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Regulatory Review

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1. OSHA: Proposed Federal Heat and Illness Prevention Standard

○ Notice of Proposed Rulemaking (NPRM)

- Published: August 30, 2024
- Comments due: *January 14, 2025*
- Hearing scheduled: *virtual, starting on June 16, 2025 (may last for more than a day)*
 - Informal – which means managed by an ALJ; witnesses may be questioned
 - Participants must submit a “Notice of Intent to Appear” by *May 2, 2025*
 - Requests for 10+ minutes and those who wish to submit documentation, must submit testimony in advance of *May 23, 2025*.

○ Background

- Years in the making – Advance Notice of Proposed Rulemaking in October 2021.
- ABA representative participated in process of review during development

○ Impact of New Administration?

- Swearing in – January 20, 2025
- Could stop proceeding; but may be picked up at a later date

1. OSHA: Proposed Federal Heat and Illness Prevention Standard

○ Summary of Proposed Rule:

- Heat Illness and Injury Prevention Plan or HIIPP
- Identification of Heat Hazards – both indoors and outdoors, worksite specific
 - Initial heat trigger 80 degrees
 - High heat trigger 90 degrees
- Implement Protective Measures
- Training
- Recordkeeping

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○ Exclusions from Rule:

1. Work activities where no reasonable expectation of exposure [(a)(2)(i)].
 - **Example:** seasonable activity during winter months, e.g. winter market
2. Short duration work (15 min. <) employee exposure in 60-min. period [(a)(2)(ii)].
 - **Example:** driver of A/C delivery vehicle, cumulative exposure of 15 min. or less w/in 60 min. period. BUT, if delivery takes more than 15 min., or occurs cumulatively more than 15 min. in a 60 min period at or above heat trigger, than non-excluded.
3. Emergency Response employees [(a)(2)(iii)] – only when performing such work.
 - **Example:** If personnel have emergency response as collateral duty, exclusion only applies for when performing emergency response duties.

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○ Exclusions from Rule (continued):

4. Work activities performed indoors and vehicles where A/C keeps temperature below 80 degrees [(a)(2)(iv)] – consistently.
5. Telework [(a)(2)(v)] – either from home or another remote location of employee's choosing.
6. Sedentary work at indoor locations, regardless of temperature [(a)(2)(vi)] – sitting with occasional (1/3 of day) standing and walking, and occasional lifting of objects weighing less than 10lbs.
 - **Example:** office worksites with employees at desks; indoor operation of vehicles if seated.

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- Exclusions from Rule (continued):

NOTE:

Employers CAN have employees who are exempt from the heat standard requirements, and employees who are subject to the requirements.

These employers will need to comply with the heat standard requirements for employees who perform work not covered by an exclusion

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○ Requirements:

1. HIIPP*: written/developed w/employee participation, and accessible at each worksite
 - a list of covered work activities;
 - policies and procedures necessary to comply with the rule;
 - the metric to be monitored to identify heat hazards (either the heat index or wet bulb globe temperature (WBGT)); and monitoring plan for indoor locations.
 - identification of safety coordinator(s), to implement, monitor and enforce the HIIPP;
 - a heat emergency response plan – for employees experiencing heat-related illness (detailed); and
 - if applicable, additional information to address employees required to wear vapor-impermeable clothing.
 - Reviewed/updated at least annually, or when incident occurs – continuous monitoring for effectiveness

*If less than 10 employees, it does not need to be in writing

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○ Requirements (continued):

2. Identification of Hazards – specific requirements for employers to monitor heat conditions at both indoor/outdoor work sites

- Definition of indoor v. outdoor
 - Indoors – ceiling/covering and walls (all perimeters), even if door
 - Includes work in a garage, even if door is open
 - Outdoors – an area not indoors
 - Includes vehicles operated outdoors
- Temperature triggers
 - Initial heat trigger – heat index of 80 degrees or WBGT
 - High heat trigger – heat index of 90 degrees or WBGT

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○ Requirements (continued):

2. Identification of Hazards – specific requirements for employers to monitor heat conditions at both indoor/outdoor work sites

- Temperature monitoring – to assess possibility of triggers, and then implement “controls”
 - *Indoors – identify work areas where reasonable expectation to hit triggers; must have monitoring plan for each worksite identified; must keep records of readings.
 - Outdoors – close to start of work period, and consult frequently if anticipate hitting trigger
- Temperature triggers
 - Initial heat trigger – heat index of 80 degrees or WBGT
 - High heat trigger – heat index of 90 degrees or WBGT

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○ Requirements (continued):

3. Implementation of protective measures or “Controls” – specific actions employers must take at work sites when heat trigger is reached.

- Initial heat trigger - 80 degrees or WBGT/NIOSH -
 - Controls: drinking water, indoor worksite cooling measures (e.g. A/C – air movement AND de-humidification), break areas with cooling measures, acclimatization protocols, paid rest breaks (as needed), 2-way communication
- High heat trigger - 90 degrees or WBGT/NIOSH -
 - Controls: the same controls as initial heat trigger, BUT – mandatory (paid) breaks (minimum of 15min/2 hours), observation for signs/symptoms of heat distress (regular communication (1x2hr), hazard alerts (prior to work shift or when exposed) – including preventatives measures and rights, warning signs for indoor work sites that routinely exceed 120 degrees

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○ Requirements (continued):

4. Training -

- Must be understandable to all employees and cover:
 1. recognition of heat stress hazards, heat-related injuries and illnesses, risk factors, signs/symptoms of heat illnesses needing emergency action;
 2. rights and preventative measures available, and importance of self-reporting symptoms;
 3. HIIPP policies/procedures, the OSHA standard, key responsible personnel (e.g. heat safety coordinator, etc), and where to find HIIPP at worksite;
 4. developed with employee participation and at no cost to employee
- Additional, specific training for supervisors and safety coordinators
- Annual refresher training and supplemental training as necessary/appropriate

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○ Requirements (continued):

5. Recordkeeping -

- Applies to employers with indoor work areas with anticipated high heat exposure, who are required to monitor on-site temperatures
 - Must record and maintain electronic records of temperature measurements
 - Must retain records for at least 6 months
- BUT – based on number of requirements under the rule, it would be prudent to maintain a number of other records to demonstrate compliance. Such as:
 - How employee participation requirement met
 - Training records
 - Incident records
 - HIIPP update records
 - Cost calculations

2. FMCSA Transit Petition for Exemption – “under the hood” testing

- APTA requests FMCSA to allow for exemption from CDL skills testing requirement
 - Notice published: Dec. 26, 2024; **comments due Jan. 2025**
 - Similar to NSTA/School Bus driver exemption – renewed in Dec. 2024
 - Allows State Licensing Administrations to waive the under-the-hood pre-trip skills testing requirement for applicants seeking an S and P endorsement, for school bus operations
 - State Licensing Administrations must identify restrictions on license
 - Beneficiaries are limited to intrastate operations in support of school activities
 - Exemption is good for 2 years
 - Similar arguments – obsolescence, unnecessary, bus driver shortage etc.
 - Not similar to NSTA exemption because:
 - Seeking waiver for transit bus driver and transit contractor bus driver CDL applicants
 - Seeking a 5-year exemption
 - Does not address “intrastate” limitation of the NSTA exemption
- Position/Feedback?

3. Corporate Transparency Act: Beneficial Ownership Information reporting

- Corporate Transparency Act or CTA

- Enacted in 2022 – intended to assist officials to fight financial crimes
- FinCEN issued reporting requirements via regulation in 2022 –
 - Small businesses – 20 or fewer employees; or \$5 million in gross annual receipts
 - Information on owners/applicants of company – detailed information
 - Steep penalties, both civil (\$500/day up to \$10,000) and criminal (up to 2 years in prison)
- Litigation – several cases
 - District Court – Eastern Texas: nationwide preliminary injunction, Dec.
 - 5th Circuit – DOJ appealed, and court upheld injunction while awaiting hearing of case, Dec. 26
 - NOTE: cases in VA and OR already upheld CTA and BOI rule
 - DOJ appealed nationwide injunction to Supreme Court (awaiting decision); 5th Circuit case hearing on merits scheduled for March 2025.

- Current Status: *Companies can still file but are not required to and will not face a penalty. Supreme Court expected to act expeditiously*

4. Department of Labor: Over-time Pay Triggers (non-driver positions)

○ New rule expanding over-time pay eligibility

- Published: April 26, 2024
- First increase – July 1, 2024 - \$684/week (\$35,568 annual) → \$844/week (\$43,888)
- Second increase – January 1, 2025 - \$844/week (\$43,888) → \$1,128/week (\$58,656)
- Automatic increase every 3 years – without notice and comment

○ Background

- Administrations: Bush, Obama, Trump, Biden
- Litigation: 3 federal cases brought, different mixed outcomes, allowed July 1 increase to go into effect. On November 24, 2024, federal district court in TX vacated the rule entirely

○ Current Status: Rule is vacated, so not in effect – up to next Administration if there is to be an appeal

5. EPA Grant of CARB waiver for Omnibus NOx rule

- EPA grants CARB waiver request for Omnibus NOx rule, as amended
 - Issued Dec. 17, 2024 (published Jan. 6, 2025)
 - New NOx stds for engines, drive toward zero emissions
 - Following initial Omnibus NOx in 2021 and waiver request, CARB negotiated agreement w/engine mfters and amended rule, aligning/adopting EPA flexibilities for buses
 - ABA opposed rule, unsuccessfully sought clarification and additional flexibility for bus engines, through amendment process
 - Rules goes into effect in 2024, use of legacy engines will be phased out
 - CARB Opt-in states have/will follow suit
- What about other pending CARB waiver requests, i.e. ACF?
- What impact to bus manufacturers?



Navigating what's ahead.

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