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October 30, 2025

The Honorable Amanda Wood Laihow
Acting Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Ave, NW
Room N3626
Washington, DC 20210

Dear Acting Assistant Secretary Laihow:

On behalf of the more than 8,000 members of the American Road & Transportation Builders Association (ARTBA), we respectfully submit the enclosed written responses relating to the proposed heat safety standard. This document comprises ARTBA's responses to questions for the record referenced during the Occupational Safety and Health Administration (OSHA) public hearing on June 24, 2025, at which ARTBA presented oral testimony.

Background

ARTBA represents public and private sector entities of all sizes within the transportation construction industry, including construction contractors, materials suppliers, planning and design firms, state and local transportation agencies, and safety and equipment manufacturers. They plan, design, build and maintain the nation's highways, bridges, transit and rail lines, airports, ports and other critical infrastructure. Our members work to deliver projects safely, efficiently, and cost-effectively.

The transportation construction industry brings extensive experience in managing heat-related workplace hazards. As outlined in ARTBA's written comments on the proposed rule, our members have long implemented effective measures for protecting workers from the inherent risks of working in high-temperature, outdoor environments.

Unfortunately, OSHA's 2024 proposal takes a prescriptive approach, rather than incorporating the industry's strategies that have successfully managed these hazards. During the June hearing, ARTBA identified ways in which the rule is infeasible, including how mandated rest times can actually compromise worker safety. Additionally, there are other complicating factors outside of the control of the employer that may exacerbate an employee's ability to acclimate to a high-heat setting. Finally, ARTBA shared concerns about unintended legal implications for employers from the rule.

During ARTBA's testimony, the association was asked a series of questions by OSHA officials and members of the public. Below, ARTBA offers responses to complement the oral testimony and provide additional details as the agency considers appropriate next steps for this rulemaking.

ARTBA Response to Questions

1. **If the transportation construction industry is granted an emergency response exemption, how will your members ensure that workers are protected from heat in situations requiring around-the-clock work?**

During natural and other disasters, transportation construction workers are often the first called upon to restore and open roadways and related transportation networks so other emergency responders can access them. Regardless of the urgency of such situations, our members will apply proven practices such as rotating workers through tasks with varying exertion levels, allowing natural breaks during operational lulls (e.g., waiting for materials or other deliveries to arrive at the job site), and ensuring access to water and cooling opportunities. In some situations, OSHA must consider the relative priority of rescuing disaster victims against rigid protocols designed for "normal" conditions. As always, our industry employers will take the utmost care to ensure their workers receive essential protections so they do not become victims themselves.

2. **Elaborate on the administrative challenges for small businesses that you see in complying with the Heat Injury and Illness Prevent Plan provision.**

The rule would require extensive documentation, including:

- Tracking individual water consumption and break times.
- Logging ambient temperature on job sites throughout the day.
- Reconfiguring entire operations to account for breaks at prescribed times. However, much transportation construction work is continuous in nature, such as laying asphalt or pouring concrete.

The proposed requirements are impractical for time-sensitive projects and conflict with operational realities such as material delivery schedules and work schedules intended to minimize inconvenience for the traveling public. The cumulative burden could hinder project efficiency and increase costs, with minimal— if any—improvements to existing safety benchmarks.

The bottom line for many industry businesses —particularly smaller firms —would be a newfound need for dedicated personnel just to manage these mounds of paperwork. In this way, the rule would drive up project costs.

3. **Describe the acclimatization protocols used by members.**

Common practices include adjusting work hours to avoid peak heat (e.g., starting at 5 a.m. and ending by mid-afternoon), monitoring new employees for signs of overexertion, and offering flexible scheduling or reduced hours as needed. These protocols are implemented within project time constraints and therefore typically do not require consultation with state DOTs.

4. **What are your thoughts regarding the second option for acclimatization proposed by OSHA?**

ARTBA members believe their current practices are effective and do not see a need for additional, mandated protocols unless evidence suggests otherwise. There are also ambiguities in the proposed rule, such as how OSHA views natural acclimatization, e.g. 1) working in weather conditions/temperatures that gradually increase throughout the season until they reach action levels, or 2) times when the temperatures naturally dip below action levels for a period of a few days, then climb back up. Are new acclimatization procedures required in these circumstances as well?

5. **What are ideas of alternatives that could be used to address the acclimatization requirements?**

Instead of blanket requirements to cover all scenarios, there may be better alternative approaches, such as required protocols when temperatures spike rather than gradually rise over time.

6. **For situations where shade is provided can you elaborate on its use, including things like how the shade is provided. How close is it typically to the work area? If it is portable, so it can relocate as work moves?**

Shade is provided through a combination of:

- Equipment-based solutions: umbrellas on machinery, enclosed cabs with roofs, portable shades when feasible.
- Portable options: tents, cooling trailers, vehicles.
- Personal protective gear: hard hat shades, UV-protective clothing, wide-brimmed hats.
- Natural shade: tree coverage or nearby structures when available.

It is important to note, however, that there are circumstances where creating shade is not feasible due to factors such as proximity to moving traffic where tents create a crash hazard for motorists, or bridge spans where there is not space for erecting tents. In those instances, requiring workers to walk long distances to reach shade is counterproductive to cooling needs, and in fact contributes to overexertion.

7. **What are alternatives you've seen used or the types of controls your members use in situations where shade cannot be used to prevent heat-related illness?**

Workers often use nearby vehicles (e.g., a foreman's or inspector's truck) for cooling. In some cases, fans are mounted on equipment like pavers. Enclosed cabs with air conditioning when available, and rotation of workers into shaded vehicles, are also standard practices. In these situations, staggered breaks are needed rather than scheduled breaks for an entire crew.

8. **How do your members determine when to start using all of these protective measures?**

As a default, industry employers provide all of these protective measures in times of high heat and in climates where it is warm year-round. Water and rest are standard protocols on all job sites.

Employers utilize:

- Buddy systems and safety meeting reminders.
- Foremen and operators who actively observe crews.
- Designated crew members trained in heat illness prevention.
- First aid-certified personnel on site to recognize symptoms early.

In the roadway construction industry, workers typically do not work close to water sources. Therefore, coolers, water bottles, and other drinks are routinely provided in all weather temperatures, not just in hot conditions. This is a standard operating procedure.

9. **Discuss current practices at member employer's work sites on breaks. Are employees able to take breaks as needed to prevent overheating at the moment? If so, how do supervisors and crews arrange for those as needed rest breaks during time-sensitive operations?**

Flexibility is built into daily operations to prioritize worker health without compromising workflow. Breaks are taken whenever needed to protect workers' well-being. Ideally, crews are cross-trained, allowing rotation of various tasks where feasible.

Deliveries of materials and equipment to the job site are critical to timeliness. Thus, when trucks are not queued, simultaneous breaks among personnel are more feasible. However, such practices can vary widely from employer to employer, as smaller companies have less employee capacity to rotate. In these situations, workers simply take breaks when the process allows, or when needed. Workers are encouraged to prioritize their health, and specifically to take breaks rather than becoming overheated.

10. **How could OSHA write regulations that give you flexibility that you're asking for while assuring some minimum protections for workers to make sure they are adequately protected?**

A performance-based approach could resemble silica's Table 1, tailored to:

- Job type (e.g., bridge vs. landscape).
- Daily hazard analysis.
- Task-specific exertion levels (low, moderate, high).
- Worker knowledge of symptoms and access to controls.

Training should focus on practical awareness of the hazard rather than rigid documentation. Employers should ensure access to resources and empower workers to self-monitor. This is the key point and leads to a better performance-based system. Workers need to understand risk factors, and employers need to be responsive to those needs. Some personnel may need more frequent breaks, others less so. If workers and employers better understand the risks and remedies—and work together to meet individual needs—the rule will be most effective.

11. **Speak to the infeasibility of the rule, particularly in your industry there's concern about setting up artificial shade and tents etc.**

Among the key concerns:

- Employers cannot assess personal health risks. These may relate to age, undiagnosed medical conditions, substance use, or information limitations relating to the Health Insurance Portability and Accountability Act (HIPAA).
- Regional temperature triggers are inconsistent; a percentage-based deviation from norms would be more appropriate.
- The provision to provide water is already standard; requiring temperature thresholds adds unnecessary complexity.
- Documentation burdens (e.g., tracking water intake and break timing) may require adding or reassigning full-time staff.
- Daily temperature thresholds should guide—not mandate—controls, especially in regions where thresholds are routinely exceeded. There needs to be accommodation for regions that are typically warmer and where workers are more accustomed to routinely working in those conditions.
- Acclimatization requirements need to better consider outdoor ambient temperature variability and not necessarily need to "reset" every time the temperature dips and exceeds thresholds.

12. **In the case of dual or competing jurisdictions should OSHA defer to DOT? Would you recommend something similar for your uniform traffic guidelines?**

From an industry standpoint, **OSHA should defer to DOT in cases of dual or overlapping jurisdiction**, particularly where DOT's agencies already regulate worker safety and operational procedures specific to transportation construction environments. DOT and its modal administrations (like FHWA, FRA, and FMCSA) have deep expertise in managing safety risks tied to roadway, bridge, and transportation system operations — areas where context, traffic control standards, and mobility considerations are integral to safety outcomes. DOT better understands the complexity and interrelationship between worker and roadway user (motorist) safety needs.

Deference also helps avoid **duplicative or conflicting regulatory requirements** that can create confusion and compliance burdens for employers and workers alike. For example, DOT's work zone safety and traffic control regulations already address many of the same risks OSHA might seek to regulate (e.g., worker exposure to traffic, visibility, and equipment movement). In these settings, a DOT-led standard ensures both safety and operational feasibility without imposing conflicting obligations.

As for the **Manual on Uniform Traffic Control Devices (MUTCD)** or similar such guidance, the same principle applies: consistency and clarity are paramount. A single federal authority (DOT) should set the standards for how work zones and roadway operations are designed and implemented, while OSHA's role should be limited to ensuring general workplace safety in areas not already governed by DOT standards. This division preserves the **one-agency-one-rule** approach the industry has long supported, ensuring efficiency and clear lines of accountability for compliance and enforcement.

13. **What is the responsibility of the employee to hydrate, take breaks when needed, report when there are confounding factors such as health concerns or medication or if they've been engaged in outside activities that might make them vulnerable?**

Employees have an important role to play in recognizing and communicating their own needs and limitations, especially in heat-exposed or high-risk environments. The industry supports a **shared responsibility model,** where safety is a partnership between the employer and employee. Workers should be encouraged to, and not penalized for:

- **Hydrating regularly** and using water, shade, and rest breaks as provided by the employer;
- **Alerting supervisors** if they experience symptoms of heat stress or other medical issues;
- **Reporting confounding factors** such as health conditions, medications, or fatigue from outside activities that may increase their vulnerability; and
- **Following established site protocols** for safety briefings, buddy systems, and self-monitoring.

At the same time, employers bear the primary duty under OSHA's General Duty Clause to provide a safe work environment, including training workers to recognize heat illness symptoms and making sure hydration and rest opportunities are accessible. Employees' responsibilities should be framed within that broader employer obligation assuring expectations are **reasonable, practical, and clearly communicated** so workers can safely participate in their own protection without fear of discipline or job loss.

14. **The standard does not say everyone has to take a break at the same time it just says every employee has to take a break every 15 minutes every two hours, would that be possible to accommodate?**

On the job site, breaks are managed through rotation and timing adjustments, especially for smaller companies with limited staff. Breaks are typically staggered unless operational conditions (e.g., windows of time with no truck deliveries scheduled) allow for group breaks. Rotation is used to maintain workflow while ensuring rest.

In many cases, complying with a mandated break for every employee every two hours, even if staggered, would necessitate adding personnel on the job site, with associated increases in project costs. As stated above, ARTBA believes enhancements to worker safety would be minimal, and certainly not sufficient to justify those additional costs.

15. **If you are otherwise in compliance with every element of the standard would you still get cited if an employee experiences an event?**

Employers are concerned about liability in cases where all reasonable precautions were taken but an incident still occurs. Clarification is needed on how OSHA will assess employer responsibility in such cases. ARTBA is aware of cases where the employer was in full compliance with safety requirements set forth by DOT regulations, yet OSHA still sought citations for "something more that might have been done." Even in situations where citations are vacated at a later date, there are still substantial legal costs incurred by employers as they respond. Likewise, employers are still required to log and report all requisite injuries, illnesses, etc., even if they were in full compliance with the regulations.

16. **How do you provide water on large job sites?**

Members employ baseline measures on all job sites. However, on larger sites they may provide additional supply stations or larger water coolers. Some ARTBA members have reported that they retrofit water stations for larger sites and spread them out throughout the job site. These include water coolers, bottled water and other drinks kept in coolers with ice, trailers with beverages, refrigerated drinks cooled using portable generators, and other options.

Conclusion

ARTBA's appreciates the opportunity to expand upon our testimony and provide these additional responses for the record. We urge OSHA to take into account the transportation construction industry's longstanding experience managing heat-related risks, as well as the practical constraints that make prescriptive compliance measures infeasible in many work settings. A final rule that harmonizes with DOT safety regulations and allows for performance-based compliance will best advance our shared goal of protecting workers while maintaining the efficiency and reliability of the nation's transportation infrastructure system.

Sincerely,

//s//

Bradley A. Sant
Senior Vice President for Safety

//s//

Prianka P. Sharma
Vice President and Counsel for Regulatory Affairs