

DEPARTMENT OF LABOR  
OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION

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DOCKET NO. OSHA–2021-0009;  
HEAT INJURY AND ILLNESS PREVENTION IN OUTDOOR AND INDOOR WORK SETTINGS

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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 October 27, 2021, Advance Notice of Proposed Rulemaking (“ANPRM”) addressing heat-related injuries and illnesses.<sup>1</sup> 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.

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<sup>1</sup> 86 Fed. Reg. 59,309 (Oct. 27, 2021).

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 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 1,300 public and private sector organization which represent a \$71 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.

The Railroads' primary safety regulator, the Federal Railroad Administration ("FRA"), regulates heat-related safety considerations of railroad operations in a number of different contexts. For example, FRA's regulations at 49 C.F.R. Part 229 address heat-related considerations for train crews, railroad mechanical employees, and any other railroad employees that might occupy locomotive cabs. Section 219.119 requires that any new or remanufactured locomotives placed in service after 2012 be equipped with air conditioning units that must be regularly inspected and maintained. Upon the express authority of Congress (49 U.S.C. § 21106), FRA also regulates temperature-related considerations for the occupants of camp cars (typically used by railroad maintenance of way or signal employees).<sup>2</sup> Section 228.313 addresses air conditioning, ventilation, and heating requirements for camp cars, and Part 228 specifically defines the relevant temperatures (68 and 75 degrees Fahrenheit) camp cars must be capable of maintaining during both hot and cold weather situations. Further, in FRA's "Railroad Workplace Safety" regulation at 49 C.F.R. Part 214, the agency requires that certain roadway maintenance machines, most often operated by railroad roadway workers (maintenance of way employees), be equipped with operative air conditioning and ventilation systems. 49 C.F.R. § 214.505.

FRA's regulations also comprehensively address various hot and cold-weather related infrastructure and equipment concerns that relate to the safety of railroad operations. For example, in the area of railroad industry infrastructure (*see, e.g.*, 49 C.F.R. § 213.119), FRA

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<sup>2</sup> A trailer and/or on-track vehicle, including an outfit, camp, bunk car, or modular home mounted on a flatcar, or any other mobile vehicle or mobile structure used to house or accommodate an employee of maintenance of way (MOW) worker. *See* 49 C.F.R. §228.5.

regulations govern the temperature ranges for continuous welded rail (railroad track). 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 C.F.R. § 232.107 addressing train air brake requirements and “cold weather operations”). 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.

Relatedly, as OSHA is aware, 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 casualty reporting regulations. *See* 49 C.F.R. Part 225. In that respect, FRA has long collected railroad industry heat illness/injury data. FRA has established specific injury reporting codes for heat-related illnesses/injuries as listed in FRA’s “Guide for Preparing Accident/Incident Reports”.<sup>3</sup> In the railroad industry, it is extremely unlikely that heat-related injuries or illnesses are being underreported due to varying state standards and other considerations as discussed in the ANPRM.

A review of FRA safety data indicates that heat-related illnesses have not been an issue in the railroad industry. In 2020, the most recent full year for which complete FRA safety data are available, there were only 31 heat-related on-duty railroad employee illness/injury reports across the entire industry. In context, there are nearly 200,000 railroad employees nationwide,

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<sup>3</sup> *See* <https://railroads.dot.gov/elibrary/fra-guide-preparing-accidentincident-reports-0>.

and in 2020 the heat-related injury rate for those employees was less than .017 injuries per 200,000 railroad employee hours worked.<sup>4</sup> FRA data for 2021 (currently available through October 31, 2021) indicates only ten potential heat-related employee illnesses/injuries across the entire railroad industry (or less than .007 injuries per 200,000 employee hours worked). A review of FRA's on-duty railroad employee fatality data since 1975 indicates only a single employee fatality report cites heat as a potential cause.<sup>5</sup>

In sum, the railroads have been successfully and safely conducting operations in extreme hot and cold climates in this country for over 150 years. FRA has long collected heat-related injury/illness data for railroad employees and has carefully evaluated the concerns raised in OSHA's ANPRM in many contexts. Applying its industry-specific expertise, FRA has implemented climate-related safety regulations that affect a wide variety of railroad occupations and infrastructure/rolling equipment standards. The safety regulation of railroad operations in various weather and climates is a field long occupied by FRA. Pursuant to longstanding jurisdictional precedents governing the federal safety regulation of railroad operations, OSHA should exclude railroads from this proceeding and instead permit FRA to continue to regulate temperature- and weather- related safety considerations unique to

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<sup>4</sup> See <https://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx>.

<sup>5</sup> See <https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/Query/casemp.aspx>. Also, given the FRA railroad safety data described above, it is not surprising that railroads are not mentioned in the extensive ANPRM discussions. OSHA notes that most heat-related fatalities occur at very small businesses (under 10 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.

railroad operations and occupations. *See, e.g.,* 1978 FRA & OSHA Policy Statement, 43 Fed. Reg. 10,583 (Mar. 14, 1978).

Thank you for your consideration of these comments.

Respectfully submitted,



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