



## **Testimony of**

**Chip W. Bishop III, Deputy Chief Counsel and  
Bruce E. Lundegren, Assistant Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration**

***Before the  
Occupational Safety and Health Administration, U.S. Department of Labor***

**Date: June 16, 2025  
Location: Via Web, Washington, D.C.  
Subject: Public Hearing on OSHA's Proposed Heat Injury and Illness  
Prevention in Outdoor and Indoor Work Settings**

Thank you, Your Honor, and Members of the Panel. My name is Chip Bishop, and I serve as Deputy Chief Counsel for the Office of Advocacy of the U.S. Small Business Administration. Joining me today is Assistant Chief Counsel Bruce Lundegren.

Advocacy is a federal office that oversees compliance with the Regulatory Flexibility Act, a law that requires federal agencies to assess the impact of their regulations on small entities and consider less burdensome alternatives. We appreciate the opportunity to discuss OSHA's proposed Heat Injury and Illness Prevention rule and its potential impact on small entities.

This rule would affect small businesses in construction, agriculture, maritime, and general industry, as well as small governmental jurisdictions in state plan states.

Advocacy was a member of the Small Business Advocacy Review panel for this rule in 2023 and has discussed the rule at multiple small business roundtables we've hosted. While small entities emphasize that health and safety are their paramount concerns, most object to the one-size-fits-all approach OSHA has taken and want a more flexible and less prescriptive rule.

OSHA estimated that small entities would incur aggregate annualized costs of approximately \$8.2 billion. OSHA has understated the costs, including in rule familiarization and program development. These costs would put small entities at a competitive disadvantage.

Advocacy appreciates the opportunity to reiterate **six** issues that small entities raised during the SBREFA panel that OSHA failed to incorporate. Advocacy urges OSHA to take these issues into account to reform the rule.

1. ***First, OSHA has proposed a one-size-fits-all approach.*** Despite OSHA's assertion that the proposed rule is a programmatic standard intended to be flexible, it largely requires every employer to adopt the same plan with the same provisions, triggers, and protocols. Workplaces and employees vary widely. OSHA should incorporate industry, sector, geographic, operational, and employee flexibilities into any rule.
2. ***Second, the proposed heat triggers are too low.*** Some businesses operate in climates that do not drop below 80-degrees for weeks at a time. Any rule should incorporate geographic and workplace flexibility. One stakeholder also stated that OSHA should look at metabolic body heat rather than environmental temperature. OSHA should consider a performance-based standard based on employee health and safety outcomes, not ease of OSHA enforcement.
3. ***Third, the proposed rule includes ambiguous terms and arbitrary provisions that make compliance difficult.***
  - Inflexible rest breaks are impractical or infeasible for time-sensitive products or materials like asphalt, concrete, or agricultural products. Inflexible rest breaks can create a greater hazard in industries like tree care and tower services where climbing from heights is a significant safety concern.
  - Requiring artificial shade and temporary structures in operations like road construction can introduce greater hazards, such as sight obstructions. OSHA should recognize and provide variances for these situations and sincerely aim to avoid creating new risks.
  - The acclimatization requirements are too rigid and should be based on regional variations, employee susceptibility, confounding factors, and employer observation.
  - Small businesses have questioned the need for annual program re-evaluations if workplace conditions have not changed. They question

seemingly arbitrarily setting the written program exemption at ten or fewer employees when verbal safety briefings have been trusted for larger groups in multiple industries for decades. Others raised concerns about involving outside, third parties in program development and re-evaluation, referencing concerns with OSHA's worker-walkaround rule.

4. ***Fourth, OSHA should clarify standards for hybrid work environments.*** OSHA should consider separate standards for outdoor, indoor, and hybrid work.
5. ***Fifth, OSHA should simplify training requirements.*** Small businesses are concerned about the complex training provisions, which appear to require employers to conduct training on complex medical concepts. A stakeholder noted that the training requirements are too technical and should be simplified for typical small business employers and employees to understand.
6. ***Sixth, OSHA should consider regulatory alternatives that achieve the agency's objectives and minimize the impact on small entities.*** Two potential alternatives would be to limit any rule to workplaces with heat injury and illness rates above a certain threshold, similar to a National Emphasis Program. Another alternative would be a training-only rule based on industry standards or OSHA guidelines, or one that provides employers with a menu of acceptable controls.

Advocacy is concerned that the proposed rule is inflexible, overly prescriptive, and fails to account for sector-specific and regional differences. Advocacy recommends that OSHA withdraw the proposed rule. And, if OSHA decides to propose a new *heat* rule, it should re-engage with small entities and develop a proposal that is performance based, targeted at positive health and safety outcomes, and incorporates the previously stated yet ignored issues in this testimony. Advocacy would welcome the opportunity to participate in any such efforts.

Thank you for your consideration. We are happy to answer any questions.