worker safety” including management plan to minimize health risk, writing procedures, and provide equipment and training workers in preventative measures |
| Nova Scotia | Nova Scotia Occupational Health Regulations for Construction states occupational exposure limits in the heat must adhere to values similar to ACGIH standard (TLVs) | Construction | Suggests administrative and engineering controls |
| Newfoundland and Labrador | Section10 of the Occupational Health and Safety Act of the Consolidated Newfoundland Regulation (1165/96) requires workplace conditions of a thermal environment which are reasonable and consistent with degree of work as established by latest ACGIH standard (TLVs) | All workplaces | “Shall make further provisions for health and safety and reasonable thermal comfort of workers.” Suggests administrative and engineering controls, and protective clothing |
| Yukon Territory | Section 9 of the Yukon Occupational Health Regulations 2005, requires thermal conditions to be reasonable and appropriate to the nature of work. Suggests monitoring conditions but does not recommend specific method | Indoor workplaces | “Provide effective protection for the health and safety and reasonable thermal comfort of workers.” Suggests administrative and engineering controls, acclimatization and protective clothing |
| Northwest Territories | Section 9.60 of Revised Regulations of the Northwest Territories 1990, requires hot environments be monitored. Requires adherence to 1994-1995 ACGIH standard (TLVs) | Underground mines | “Manager shall institute a program” including informing and training employees for recognizing symptoms. Protective measures are also required to “adequately protect employees” |
| Nunavut | Section 9.60 of Nunavut Mine Health and Safety Act, Mine Health and Safety Regulations 2003, requires hot environments be monitored. Requires adherence to1994–1995 ACGIH standard (TLVs) | Underground mines | “Manager shall institute a program” including informing and training employees for recognizing symptoms. Protective measures are also required to “adequately protect employees” |

Source: Jay and Kenny. p. 847, Table III.

Figure 7. U.S. Navy PHEL curves



Source: Manual of Naval Preventive Medicine. Department of the Navy. NAVMED P-5010-3 (Rev. 2-2009). p. 3-17, Figure 3-5.

Table 10. U.S. Navy PHEL time limits for PHEL curves I-VI without the
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