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May 11, 2021

James Frederick
Acting Assistant Secretary of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Mr. Frederick:

We'd like to thank you for your considerable efforts to protect workers from the spread of COVID-19. With your commitment to working people, we are hopeful that the Occupational Safety and Health Administration (OSHA) will once again become a leader in holding employers accountable for creating a safe workplace. As part of that effort, we ask that OSHA issue a heat standard to protect workers from heat-related illness and death.

On July 17, 2018, Public Citizen, a consumer and health advocacy group with more than 500,000 members and supporters nationwide, petitioned OSHA to issue a standard to protect workers from occupational exposure to excessive heat.¹ We were joined in the petition by Farmworker Justice, United Farmworkers, former OSHA directors Drs. Eula Bingham and David Michaels, former CalOSHA director Ellen Widess, U.C. Davis heat illness prevention expert Dr. Mark Schenker, and 131 other organizations. The previous administration took no action on the petition.

We are asking you to review our petition and begin rulemaking to issue a heat standard.

Heat is the leading weather-related killer, and it is rapidly becoming more dangerous due to global warming, as 20 of the last 21 years were the hottest on record.² The summer of 2020 saw new heat records set throughout the nation for both high temperatures and the

¹ Petition from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor (Jul. 17, 2018), <https://bit.ly/2wjJSzy>. Press Release, Public Citizen, *As Climate Heats Up, Government Must Protect Workers From Heat* (Jul. 17, 2018) <https://bit.ly/2LIHIoD>.

² *Severe Weather Awareness – Heat Waves*, NATIONAL WEATHER SERVICE (viewed on Apr. 29, 2021), <https://bit.ly/2CQ3X6u>; *Global Temperature, Latest Annual Anomaly: 2020*, NASA, <https://go.nasa.gov/30gTpqR>; Rebecca Lindsey and LuAnn Dahlman, *Climate Change: Global Temperature*, NOAA Climate.gov, <https://bit.ly/3kVLR4Y>.

number of days at extreme high temperatures,³ including the hottest recorded temperature on the planet in more than a century, set on August 16th in Death Valley, California.⁴ Excessive heat can cause heat stroke and even death if not treated properly. Repetitive heat illness can lead to long-term health effects. Heat stress also exacerbates existing health problems like asthma, kidney disease, and heart disease. Workers in agriculture and construction are at highest risk, but the problem affects all workers exposed to heat, including indoor workers without climate-controlled environments.

Protecting workers from heat also has economic benefits. In high heat, people work less effectively due to “diminished ability for physical exertion and for completing mental tasks,” which reduces productivity, increases the risk of accidents, and drives up medical expenses.⁵ Employers in the U.S. spend \$220 billion every year on injuries and illnesses related to excessive heat.⁶ The costs of lower labor productivity under rising temperatures is estimated to reach up to \$155 billion in lost wages per year in the U.S. by 2090 according to the 2018 National Climate Assessment.⁷ These impacts can be mitigated by heat protections. For instance, in 2011 a central Texas municipality implemented a heat illness prevention program for outdoor municipal workers that not only resulted in a significant decrease in heat-related illnesses, but a decrease in worker’s compensation costs by 50% per heat-related illness.⁸

It is also important to understand the racial injustice in workplace heat hazard risks. Essential jobs that experience the highest rates of heat illness are disproportionately held by Black and Brown workers. For example, while Latinx workers make up 17.6% of the entire workforce, they make up 65% of farm laborers, graders, and sorters.⁹ And crop workers die from heat stress at a rate 20 times greater than the rest of the U.S. workforce.¹⁰ More than 46% of laborers and freight, stock, and materials movers are Black and Hispanic/Latinx, as are more than 52% of laundry and dry-cleaning workers, 52% of cooks, and 58% of those working in warehouses and storage.¹¹ While Black Americans only make up 12.1% of the total workforce, they make up 25% of postal

³ Summer 2020 Ranked as One of the Hottest on Record for U.S., NOAA (Sep. 9, 2020), <https://bit.ly/3cFMlJf>; Audrey Jensen, *Record-Breaking August Cements Summer 2020 as Hottest in Phoenix History*, ARIZONA REPUBLIC (Sep. 5, 2020), <https://bit.ly/34cuq9A>; Jonathan Erdman, *July and All-Time Heat Records Smashed in Texas, New Mexico; Searing Heat to Return This Weekend to Midwest, East*, THE WEATHER CHANNEL (July, 15, 2020), <https://bit.ly/2Gk43WB>.

⁴ Bob Henson, *We May Have Just Seen the World’s Highest Recorded Temperature Ever. Has That Sunk in?*, THE GUARDIAN (Aug. 19, 2020), <https://bit.ly/2FY9zic>.

⁵ *Climate Change and Labor: Impacts on Health in the Workplace*, UNITED NATIONS DEVELOPMENT PROGRAMME (viewed on Apr. 29, 2021), <https://bit.ly/2dGd79p>; Sidney Shapiro & Katherine Tracy, *Public Law and Climate Disasters Occupational Health and Safety Law* (Rosemary Lyster *et al.* eds., 1st ed., Edward Elgar Pub, 2018), <https://amzn.to/2QTBWxJ>.

⁶ Heidi E. Lehmann, *Hidden Heat: The Costly Impact of Heat-Related Injuries*, *North American Clean Energy* (July 15, 2020), <https://bit.ly/3fCmHZN>.

⁷ U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II* (Nov. 2018), <https://bit.ly/2r3WZ5S>.

⁸ Ronda B. McCarthy *et al.*, *1536 Occupational Heat Illness in Outdoor Workers Before and After Implementation of a Heat Stress Awareness Program*, 75 *BMJ JOURNALS OCCUPATIONAL AND ENVIRONMENTAL MEDICINES* (2018) <https://bit.ly/32j3XFA>.

⁹ United States Department of Agriculture Economic Research Service, *Farm Labor* (data from 2018), <https://bit.ly/339Ks4F>.

¹⁰ CDC, *Heat Related Deaths Among Farmworkers*, United States — 1996-2006, <https://bit.ly/3i9XgMw>.

¹¹ BLS Labor Force Statistics from the Current Population Survey (2020) <https://www.bls.gov/cps/cpsaat11.htm>; BLS, *Labor Force Statistics from the Current Population Survey* (2020), <https://www.bls.gov/cps/cpsaat18.htm>.

workers and 23% of UPS drivers.¹² They also make up nearly 28% of refuse and recyclable materials collectors nationally and account for well over half the collectors in many areas of the country.¹³ Grounds maintenance workers are more than 44% Latinx, while roofers are more than 53% Latinx.¹⁴ All of these jobs have higher rates of heat-related illness and death.

The National Institute of Occupational Safety and Health (NIOSH) issued criteria for a recommended heat standard in 1972, which it updated in 1986 and 2016.¹⁵ California, Minnesota, Washington, and the U.S. military have heat stress standards. Maryland¹⁶ and Oregon¹⁷ are in the process of writing standards as well. It's time for the federal government to follow their lead to ensure workers throughout the country are protected.

Absent a federal standard, OSHA polices heat-related injuries and deaths only by enforcing its “catch all” general duty clause that requires employers to ensure that their workplaces are “free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees.” Enforcement is scarce, and it is reactive rather than preventive. Notably, from 2013 through 2017, California used its heat standard to conduct 50 times more inspections resulting in a heat-related violation than OSHA did nationwide under the general duty clause.¹⁸

The Occupational Safety and Health Review Commission, an independent federal agency created to adjudicate appeals of OSHA citations and penalties, has held that the general duty clause places a high burden on OSHA to demonstrate that the employer failed to provide safe workplaces. On July 15, 2020, the Commission handed down decisions in five cases that make it very difficult for OSHA to protect workers from heat stress under the general duty clause. OSHA had issued citations against the U.S. Postal Service for exposing its employees “to recognized hazards of working outside during periods of excessive heat.” In all five cases, the Commission vacated the citations because OSHA made no attempt to defend the validity of NIOSH heat stress guidelines that define what

¹² BLS, Labor Force Statistics from the Current Population Survey (2020), <https://www.bls.gov/cps/cpsaat18.htm>; UPS: Who We Are, <https://bit.ly/3n0FKOo>.

¹³ BLS Labor Force Statistics from the Current Population Survey (2020) <https://www.bls.gov/cps/cpsaat11.htm>; Cole Rosengren and E.A. Crunden, *Risk and Race Concerns Fuel Ongoing Debate around Hazard Pay During Pandemic*, WASTE DIVE (July 9, 2020), <https://bit.ly/2S3Iz39>; Juliana Feliciano Reyes, *Trash is Piling Up but People Aren't Blaming Philly Sanitation Workers*, PHILADELPHIA INQUIRER (Aug. 4, 2020), <https://bit.ly/3kXoV5o>.

¹⁴ BLS Labor Force Statistics from the Current Population Survey (2020) <https://www.bls.gov/cps/cpsaat11.htm>.

¹⁵ NIOSH [2016]. NIOSH criteria for a recommended standard: occupational exposure to heat and hot environments. By Jacklitsch B, Williams WJ, Musolin K, et al. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication 2016-106. <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf>.

¹⁶ Maryland General Assembly, Labor and Employment – Occupational Safety and Health - Heat Stress Standards (Oct. 1, 2020), <https://bit.ly/2PDpzur>.

¹⁷ Office of the Governor, State of Oregon, Directing State Agencies to Take Actions to Reduce and Regulate Greenhouse Gas Emissions (March 10, 2020), Executive Order 20-04 (EO 20-04).

¹⁸ CA has over 14 years of experience with a heat standard, confirming the practicality and effectiveness of such a standard. Its standard resulted in greater compliance by more employers and prevention of heat illness and death among workers in CA. Petition from Public Citizen et. al. to Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor 17 (Jul. 17, 2018) <https://bit.ly/2wjJSzy>.

constitutes dangerous levels of heat and, when asked, would not give any temperature ranges it believes constitute excessive heat.¹⁹

The Commission went out of its way to point out that its findings did not necessarily mean that excessive heat didn't exist in the cases, but rather there were no clear OSHA standards. The Commission went on to say that the lack of a standard on heat stress also made it extremely difficult to make sure employers can recognize the hazard.²⁰ These Commission findings demonstrate the difficulty in holding employers accountable for failure to protect workers from heat hazards under OSHA's general duty safety requirement and the critical need for an OSHA heat stress standard.

It is in the interest of both workers and employers to have effective protocols in place to mitigate worker exposure to excessive heat. We urge you to begin the rulemaking process immediately on developing a workplace heat standard.

Sincerely,

Juley Fulcher
Worker Health and Safety Advocate



David Arkush
Director, Climate and Energy Program



cc: Secretary of Labor Marty Walsh
Deputy Director Maureen Ruskin, OSHA Directorate of Standards and Guidance
Deputy Assistant Secretary Stephanie Swirsky, Office of the Assistant Secretary
for Policy

¹⁹ Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 16-1713; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 16-1813; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 16-1872; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 17-0023; Secretary of Labor v. United States Postal Service, National Association of Letter Carriers (NALC) and National Rural Letter Carriers' Association (NRLCA) OSHRC Docket No. 17-0279.

²⁰ *Id.*