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December 20, 2023

VIA ELECTRONIC SUBMISSION

Hon. Douglas L. Parker
Assistant Secretary of Labor for Occupational Safety and Health
U.S. Occupational Safety and Health Administration
200 Constitution Ave. NW
Washington, D.C. 20010

RE: Heat Illness and Injury Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel Materials (Docket No. OSHA-2021-0009-1059).

Dear Assistant Secretary Parker:

On behalf of the American Road & Transportation Builders Association (ARTBA) and our more than 8,000 members in the transportation construction industry, we respectfully submit the following comments to the U.S. Occupational Safety and Health Administration (OSHA) on its Small Business Regulatory Enforcement Fairness Act (SBREFA) panel materials concerning potential heat illness and injury prevention regulations.[1] Our members include transportation construction firms of all sizes and disciplines, all fully committed to safe, efficient and cost-effective delivery of projects, including those funded by the Infrastructure Investment & Jobs Act. Safety remains the top priority for ARTBA and our members. Even one workplace incident – including any related to heat exposure – is one too many. Therefore, ARTBA welcomes the opportunity to offer comments on OSHA's heat injury and illness SBREFA materials and encourages the agency to consider these suggestions when drafting its proposed rule.

Background

ARTBA represents members in all facets of the transportation construction industry, including contractors, materials suppliers, state and local transportation agencies, planning and design firms, safety and equipment manufacturers and more. Safety is at the forefront of everything ARTBA and its members do. ARTBA has actively engaged, and enjoyed its relationship, with OSHA in developing regulations that enhance the safety of transportation construction worksites. In developing these comments, we have consulted with both small and large businesses within the membership. They all share similar concerns with OSHA's potential rulemaking.

On October 27, 2021, OSHA published an advance notice of proposed rulemaking to solicit data and comments on a potential heat illness and injury prevention safety standard. At that time, ARTBA and our partner organizations emphasized that the various segments of the construction industry –

[1] *See* OSHA SBREFA Panel Materials, https://www.osha.gov/heat/sbrefa.

including that which ARTBA represents – already take substantial, proactive measures to address heat-related hazards.[2] For example, ARTBA and the National Asphalt Pavement Association (NAPA) jointly developed a publicly-available "Heat Illness and Injury Prevention Toolkit."[3] Comments filed on the notice also emphasized that an 80-degree heat trigger is impractical as a nationwide regulatory standard. Instead, ARTBA urged OSHA to focus on training for workers, and make sure that regulatory approaches are simple and easy to implement.[4]

On August 25, 2023, OSHA convened a SBREFA panel comprised of small businesses potentially impacted by the standard.[5] ARTBA Board member and small business owner Meg Rietschlin participated as a small entity representative (SER) during the panel process. On Sept. 7, Ms. Rietschlin offered detailed testimony regarding the transportation construction industry's perspective on the potential rulemaking. In addition to her participation in the SBREFA video conference, Ms. Rietschlin also provided written comments. [6]

ARTBA's Comments

I. <u>OSHA has not offered transparent data to support the issuance of a broad safety standard.</u>

OSHA's SBREFA panel materials provided statistics stating that between 2011 and 2020, 33,890 workplace heat injuries and illnesses occurred, to the extent these employees needed time away from work.[7] The agency further states that exposure to environmental heat has caused 999 fatalities among U.S. workers from 1992 to 2021. While OSHA contended this data justifies its new heat injury and illness regulatory initiative, it does not specify the industries in which these incidents occurred. There is also no information as to how, when, and where these deaths took place. ARTBA recommends that to meet its burden for demonstrating the need for these actions, OSHA provide industry-specific data, including North American Industry Classification System (NAICS) codes for the relevant employers and geographic locations of the incidents.

Furthermore, OSHA must provide data on other contributory factors, such as worker drug and alcohol use, prescription and over-the-counter drug use, and medical conditions (e.g., diabetes). While not alleviating the tragedy of these fatalities, such personal health factors can exacerbate heat-related symptoms. Employers are not legally permitted to ask employees about their health habits and/or illnesses that can increase their risk for heat-related injuries. Yet, employers are

[2] *See* Construction Industry and Safety Coalition Comment on Advance Notice of Proposed Rulemaking on Heat Illness and Injury Prevention in Outdoor and Indoor Settings, filed on January 26, 2022, https://www.artba.org/wp-content/uploads/2022/01/CISC-Comments-OSHA-2021-0009-Heat-Injury-and-Illness-Prevention-ANPRM-1.26.2022.pdf.

[3] Heat Illness and Injury Prevention Toolkit, https://artbatdf.org/safety_resources/heat-illness-prevention/.

[4] *Supra* note 2.

[5] *See* OSHA Heat Illness and Injury SBREFA, https://www.osha.gov/heat/sbrefa.

[6] *See* Comments from Meg Rietschlin, Rietschlin Construction, filed on September 29, 2023, available at https://www.artba.org/wp-content/uploads/2023/10/Meg-Rietschlin-SER-comments-post-9.7.2023-panel-meeting.pdf.

[7] U.S. DEP'T. LABOR, OSHA Heat Injury and Illness Prevention in Outdoor Settings, SER Background Document, (August 2023), p. 4, https://www.osha.gov/sites/default/files/Heat_SER_Background_Document_8-21-2023.pdf.

responsible for adverse occupational health outcomes resulting from the personal choices their workers may make. OSHA needs to explain how often such health conditions and actions have contributed to heat injuries, illnesses, and deaths, and provide solutions or limited liability when such unknowns play a significant role in these outcomes.

II. Heat triggers must allow for regional variations.

Within OSHA's panel materials, the agency offers Table 1, "Options for heat triggers being considered by OSHA."[8] This table shows that if proposed, OSHA's suggested initial heat trigger would occur at temperatures as low as 76 degrees Fahrenheit. Yet, the U.S. Department of Energy recommends setting home and business thermostats to 78 degrees Fahrenheit during warm weather months.[9] Thus, one federal agency recommends a particular temperature threshold as comfortable, while another uses the same measure to initiate a mandatory standard to protect against heat illness and injury. OSHA must align its proposed recommendations with other federal agencies to avoid conflict and confusion.

Moreover, our members in states featuring warmer climates (such as Arizona, Florida, Texas, and others) report workers commonly wear additional layers of clothing (e.g., "hoodies", sweatshirts, etc.) when temperatures are in the 70s and low 80s, as they are acclimated to much warmer temperatures and can comfortably dress this way.

III. OSHA should not disrupt effective industry strategies in heat illness prevention.

According to data from the Bureau of Labor Statistics, the transportation construction industry has – fortunately – reported relatively few heat illnesses, injuries, or fatalities over the past decade. Not coincidentally, ARTBA members are already employing effective methods for ensuring the safety of their employees in warm conditions. In fact, long before OSHA initiated this current emphasis program, the transportation construction industry has been actively working to protect its personnel from the effects of extreme heat. In developing heat illness prevention policies, OSHA should not disrupt these strategies by imposing one-size-fits-all, indiscriminate mandates. A beneficial OSHA rule would leverage existing safety structures at constructions sites—e.g., pre-work hazard assessments, safety tool gate meetings etc.—to protect workers from outdoor workplace risks. OSHA should focus more on outcome-based measures rather than prescriptive ones.

IV. The proposed recordkeeping requirements are not balanced with the steps needed to ensure workers are provided with a safe and healthy place of work.

[8] *Id.* at page 13.

[9] *See* https://www.energy.gov/energysaver/spring-and-summer-energy-saving-tips. Energy Star, a program of the U.S. Environmental Protection Agency and the U.S. Department of Energy, suggesting that homes be kept at 78 degrees Fahrenheit when home during the day. It also suggests that the thermostat be set to 82 degrees Fahrenheit when sleeping and 85 degrees Fahrenheit when out of the house for maximum savings.

The proposed regulatory framework shared by OSHA is prescriptive, with many of the requirements having little to do with protecting worker health. These include:

(1) *Recording rest breaks.* In the transportation construction industry, worker breaks do not always take place at uniform, set times. Workers take breaks and hydrate when they need to do so or when the schedule of tasks best allows. Documenting when breaks take place does not make sense for these employers and may distract them from other duties and tasks intended to enhance the site's safety practices.

(2) *Creating a log of heat-related injuries and illnesses that only required first aid.* There are already recordkeeping requirements in the OSHA standards pertaining to incident reporting. Thus, there is no need for an additional, duplicative requirement, particularly for a hazard not prevalent across this industry. This requirement would add to a transportation construction employer's administrative burden, while adding few demonstrable benefits. Small businesses within the industry, including those within the Disadvantaged Business Enterprise (DBE) program such as Ms. Rietschlin's, would bear a particularly outsized and unfair burden, including arduous record keeping and related penalties.

(3) *Documenting the daily temperature*. This requirement would again force employers to take on unnecessary administrative burdens with little to no demonstrated benefits. Instead, OSHA should allow employers to rely on weather services that already carry out this task while measuring a variety of factors such as humidity, heat index, and the UV index.

V. OSHA regulations should address worker safety without reference to unrelated policy priorities.

When announcing the agency's heat emphasis program in September 2021, then-U.S. Secretary of Labor Marty Walsh referenced "changing climate" and "the growing frequency and intensity of extreme heat events." The OSHA news release noted "increasing heat precipitated by climate change."[10]

Indeed, climate policy remains a prominent topic among the federal Executive Branch and Congress, with President Biden's administration having spoken clearly on the subject since taking office. However, OSHA should not be directed to impose costly burdens on the transportation construction industry – which is already treating heat illness seriously and addressing it effectively – merely to support a larger narrative.

Moreover, these new burdens will prove to conflict with other prominent administration objectives, such as maximizing the economic benefits from federal infrastructure investment and growing opportunities for small businesses and DBEs. OSHA policy should not be the means of achieving unrelated political talking points.

[10] *See* OSHA National News Release, "US Department of Labor announces enhanced, expanded measures to protect workers from hazards of extreme heat, indoors and out.", (September 20, 2021), https://www.osha.gov/news/newsreleases/national/09202021

Conclusion

ARTBA appreciates the opportunity to provide additional comments in advance of OSHA's potential rulemaking. As indicated, one-size-fits-all heat safety standards simply do not work in this scenario. OSHA must account for feasibility of requirements by various industry sectors, regional variations in weather conditions, and proactive measures already being implemented by the transportation construction industry to prevent heat illness and injury. Furthermore, OSHA should ensure that the requirements will provide a benefit through increased safety and not simply impose burdensome administrative tasks on businesses. We encourage OSHA to consider these suggestions when developing its rulemaking.

Should you have any questions or require additional information, please contact Brad Sant, senior vice president for safety and education at bsant@artba.org, or Prianka Sharma, vice president and counsel for regulatory affairs at psharma@artba.org.

Sincerely,

/s/
Bradley M. Sant
Senior Vice President for Safety and Education

/s/
Prianka P. Sharma
Vice President and Counsel for Regulatory Affairs

Enclosures (2)
1. ARTBA Comments on Advance Notice of Proposed Rulemaking on Heat Illness and Injury Prevention in Outdoor and Indoor Settings (filed on January 26, 2022).
2. Comments from Meg Rietschlin, Rietschlin Construction (filed on September 29, 2023).

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January 26, 2022

Occupational Safety and Health Administration
200 Constitution Ave. NW
Washington, DC 20010

Re: Docket No. OSHA-2021-0009, Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings

Today I respectfully offer comments on the advanced notice of public rulemaking (ANPRM) from the Occupational Safety and Health Administration (OSHA) regarding heat injury and illness prevention in outdoor and indoor work settings.

Introduction

Worker safety is a priority of the American Road & Transportation Builders Association (ARTBA) and its members. ARTBA's membership includes representation from all components of the transportation construction industry. Our 8,000 members have worked continuously to protect the jobsite safety and health of the men and women building and repairing the nation's transportation infrastructure network.

OSHA has initiated this ANPRM to "protect indoor and outdoor workers for hazardous heat" and to obtain "additional information about the extent and nature of hazardous heat in the workplace and the nature and effectiveness of interventions and controls used to prevent heat-related injury and illness." The ANPRM does not propose any new standards, but rather is an effort to gain information from the regulated community before drafting a rule. ARTBA appreciates OSHA's engaging in this conversation prior to issuing a proposed rule, which will have significant impacts on the transportation construction industry.

Heat Exposure and the Transportation Construction Industry

Exposure to higher outdoor temperatures and hot substances (e.g., asphalt) constitute the primary heat-related hazards for the transportation construction industry. Due to the nature of most transportation construction and many of the materials used for it, the work often takes place outdoors during milder and warmer months. For this reason, wholly independent of federal regulations, the industry has long embraced its responsibility to protect its workers in these environments. Methods have included training, acclimatization processes, and jobsite practices encompassing work breaks and regular intake of fluids. As is shown below, the success of the industry in protecting its workers is demonstrated through the very low instances of heat-related death and injury as reported by the U.S. Bureau of Labor Statistics (BLS).

Now, in contemplating a regulatory approach to preventing heat-related illness, OSHA should take note that transportation construction may be a nationwide industry, but its work occurs at localized jobsites subject to a variety of conditions and environments. In developing strategies to protect their personnel as described above, contractors weigh a number of factors. These include temperature, wind, sunlight, and humidity, but also safeguards relating to overall worker safety and efficiency.

Moreover, some tasks in transportation construction necessarily require working in warmer weather. The contractor is best positioned to determine how to carry out this work while prioritizing worker safety above all other objectives. Asphalt paving is a prime example. Personnel working with this material will likely achieve better results in warmer weather. An indiscriminate heat-prevention standard could compromise the quality and effectiveness of the work on these types of projects. As outlined in these comments, ARTBA urges a flexible, outcome-based approach that accounts for variations among industries, geographic regions and tasks.

Current Impacts of Heat Exposure on Transportation Construction Workers are Minimal

As shown in the chart below, there have been minimal reports of injury, illness, or death from overexposure to heat as demonstrated in data from the BLS for the category of *Highway, Street and Bridge* construction workers. For example, during 2011-2020, BLS reported just three deaths resulting from environmental heat, all occurring in 2015. While any fatalities on the jobsite are most unfortunate and tragic, and the BLS number could be slightly understated due to reporting omissions, the number of occurrences is still relatively low. When looking at the broader data category of "exposure to harmful substances or environments," which also includes exposure to other hazards such as electricity, lead, silica, and cold temperatures, the BLS Census of Fatal Occupational Injuries (CFOI) recorded an average of 2.5 deaths per year in this category over the same period (and 3.6 deaths if restricted to years with at least one reported death). Moreover, deaths resulting from exposure to environmental heat accounted for an average of only about 9 percent of this broader category for the overall construction industry (including many other sectors beyond transportation).

Similarly, nonfatal injury and illness reports show an average rate of 3.4 cases per year (per 100 full time workers) for *all* recordable ailments for the years 2014-2020. Among the 1.2 such cases (on average) that are severe enough to require days away from work, only 0.07 of them have been attributable to the broader data category that pools heat-related conditions with other types of harmful exposure. All this data applies to industry that employed approximately 350,000 workers in 2020.

Occupational Injuries and Illnesses in the Highway, Street and Bridge Construction Industry

Year	Number of Workers (Thousands)	Fatal Injuries			Nonfatal Injuries and Illnesses (Rate per 100 Full-Time Workers)		
		Total	Exposure to Harmful Substances or Environments		Total Recordable Cases	Cases with Days Away from Work	
			Total	Environmental Heat		Total	Exposure to Harmful Substances or Environments
2011	286	66	3	--		1.6	0.11
2012	295	86	4	--		1.3	0.05
2013	293	66	3	--		1.5	0.05
2014	294	63	--	--	3.8	1.2	0.07
2015	309	66	5	3	3.6	1.1	0.05
2016	319	69	3	--	3.5	1.4	0.10
2017	328	68	3	--	3.2	1.1	0.06
2018	341	73	4	--	3.6	1.2	0.11
2019	349	68	--	--	3.4	1.2	0.06
2020	345	87	--	--	2.7	0.9	0.05
Average	**316**	**71**	**4**	**3**	**3.4**	**1.3**	**0.07**

Sources: BLS Census of Fatal Occupational Injuries; BLS Survey of Occupational Injuries and Illnesses; BLS Current Employment Statistics.
Note: Dashes indicate no data reported or data that do not meet publication criteria.

Given the success of the industry in controlling such injuries for its workers, we believe that any regulation issued by OSHA intended to protect workers from heat hazards should be outcome-based, and not prescriptive in nature, so as not to unintentionally negate some of the effective practices currently in use. The industry must maintain flexibility to address this hazard while effectively dealing with location-specific and worker-specific needs.

The Transportation Construction Industry is Mitigating the Impacts of Heat Exposure

Worker safety will always be a primary concern of ARTBA and the transportation construction industry. ARTBA's extensive safety program addresses working in hot environments and ways to prevent heat-related illnesses in multiple training courses, including:

- An online "Working Outside" module that can be taken as a stand-alone course, or as part of the Safety Certificate for Transportation Project Professionals program,
- An online "Environmental Conditions" course covering similar objectives,
- OSHA-10 and OSHA-30 courses, and
- The Federal Highway Administration's (FHWA) online "Working Outside" course, which is produced by ARTBA and includes detailed information on heat-related illnesses.

Additionally, ARTBA training materials, which we provide to members of the transportation construction industry, cover:

- How to recognize and treat the different types of heat-related illnesses; and

- How to mitigate the risks of heat-related illnesses, incorporating:
  - OSHA's heat acclimatization program,
  - Providing water and scheduling more frequent rest breaks in cooling stations or in the shade,
  - Reducing physical demands by rotating workers and scheduling work at night or in cooler seasons when possible, and
  - Monitoring at-risk workers.

ARTBA has also developed a "Heat/Cold Stress" interactive tool. This technology allows workers or employers to enter a temperature, the type of clothing a worker is wearing, the anticipated workload and whether the worker is acclimatized. Based on that input, the tool provides guidance on the worker's risk for either heat or cold stress.

Examples of ARTBA's heat exposure training materials and the heat/cold stress interactive tool are attached to these comments.

ARTBA members have also shared the following strategies they use to help mitigate the impacts of heat exposure:

- Annual training on heat exposure at company safety days.
- Toolbox talks about heat exhaustion and heat related safety.
- Mandatory cool-down periods for employees.
- Umbrellas/shading devices on work equipment to protect operators.
- Altering shift times when temperatures reach triple digits.
- Providing water/sports drinks to employees on the jobsite.
- A "buddy system" for employees, so that if someone starts showing signs of heat exhaustion, a colleague recognizes the symptoms and takes them to a cooler area.
- Switching work to the night hours during summer months, reducing the first-hand effects of direct heat from the sun. The precautions above are still used to mitigate night heat.
- Providing air-conditioned workspaces and work vehicles.

Flexibility is Essential to Any Proposed Heat Standard

Any standard developed by OSHA should not follow the "one size fits all" model. Heat exposure and risk varies widely among the various industrial sectors in our economy. Uniform standards which do not consider these variations can prove unworkable. Most recently, this was the case with OSHA's COVID-19 emergency temporary standard for employers, which has been paused by the U.S. Supreme Court because it was a "blunt instrument" which drew "no distinctions based on industry."

To be workable, a proposed heat standard must not only account for differences among industries, but also differences in geography. For example, transportation construction personnel in Arizona will experience different heat scenarios than workers in Wisconsin.

Employers in both regions are best positioned to know what strategies are most effective to their climate and conditions, and they need the regulatory flexibility to employ those plans to best protect workers.

Therefore, ARTBA recommends a regulatory approach that is not overly-rigid. The outcome-based objective is to protect workers from heat hazards, not to complete checklists for prescribed actions without regard to their effectiveness or relevance.

There is Bipartisan Support for Clarity in the Regulatory Process

The bipartisan Infrastructure Investment and Jobs Act (IIJA), which President Biden signed into law on Nov. 15, 2021, features historic increases in federal transportation investment across all modes. This funding should be a major catalyst for our nation's economic recovery, but only if invested in the larger context of a favorable regulatory environment.

One of IIJA's goals is to deliver transportation improvements to the communities who need them most in an expeditious manner. As it develops a new heat exposure standard, OSHA can help accomplish this goal by crafting proposed rules in a manner emphasizing flexibility and clarity for the regulated community.

ARTBA is also submitting comments through the Construction Industry Safety Coalition, which we incorporate here by reference.

ARTBA looks forward to continued participation in this conversation with OSHA on workplace heat exposure. Thank you for considering the viewpoint of the transportation construction industry on this important policy matter.

Sincerely,

David Bauer
President & CEO

Examples of ARTBA Training Materials on Heat Exposure

Working in Hot Weather & Climates

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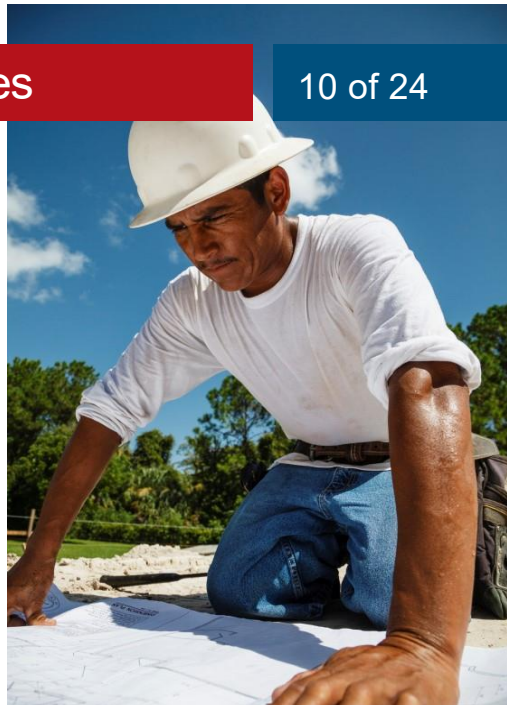
Workers who are exposed to heat either from outside temperatures, equipment, exertion, PPE, or any combination of those need to be stay hydrated and take frequent breaks. Workers on the night shift can fail to recognize when they are overheated because of the lack of daylight and sunshine. When workers get overheated, they often stop wearing their PPE, leaving them open to many risks.

There are different levels of heat-related illness that range from mild dehydration to fatal heat stroke. Progression from one illness to another may go undetected and can happen rapidly.

- Dehydration
- Heat Rash
- Heat Cramps
- Heat Exhaustion
- Heat Stroke



Hot Temperatures

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Hot working conditions occur in multiple places, not just outside on a hot day. Other places include:

- Inside vehicle and equipment cabs
- Inside confined spaces
- Under tarps or nets
- Inside tents or other structures without a means to cool the air

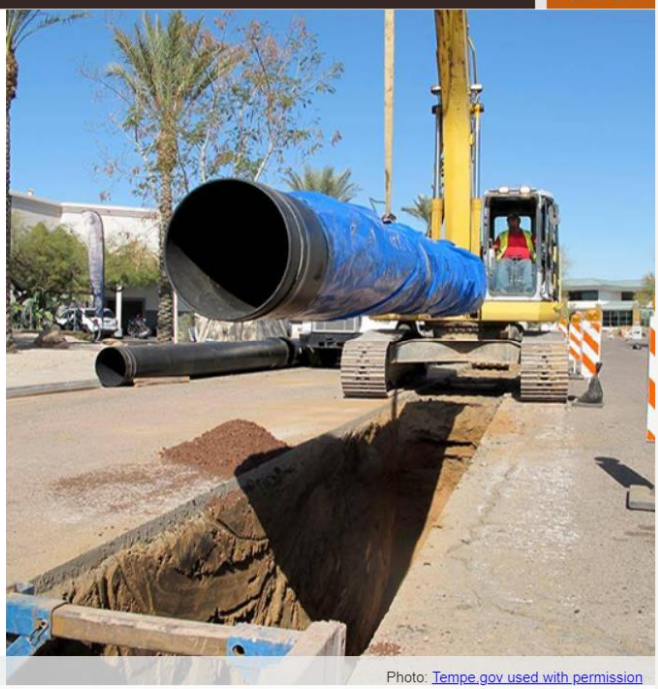

Photo: Tempe.gov used with permission

Hot Temperatures

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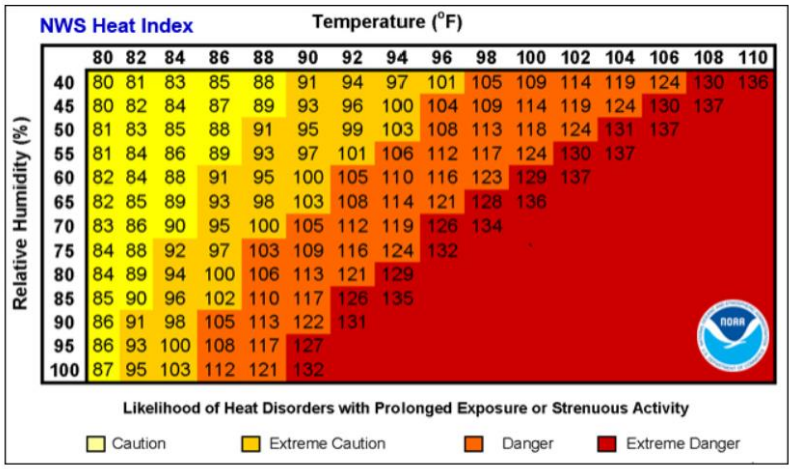
Extreme or excessive heat is defined by the National Oceanic and Atmospheric Administration (NOAA). NOAA issues heat alerts based on heat index values, which measure how hot is feels when relative humidity is taken into account with the actual air temperature.



Graphic: NOAA

Heat Exposure

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How heat exposure affects individuals is based on the heat index and many other variables including:

- Age
- Weight
- Health
- Hydration
- Level of acclimation to heat

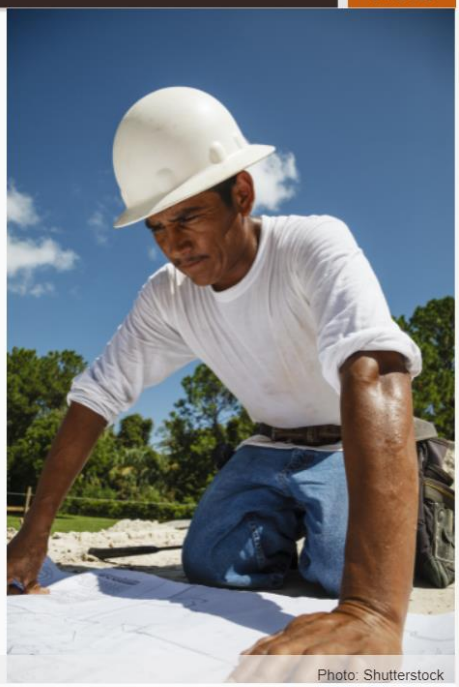

Photo: Shutterstock

Heat Exposure

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Developing heat related illness progresses from mild dehydration to heat stroke and death. Symptoms can range from headache and irritability to nausea and vomiting. Progression can go undetected and occur quickly without intervention.

Click on each icon to learn more.

Dehydration	Heat Rash	Heat Cramps	Heat Exhaustion & Heat Collapse	Heat Stroke
				

Mitigate Risk

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Work with your supervisor to limit your work in a hot environment and slowly build up your tolerance and endurance. According to OSHA, a heat acclimatization program promotes work at a steady and moderate rate that can be sustained in the heat. It usually takes about five to seven days to build up heat tolerance to a full day's work in the heat. During that time,your body will undergo a series of changes that will make continued exposure to heat more endurable. However, it may take up to several weeks for the body to fully acclimatize.

Photo: U.S. Navy Specialist David Cirilo

Mitigate Risk

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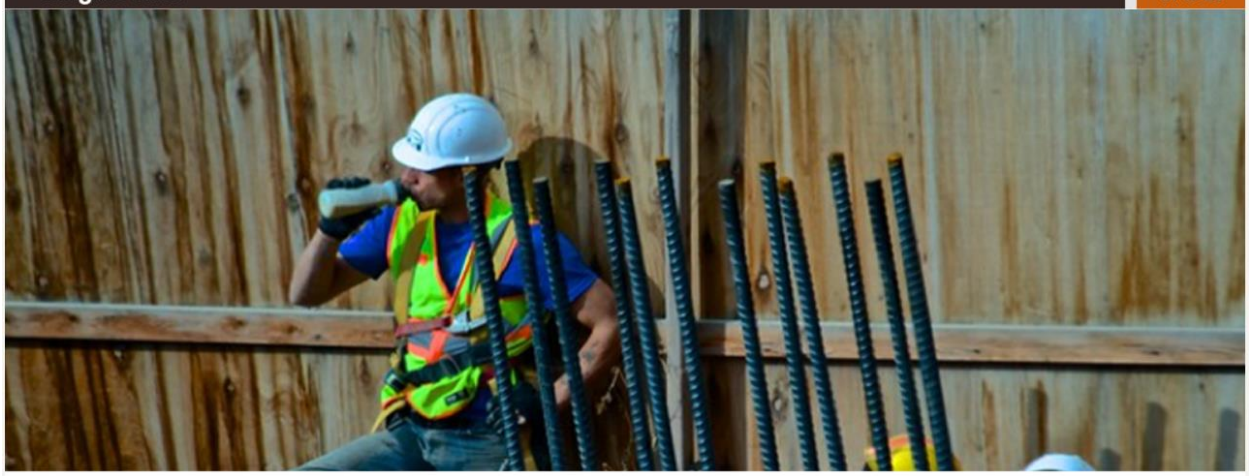

According to the Centers for Disease Control (CDC), workers who have had previous experience in jobs where heat levels are high enough to produce heat stress may acclimatize with a regimen of 50% exposure on day one, 60% on day two, 80% on day three, and 100% on day four. For new workers who will be similarly exposed, the regimen should be 20% on day one, with a 20% increase in exposure each additional day.

Photo: David McSpadden Creative Commons 2.0

Mitigate Risk

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Reduce the physical demands by reducing physical exertion such as excessive lifting, climbing, or digging with heavy objects.

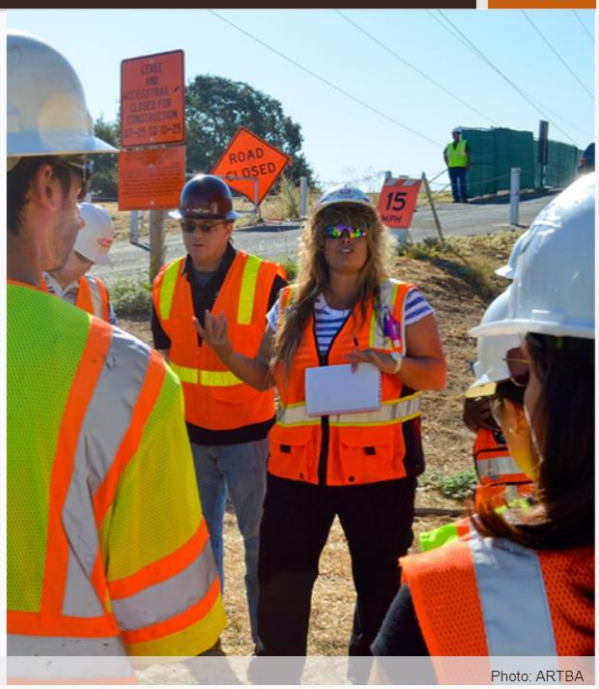

Photo: ARTBA

Mitigate Risk

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Use recovery areas such as air-conditioned enclosures and rooms for intermittent rest periods with water breaks.

Photo: Shutterstock

Mitigate Risk

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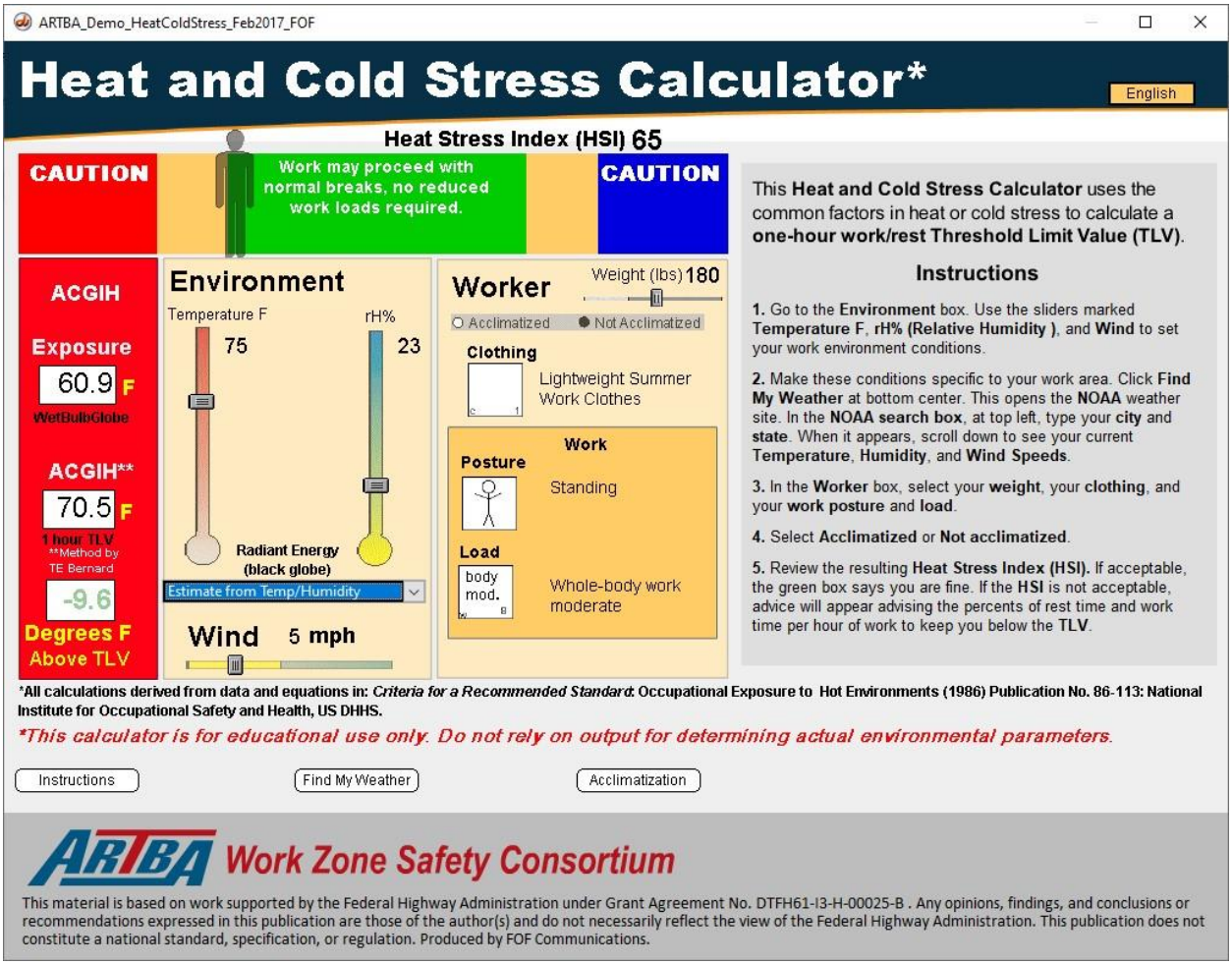
When possible, reschedule hot jobs for the cooler parts of the day such as early morning or after sun set.Take care of the most strenuous tasks during the coolest part of your shift. Work with your supervisor to schedule routine maintenance and repair work in hot areas for nightshifts and cooler seasons of the year.

Supervisors need to monitor workers who are at risk of heat stress.

Photo: ARTBA

Photo: pxhere

ARTBA Heat/Cold Stress Calculator



September 29, 2023

Hon. Douglas Parker
Assistant Secretary of Labor for Occupational Safety and Health
Occupational Safety and Health Administration
200 Constitution Ave NW
Washington, DC 20210

RE: OSHA Heat Safety Standards Small Business Advocacy Review Panel

Dear Assistant Secretary Parker:

Thank you for convening the recent Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel to discuss OSHA's potential rulemaking for a heat safety standard. I appreciated the opportunity to participate as a small entity representative (SER) on the panel. Below please find my additional comments and questions on the materials provided.

The SBREFA Panel provided statistics stating that between 2011-2020, 33,890 work related heat injuries and illnesses occurred, resulting in employees taking days away from work. It further states that exposure to environmental heat has killed 999 US Workers from 1992-2021. While this data is meant to justify a new regulatory OSHA effort, there is no specificity that indicates in which industries these injuries occurred. There is also no other specific information included, such as how, when and where these deaths took place. I respectfully ask that OSHA break down the data by—at the very minimum—NAICS codes and geography. The further division of data would indicate geographies and industries that most need attention.

Second, in the statistics above, were there other influences that caused those injuries and illnesses and deaths? Employers are not legally permitted to ask what chronic conditions or illnesses a potential or present employee has or had, what medication they take, or lifestyle choices they make. Prospective employees are not always subject to preemployment drug tests either. An employer cannot know what drugs, legal or elicit, an employee may use. An employee may have several health factors putting them at risk of heat illness, and employer would never know. Without first-hand knowledge of an employee's health factors, how can an employer evaluate who should or shouldn't be placed in a position where heat may conflict with their health? I am certainly not advocating for employees to disclose confidential information but this is a challenge that OSHA needs to address. Employee health conditions can pre-determine responses that render a person unsuitable for work in certain climates. If OSHA's regulation is to make employers responsible for our employees' heat related illnesses and injuries, we must have the ability to access the necessary information to do so. It is not fair or feasible otherwise.

In highway heavy industry, we supply PPE for employees that includes hard hats with wider brims, neck coverings that attach to hard hats, high visibility safety vests and wicking long sleeve shirts, gloves, ear protection, dust masks, fall protection such as body harnesses, floatation devices such as life preservers, safety glasses and more. All this PPE is required to make them more visible, protect them from sun

which can lead to cancer, etc. We supply water and ice on the job during the construction season. Ohio is a state workers compensation system. So any injuries can quickly cause significant increases in premiums for small companies. Many of us participate in safety councils, worker training, and an annual safety congress. Our employees receive Red Cross first-aid, CPR, AED and Bloodborne pathogen training. This training also includes recognition of signs and symptoms of heat related emergencies and proper response. Additional training includes OSHA 10, 30 and competent person. The point here is that we have already invested in our training and PPE to keep employees safe from heat related illnesses and injuries. Any additional requirements would be duplicative.

In 2023, the US Department of Energy recommended setting thermostats to 78-degree Fahrenheit. It seems contradictory to recommend one temperature as comfortable in one setting but a heat trigger index of only two degrees higher in another. The federal government needs to better align its regulations and recommendations among agencies to avoid conflict and confusion.

The proposed rule assumes that employers don't have the best interests of their employees at heart. Nothing could be further from the truth. A small business cannot afford to lose an employee. Each employee serves specific and important functions. They are not replaceable. The time, effort, and cost required to find and train a new employee is too burdensome for a small business to absorb. Furthermore, the ongoing workforce labor shortages significantly impact small businesses. The goal of this effort should be to encourage employers to provide healthy workspaces and not to burden small businesses with more regulatory penalties and arduous record keeping.

OSHA's guidance suggests 10 employees as the cutoff for written plans. Small businesses have changed so much. Technology has infiltrated every aspect of our daily work life. Tools and equipment are so much more refined. I suggest OSHA raise that number.

Regarding engineering and administrative controls, these are best left to the employer. Employers know what is best for their employees given a particular climate. some of the best ideas about how to protect workers come from our employees themselves who work these jobs every day.

In summary, I would caution OSHA against proposing this rule. If the agency does move forward with a proposal, I ask that OSHA offer the maximum flexibility within the rulemaking to allow employers to choose from several engineering and administrative controls depending on what is the most feasible for their business and which provides protections for their employees.

Thank you for the opportunity to submit these comments. I am available to answer any questions should you wish to speak with me further.

Sincerely,

Meg Rietschlin, President
Rietschlin Construction Inc