DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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DOCKET NO. OSHA-2021-0009
HEAT INJURY AND ILLNESS PREVENTION IN
OUTDOOR AND INDOOR WORK SETTINGS
NOTICE OF PROPOSED RULEMAKING

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COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS,
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION,
AND
THE AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

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The Association of American Railroads ("AAR"), the American Short Line and Regional Railroad Association ("ASLRRA"), and the American Public Transportation Association ("APTA"), on behalf of themselves and their member railroads ("the Railroads"), submit the following comments in response to OSHA's August 30, 2024, Notice of Proposed Rulemaking ("NPRM") titled "Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings."[1, 2]

Statement of Interest

AAR is a trade association whose membership includes freight railroads that operate approximately 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States, as well as passenger railroads that operate intercity passenger trains and provide commuter rail service.

ASLRRA is a nonprofit trade association representing the entrepreneurial owners and operators of short line and regional railroads throughout North America. Short line freight is a critical part of the

[1] 89 FR 70698 (August 30, 2024).
[2] APTA joins and endorses this comment as it relates APTA's railroad members. APTA is filing additional comments separately to address the member concerns of those organizations that are responsible for operations in other modes of transportation, such as bus, paratransit, light rail, subway, and waterborne services.

U.S. freight network. The nation's approximately 600 short line carriers provide the first and last mile service for one in every five cars moving each year. Operating nearly 50,000 track miles, or 30% of freight rail in the U.S., they play a vital role in the transportation network.

APTA is a nonprofit international association of 1600 public and private sector organization members which represents a $79 billion industry that directly employs 430,000 people and supports millions of private sector jobs. APTA members are engaged in the areas of bus, paratransit, light rail, commuter rail, subways, waterborne services, and intercity and high-speed passenger rail. This includes transit systems; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient, and economical transit services and products.

America's railroads directly employ nearly 200,000 U.S. employees in good-paying jobs, and are the most environmentally efficient land transportation mode. Freight railroads account for around 40% of long-distance ton-miles—more than any other mode of transportation. America's freight and passenger railroads successfully conduct their unique operations in a 24/7 operating environment in widely varying climate conditions, including indoor and outdoor environments, that would be directly regulated by OSHA if the NPRM is finalized as proposed.

Railroads safely manage work conditions to avoid heat-related injury and illnesses.

OSHA should exclude railroads from the proposed heat injury and illness standards. Most railroads have existing policies and procedures in place to address risks associated with heat. These programs incorporate periodic training and outreach concerning best practices to ensure that railroad employees operate safely in all types of environments. Railroad best practices for heat illness prevention include, among other things, acclimatization; supplying water; distributing information about proper hydration; heightening awareness of heat stress risks; appropriate first aid responses for heat-related illnesses; and ensuring that all locations and work teams are performing heat stress awareness

training, particularly during the summer months. Additionally, railroads are required by Federal Railroad Administration (FRA) regulations—and typically company policy—to engage in job safety briefings prior to specific tasks at job locations to identify hazardous conditions and to take appropriate actions to mitigate those conditions. *See e.g.*, 49 CFR 214.315 (requiring railroads to engage in job safety briefings whenever there is a risk of fouling track). When weather and related conditions are likely to impact the work being performed, railroads address such conditions in job briefings. By following these rules, policies, and procedures, railroads have effectively limited heat-related injuries and illnesses across the nation's rail network.

Unlike many other industries, railroads do not report most accidents, injuries, illnesses, or deaths that occur in the conduct of railroad operations to OSHA. Rather, railroads report such occurrences to FRA under that agency's extensive accident and incident reporting regulations. *See* 49 CFR part 225. The data is reported through specific injury reporting codes for heat-related illnesses as listed in FRA's "Guide for Preparing Accident/Incident Reports."[3] As a result, FRA has collected detailed heat illness/injury data from the railroad industry over an extended period.

FRA safety data demonstrates that railroads' heat-related risk mitigation programs have been successful. There are very few heat-related illnesses and injuries reported in the railroad industry. Over the last five years (2020-2024), the annual average of on-duty heat-related illness/injury reports was about 26 across the entire railroad industry.[4, 5] In context, there are nearly 200,000 railroad employees nationwide. The heat-related injury rate for those employees was less than 0.015 injuries reported per 200,000 railroad employee hours worked. Additionally, a review of FRA's safety data also indicates that

[3] *See* https://railroads.dot.gov/elibrary/fra-guide-preparing-accidentincident-reports-0.
[4] *See* https://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx.
[5] The Railroads reviewed incident data reported under FRA cause codes 1144 (Heat exhaustion - heat-related condition of moderate degree which, if not treated, may lead to heat stroke) and 1141 (Heat stroke/sun stroke - serious heat-related condition in which the patient often stops sweating and experiences a marked rise in core temperature).

over the last 30 years, only a single railroad employee fatality report cites heat as a potential cause.[6] The accident/incident data shows that railroads have appropriate measures in place to mitigate against heat injuries and illnesses. As such, there is not a safety basis for OSHA to apply these extensive and costly regulations to the rail industry. The regulations simply cannot be justified based on the industry's accident/incident record.

FRA safety regulations are comprehensive.

FRA's actions to address heat-related, employee rest, and employee fatigue issues supersede OSHA's authority in the railroad context. Railroad safety is primarily regulated by FRA, which has authority to "prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations." 49 U.S.C. § 20103. FRA has exercised its authority broadly to cover the NPRM's subject matter. OSHA's authority to regulate railroads is limited by FRA's exercise of its statutory authority because OSHA regulations do not apply when another Federal agency "exercise[s] its statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." 29 CFR 653(b)(1). Accordingly, OSHA's authority to regulate ends when another Federal agency—in this case, FRA—regulates in the same area. Additionally, FRA's 1978 Joint Policy Statement with OSHA, which remains in effect, envisions an evolving, cooperative relationship between the two Federal agencies:

> We believe the policy set forth in this document will assure that each of the principal Federal agencies charged with the responsibility for carrying out this program, that is, FRA and OSHA, will concentrate its efforts in those areas in which it possesses the greatest experience and expertise. In those cases in which there may be some question as to which is the primary regulatory agency, cooperative efforts between the two agencies should avoid the creation of regulatory gaps on the one hand, or unnecessary duplication on the other. At any time that a

[6] Given the FRA railroad safety data described above, it is not surprising that railroads are not mentioned in the extensive NPRM discussions. Most heat-related fatalities occur at very small businesses (under ten employees). Virtually all railroad employees in this country work for much larger employers who have established procedures to ensure the safety of their employees in varying climates.

> hazardous working condition impacts upon the overall safety of railroad operations, FRA will take the initiative in developing a proper regulatory response.

43 FR 10583, 10590 (1978) ("1978 Joint Policy Statement").

OSHA acknowledges in the NPRM's preamble that FRA has acted in certain discrete areas. 89 FR at 70809. The areas identified by OSHA include non-steam-powered locomotives purchased or remanufactured after June 8, 2012 (49 CFR 229.119(g)), camp cars (49 CFR 228.313(c)), and certain on-track roadway maintenance machines (49 CFR 214.505(a)). However, in contending that FRA regulations are discrete and limited in the context of the NPRM's subject matter, OSHA overlooks several regulatory and non-regulatory FRA actions that directly target issues related to heat injury and illness, rest times, and health monitoring protocols that are central to OSHA's proposed heat injury and illness prevention regulatory scheme.

FRA has already initiated a process related to the effect recent extreme weather events have on railroads, including extreme rises in temperature and the adverse impact heat exposure has on railroad workers. On November 24, 2023, FRA issued Safety Advisory 2023-07: Review and Implement New Predictive Weather Modeling and Proactive Safety Processes Across the National Rail Network to Prevent Weather-Related Accidents and Incidents. 88 FR 82500 ("Safety Advisory 2023-07"), which recognizes that extreme weather conditions, including hurricanes, tornadoes, wildfires, flooding, mudslides and ***summer heat***, present hazards to railroad workers, operations, and infrastructures. "To reduce weather-related accidents/incidents and improve the efficiency of the national rail network during severe weather conditions," FRA advises that railroads (1) "review existing policies, procedures, and operating rules related to predicting, monitoring, communicating, and operating during severe weather conditions or subsequent to extreme weather events" and (2) "collaborate to develop best practices for utilizing weather forecasting technologies, predictive weather models, and weather-related action plans throughout the industry." *See id*. In so doing, FRA has exercised its authority and assumed

responsibility for addressing policies and practices related to extreme weather conditions, including heat, and has encouraged railroads to review and restructure policies and procedures to meet recent climate changes. *See id.* Safety Advisory 2023-07 provided six recommendations to the rail industry:

1. Railroads should evaluate their communication and training programs, rules, policies, and procedures related to severe weather and ensure those programs are adequate for promptly implementing weather-related action plans.

2. Railroads should evaluate and assess their weather forecasting policies and procedures; railroads should consider integrating weather forecasting policies and procedures (and the outcomes from those policies and procedures) into dispatch operations and determine whether those policies and procedures should be incorporated into positive train control systems.

3. Railroads should evaluate their operating infrastructure to identify critical and geographical elements susceptible to severe weather events.

4. Railroads should evaluate existing weather-related action plans and ensure that those plans detail the necessary proactive planning, maintenance, communication, and other actions necessary to address the risks presented by severe weather conditions.

5. Railroads should establish standard operating thresholds to ensure their weather-related action plans adequately prepare for severe weather events.

6. Railroads should work together to develop summaries for using weather forecasting technologies, predictive weather models, and weather-related action plans throughout the industry.

See id. Significantly, FRA recognizes that developing a proper regulatory response involves input from those with the greatest expertise and experience—the railroads. Thus, not only has FRA asserted jurisdiction over risks presented by extreme weather conditions, including heat, but FRA has also made clear that railroads, themselves, are in the best position to assess potential hazards, review existing procedures, collaborate among each other, and then develop monitoring systems, thresholds, and action plans to address the risks presented. Notably, FRA seeks to develop a comprehensive plan addressing all types of recent severe climate and weather-related conditions affecting railroad workers.

FRA's July, 2024 Resiliency Planning bulletin further demonstrates its concerns with ensuring reliability, safety and continuity of railroad operations during extreme heat and other weather events.[7] After first recognizing that heat waves have become more frequent in the United States, FRA outlines the adverse effects heat waves have on four aspects of railroad infrastructure: (1) track expansion, (2) material degradation, (3) signal systems, and (4) human health. In so doing, FRA considered railroad workers as part of the railroad infrastructure. In other words, when it comes to extreme heat conditions, railroad workers are considered part of the entire railroad operation. By contrast, OSHA's NPRM addresses only human factors relating to heat exposure. As noted above, FRA made clear in the 1978 Joint Policy Statement, that "any time that a hazardous working condition impacts upon the overall safety of railroad operations, FRA will take the initiative in developing a proper regulatory response." 43 FR at 10590. Application of the NPRM to railroads would create overlapping regulations of the same occupational hazard (railroad employee heat exposure) by two governmental agencies, and this is the exact problem FRA sought to avoid when it issued the 1978 Joint Policy Statement.

FRA also has longstanding regulations governing Hours of Service employees that preclude the application of OSHA's heat injury and illness prevention regulations concerning rest breaks for train operations employees, dispatchers, and signal system employees. 49 U.S.C. ch. 211; 49 CFR part 228. The statutes and regulations govern how railroads manage employee rest breaks both between and within shifts. The comprehensive statutory and regulatory scheme for Hours of Service employees evidences that FRA has exclusive authority over the entire area of work and rest breaks for railroad employees, and the NPRM requirements of mandatory breaks at specified heat triggers would conflict with FRA's longstanding Hours of Service regulations. 49 U.S.C. § 21109.

[7] https://railroads.dot.gov/sites/fra.dot.gov/files/2024-07/FRA%20Resiliency%20Bulletin%20July%202024_%20PDFa.pdf (Last accessed on January 7, 2025).

Federal courts have routinely barred states from intruding on the FRA's authority to regulate hours of service, and OSHA is similarly prohibited from intruding on this subject matter given OSHA's negative preemption provision. The U.S. Supreme Court has held that "congressional legislation as to hours of service so completely occupie[s] the field as to prevent state legislation on that subject." *Southern Ry. Co. v. R.R. Comm'n of Indiana*, 236 U.S. 439, 446 (1915) (referencing *Northern Pacific Ry. v. Washington*, 222 U. S. 371 (1912), and *Erie R. Co. v. New York*, 233 U. S. 671 (1914)). FRA acknowledged this case law when it amended its Hours of Service regulations in 2011, noting that the Hours of Service Laws "have been interpreted by the Supreme Court as totally preempting the field of the hours of labor of railroad employees." "Hours of Service of Railroad Employees; Substantive Regulations for Train Employees Providing Commuter and Intercity Rail Passenger Transportation; Conforming Amendments to Recordkeeping Requirements," Final Rule, 76 FR 50360, 50392 (Aug. 12, 2011).

And courts have continued to find that preemption exists where states enact legislation intruding on a railroad worker's hours of service. In *Fowler v. Union Pac. R.R. Co,* 2018 WL 10126882 (C.D. Cal. April 30, 2018), *amended,* 2018 WL 10126883 (C.D. Cal. May 17, 2018) and *Sumlin v. BNSF Ry. Co.,* 2018 WL 2723458, *3 (C.D. Cal. Apr. 10, 2018), two U.S. District Courts for the Central District of California found that plaintiffs' assertions that their employer-railroads had failed to provide them with a paid ten-minute rest period for every four hours of work in violation of California law were preempted by Federal law. Likewise, in *Logan v. Union Pac. R.R. Co.*, 2018 WL 2976099 (E.D. Wash. June 13, 2018), a district court from the Eastern District of Washington granted two railroads judgment on the pleadings in consolidated actions in which the plaintiffs alleged the railroads violated Washington's law requiring rest breaks. The *Logan* court found: "(1) the HSA occupies ***the field of hours of work and rest for railroad employees*** and (2) Washington's regulation of work hours requiring a ten-minute rest period improperly intrudes upon this domain." *Id.* at *4 (emphasis added). In so holding, the court flatly

rejected plaintiffs' arguments that Washington's law requiring rest breaks related to "work place conditions and wages" as opposed to "related to rail safety." *Id.* at *5.

FRA also already regulates health monitoring protocols, similar to the protocols imposed by the NPRM. FRA regulations require passenger rail operations, Class I freight railroads, and certain other freight railroads to each develop and implement risk-based hazard analyses through their Risk Reduction, System Safety, and Fatigue Risk Management Programs in which railroads must identify and analyze applicable hazards and take action to mitigate, if not eliminate, any general risk and fatigue risk. *See* 49 CFR parts 270 and 271. Specifically, under FRA's Fatigue Risk Management Program regulations, a railroad must analyze the "general health and medical conditions" of its employees, any scheduling issues that may affect sleep, and the characteristics of each railroad job that may impact an employee's fatigue. 49 CFR 271.607. Together, FRA's Risk Reduction, System Safety, and Fatigue Risk Management Program regulations again illustrate FRA's exercise of authority in the realm of employee scheduling and rest periods, thus further ousting OSHA's ability to require employee breaks. Moreover, these regulations demonstrate that FRA is actively concerned with, and capable of, regulating employee health-monitoring protocols. Therefore, FRA is the appropriate Federal agency to address railroad heat monitoring protocols rather than OSHA.

Additionally, FRA's regulations comprehensively address various hot and cold-weather related infrastructure and equipment concerns that relate to the safety of railroad operations. For example, FRA has implemented regulations targeting cold temperatures by requiring on-track maintenance machines manufactured after 1991 to have an operative heater when the machine is operated at an ambient temperature of less than 50°F. 49 CFR 214.517(b). Similarly, just as locomotives must be equipped with an air conditioning unit in the cab, locomotives must also be equipped with a heating arrangement and proper ventilation to ensure that the temperature in the cab does not fall below 60°F. 49 CFR 229.119(d). FRA regulations also govern railroad rolling equipment-related safety considerations

such as the operation of train air brakes in varying temperatures, *see, e.g.*, 49 CFR 232.107 (addressing train air brake requirements and "cold weather operations"). In the area of rail industry infrastructure, FRA regulations govern the temperature ranges for continuous welded rail (railroad track). *See, e.g.*, 49 CFR 213.119). While these are not specific workplace heat exposure safety rules, they illustrate that FRA concerns itself with—and has taken regulatory actions related to—the safe operation of railroads in varying weather conditions, including hot weather operations. Accordingly, OSHA should defer to FRA action as it relates to heat-related conditions.

OSHA fails to consider specific personal characteristics and work factors that may affect heat strain.

The NPRM does not consider health, physical capabilities, experience, training, preventive behaviors, physical exertion, and work environment, whereas railroads have built-in measures that take all this information into consideration. Railroads assess as part of the hiring process whether a candidate for employment can perform job-specific tasks related to the position. For example, a railroad job candidate's offer of employment may be conditioned upon passing a functional capacity evaluation (FCE), which is a series of physical tests that assess a person's abilities to perform work-related tasks. FCEs are usually administered by a physical therapist or occupational therapist that will interview the railroad candidate, consider his or her medical records, and perform a series of physical screening to measure strength, stamina, range of motion, flexibility, and other physical parameters that pertain to the particular railroad position.

The NPRM's procedures to prevent heat-related injuries and illnesses are not feasible in a railroad operational environment.

The requirement to provide breaks on a regularly timed schedule is also counter to the work railroads perform; specifically, when operating locomotives across the country, railroad employees cannot leave their positions to travel to a shady spot or to a location that may have air conditioning. Trains operate on strict schedules and are dependent on switching at certain locations and building new

trains to transport property between states. Railroad employees are not in positions to leave their assignment without causing a host of domino-effect problems. For example, the NPRM fails to consider implications for locomotive engineers and conductors who, although assigned to the same train, have completely different work responsibilities. While under normal conditions a locomotive engineer's time is spent almost exclusively in the locomotive cab, a conductor may spend a great deal of time within an air conditioned locomotive cab and then perform tasks outside of the cab. The conductor's time spent outdoors will greatly vary and will often occur far away from any railroad property. Under the proposed rule, if a conductor spends more than 15 minutes working on the ground, then he or she would be subject to a mandatory rest break if the temperature reaches above 80°F. However, the locomotive engineer working with the conductor would not be subject to the rest break requirement because he or she would be working in an air conditioned cab. But, because the conductor controls the movement of the train, the locomotive would be forced to stop, and the engineer would be required to take the same de facto break as the conductor. This concept is nonsensical. Requiring the train crew to cease operations so that the conductor can take a mandated break could potentially throw the train completely off schedule resulting in difficulties servicing customers, making necessary crew changes, and forcing the railroad to bring in additional employees on short notice to perform unscheduled work.

The NPRM's work site identification requirements for emergency response plans are infeasible in the railroad environment.

In many circumstances, it will be impossible for railroads to comply with the proposed requirements for employers to provide clear and precise directions, including a specific address, to an employee's work site which could be provided to emergency dispatchers. Railroad work sites are often remote or hard to reach, and in many circumstances the location will not have an address. While the preamble suggests that it may be acceptable to direct a responder to a location by using GPS coordinates or a description of how to get to the specific location from the main road, entrance,

building, etc., the regulatory text is far more restrictive. However, assuming that OSHA will—in some instances—accept providing alternative directions that do not rely on a specific address, OSHA fails to clearly identify when alternative directions would be considered acceptable under the proposed regulations. OSHA should revise the proposed regulatory text to explicitly state that heat emergency response plans may rely on alternative, acceptable methods that do not rely on a specific address to direct a responder to a work site.

Emergency Response Plans should not rely on a designated person to invoke heat emergency procedures.

OSHA proposes that a heat emergency response plan must include the individual(s) designated to ensure that heat emergency procedures are invoked when appropriate. Initiating emergency response should not be restricted to a designated person(s). Relying solely on designated persons could potentially be counterproductive. Such a designation creates a failure point in that employees will look only to the designated person or persons to initiate an emergency response plan. Railroads empower their employees to take a safe course of action, but the rule would require that the determination about the safe course be delegated to a designated person. Any trained employee should be capable of initiating response when time is critical. Therefore, OSHA should strike this proposed requirement.

The NPRM's requirements are overly burdensome and unnecessary in several ways.

Temperature thresholds: The NPRM would establish an initial heat trigger when there is a heat index of 80°F or a wet bulb globe temperature (WBGT) equal to the NIOSH Recommended Alert Limit (RAL) and would establish a high heat trigger when there is a heat index of 90°F or a WBGT equal to the NIOSH Recommended Exposure Limit. OSHA's temperature thresholds are too low and do not—in contrast to state-specific regulations—take into account variances in climates and weather patterns throughout the country. For instance, Nevada, which treats any day where the temperature reaches or exceeds 90°F as a "heat priority day," considered whether it should adopt a standard that would treat

any day when the heat index is expected to be 80°F or greater as heat priority day, but ultimately decided the higher temperature threshold was appropriate based on the unique climate in the state.[8] As another example, Minnesota's state regulation sets its heat threshold at 86°F for light indoor work and has no outdoor temperature requirements at all. Finally, while California's state regulation sets its *initial* heat trigger at 80°F for outdoors and 82°F for indoors, its *high* heat trigger is 95°F.

Heat hazard alerts: The low temperature thresholds in the NPRM would effectively result in requiring a heat hazard alert to be issued almost daily in warmer geographic areas. The merit of providing such an alert/briefing "periodically" during high heat season can be reasonably argued, but there is no value in requiring railroads to issue this alert daily and for weeks on end, particularly given that railroad supervisors are already briefing employees on many job-specific, but not necessarily heat related, hazards during a pre-shift safety briefing.

Acclimatization plans: The NPRM proposes to require onerous acclimatization plans for new and returning employees. In addition to the Railroads' stated position above that rest time and fatigue are governed by FRA regulations and, therefore, OSHA is precluded from regulating, the NPRM's approach with respect to acclimatization plans is not risk-based and fails to consider relevant information in determining if a new or returning employee requires an extended acclimatization, as contemplated in the NPRM. For instance, a person who lives and works in Texas who leaves work to take a summer vacation in Texas, Louisiana, or other similarly located geographic area would not, from a safety perspective, necessarily need to be re-acclimated before resuming work.

Site-specific HIIPPs: The NPRM would require railroads to prepare a Heat Illness and Injury Prevention Plan (HIIPP) for each "work site," (or "work site type"). A site-specific HIIPP would be highly

[8] Guidance for Nevadan Business related to the Heat Illness National Emphasis Program, State Nevada Occupational Safety & Health Administration, May 4, 2022. https://dir.nv.gov/uploadedFiles/dirnvgov/content/OSHA/Guidance/Guidance%20for%20Nevadan%20Business%20Related%20to%20the%20Heat%20Illness%20National%20Emphasis%20Program%20(5-4-2022).pdf

burdensome in the railroad environment and would not contribute to improving safety. Railroads have employees performing many highly varied types of work tasks at a variety of work sites located on their networks. For example, in a single shift, a freight railroad conductor might be in and out of the locomotive cab while inspecting equipment, coupling and uncoupling cars, communicating with customers at outlying facilities, and performing a variety of other tasks. Meanwhile a signal maintainer is going to be in and out of his or her work vehicle to conduct inspections, maintenance, and repairs on railroad signal systems along the railroad's network. These are just two examples, but there are dozens of different railroad jobs that are potentially impacted by the NPRM. Moreover, for a large railroad company, there are thousands of people performing these types of jobs working across a vast multi-state geographic range including wide array of weather zones. Even for smaller freight and commuter railroads, their networks may range from a few miles to hundreds of miles long. The function of the rail business is to transport people and products from one location to another. Most railroad employees do not work in a single defined space, and they also do not perform a single defined task. As a result, employees would need to be trained on—and comply with—multiple HIIPPs, but OSHA provides no evidence that doing so will contribute to mitigating heat-related illnesses and injuries.

List of work activities: The proposed requirement for an employer to include a comprehensive list of the type of work activities covered by the HIIPP is an overly burdensome paperwork exercise that is not necessary for reducing heat-related injuries and illnesses. The Railroads' understanding of the NPRM is that it would apply to any employee that is working in an environment that meets a heat or high heat trigger threshold—irrespective of whether employee's work activity is listed in the HIIPP—unless that employee falls into an exempted category. Therefore, cataloging work activities of those employees who are subject to the regulations to include in an HIIPP is unnecessary.

Heat safety coordinators: The NPRM requires the employer to designate one or more heat safety coordinators to implement and monitor the HIIPP; however, the NPRM provides little guidance

about how employers are to select and assign these positions. Presumably, a railroad could assign a supervisor to be the Heat Safety Coordinator, as the training requirements for supervisors and heat safety coordinators are duplicative. Assuming this is correct, it is unnecessary for the HIIPP to require the name and contact information for the Heat Safety Coordinator because employees are well aware of who their supervisors are and how to contact them.

Access to written HIIPPs: The NPRM states that employers must make the HIIPP readily available at the work site, which is problematic because the way the NPRM is written appears to suggest that railroads would be required to provide a hard copy of the HIIPP at any location on its network where an employee may experience a heat trigger. However, work vehicles and locomotive cabs have limited space, and it would be cumbersome to require a paper copy in such locations. Moreover, requiring a paper copy, particularly in large organizations, is likely to result in employees carrying around outdated HIIPPs. A better alternative would be to allow employers—subject to existing FRA regulations concerning electronic devices at 49 CFR part 218, subpart C—to make the HIIPP available electronically through a company intranet or other access point.

Indoor work site monitoring plans: It is unreasonable to require employers to measure and retain records of the measurements for indoor work sites when there are no radiant heat sources and no solar radiant load. Outdoor work sites do not have similar retention requirements. Employers may simply monitor local forecasts and real-time heat index data for determining initial and high heat trigger conditions. While OSHA provides an exemption from monitoring, that exemption applies only when an employer operates based on the assumption that the temperature at a work area is at or above both the initial heat and high heat triggers. This approach disincentivizes the implementation of responsible temperature management in indoor work settings by providing regulatory relief only in situations where employers assume that its indoor employees work at temperatures above the high heat trigger.

Evaluation of fan use: The proposed rule would require employers to potentially discontinue the use of fans if the ambient temperature is above 102°F. The proposed rule fails to take into account that fans are often used for purposes other than cooling. For example, fans are used in railway tunnels for the primary purpose of ventilation and to ensure proper air circulation. Additionally, fans can be automatically activated in tunnels where they are part of a smoke control system that directs smoke away from evacuation routes. The Railroads request that OSHA explicitly exempt the use of fans in tunnels and fans used in conjunction with smoke control systems from this requirement.

Language requirements: It is not reasonable to require the HIIPP to be made available in a language that each employee, supervisor, and heat and safety coordinator understands. Railroads in the United States use English-based rules, procedures, manuals, and other documentation. Railroad communication in the United States is done exclusively in English. It would be unreasonable and overly burdensome to require railroads to provide its HIIPP in different languages than English.

Water temperature: The Railroads do not support a requirement that drinking water be provided at a specific temperature or in a temperature range. Such a requirement would be unnecessarily prescriptive. OSHA's proposal uses the term "suitably cool," which is adequate to ensure that employers provide water that will assist in reducing heat-related injuries or illnesses.

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For the reasons stated above, the Railroads urge OSHA to exclude railroads from the proposed heat injury and illness standards.

Respectfully submitted,

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