



**American
Public Transportation
Association**

EXECUTIVE COMMITTEE

CHAIR

MJ Maynard

VICE CHAIR

Leanne Redden

SECRETARY-TREASURER

Jeffrey Wharton

IMMEDIATE PAST CHAIR

Michele Wong Krause

Jose R. Bustamante

Randy Clarke

Alexander Clifford

Francis "Buddy" Coleman

Charles DiMaggio

Shawn Donaghy

Denise Figueroa

Sharon Fleming

Gary S. Giovanetti

Carolyn Gonot

Collie Greenwood

Beth Holbrook

Debra A. Johnson

Bacarra Mauldin

Raymond Melleady

Erin Rogers

Catherine Rinaldi

Kimberly Slaughter

Doug Tisdale

Jannet Walker-Ford

Joel Young

PRESIDENT AND CEO

Paul P. Skoutelas

1300 I Street NW
Suite 1200 East
Washington, DC 20005
p: (202) 496-4800
f: (202) 496-4324

APTA.COM

January 14, 2025

Occupational Safety and Health Administration
Docket Operations
200 Constitution Avenue N.W., Room N-3653
Washington, DC 20210

Re: Docket No. OSHA-2021-0009 RIN 1218-AD39

Dear Docket Clerk:

The American Public Transportation Association (APTA) is a nonprofit international association of 1,600 public and private sector organizations which represents a \$79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. APTA appreciates the opportunity to comment on behalf of non-railroad transit modes on the notice of proposed rulemaking (NPRM) for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, published in the *Federal Register* on August 30, 2024, specifically as to the impact of the proposed rulemaking on transit agencies. Comments pertaining to railroad operations were submitted separately in partnership with the Association of American Railroads and the American Short Line and Regional Railroad Association

Development of Heat Injury and Illness Prevention Plan

The NPRM requires employers to develop and implement a work site heat injury and illness prevention plan (HIIPP) with site-specific information for each work site. Discussions with transit agencies make clear that such a requirement would be highly burdensome in the transit environment and would not effectively protect transit employees from hazardous heat. Transit networks can cover thousands of square miles with transit employees performing highly varied types of work tasks at a variety of work sites. Transit agencies operate in many circumstances where the location will not have an address. In such circumstances, transit agencies may only be able to direct a responder to a specific location from a main road, entrance, building, etc. However, such directions may not comply with the proposed requirements in the NPRM.

Most transit employees do not work in a single defined site or perform a single defined task. Therefore, the NPRM would require employees to be trained on multiple HIIPPs. Flexibility should be included in the regulation to allow for a corporate HIIPP developed by work site type,

rather than by individual work sites, that include information about job tasks or exposure scenarios that would apply at multiple job sites. The regulation should also allow for site-specific information regarding heat-related hazards, controls, safety precautions, etc. to be determined during a job safety briefing held at the beginning of a job or when conditions change.

Threshold temperatures are too prescriptive

The NPRM defines an *initial heat trigger* as a heat index of 80 °F or a wet bulb globe temperature equal to the National Institute for Occupational Safety and Health (NIOSH) Recommended Alert Limit (RAL) and a *high heat trigger* as a heat index of 90 °F or a wet bulb globe temperature equal to the NIOSH Recommended Exposure Limit (REL). At any given moment, temperatures across the United States can vary dramatically and the one-size-fits-all approach of the NPRM does not account for the significant differences in climate throughout the country.

Requirements At or Above the Initial Heat Trigger: Break Area(s)

When conditions are at or above the initial heat trigger, the NPRM requires outdoor break areas that are readily accessible to the work area. The break areas are to include either an air-conditioned enclosed space (such as a trailer, vehicle, or structure) or artificial shade (*e.g.* tent, pavilion, but not from shade from large equipment) or natural shade.

For outdoor work sites, providing artificial shade such as tents will not be feasible in most transit areas, especially along the right of way where trains are operating. Tents are a hazard to safe operations if on or near the track area where they may be blown into the track area, potentially leading to a collision. Metal framed tents cannot be placed near an electrified third rail or overhead catenary wires. In addition, tents may limit the field of view to prevent clear sight distances to identify approaching trains as required by roadway worker protection regulations.

Using air-conditioned vehicles for breaks may conflict with idling restrictions and anti-idling regulations in effect. If the vehicles are not pre-cooled before being used as a break site, the interior temperature may exceed the outdoor heat index causing an even greater heat risk to employees. Pre-cooling the vehicles would increase idling time which contradicts other regulations.¹

When conditions are at or above the initial heat trigger, the NPRM requires indoor break areas that are air-conditioned or have increased air movement and, if appropriate, de-humidification, can accommodate the number of employees on break, and is readily accessible to the work area. Providing readily accessible air-conditioned break rooms or areas with increased air movement/humidity control may not be feasible such as where work is being performed in a tunnel environment.

¹ <https://www.epa.gov/sites/default/files/documents/CompilationofStateIdlingRegulations.pdf>

Frequency of Breaks

The proposed rule states that when conditions are at or above the high heat trigger, the employer must provide a minimum of a 15-minute paid rest break at least every two hours in the break areas identified in the previous section. Transit agencies allow for breaks as needed to prevent overheating. However, a minimum time requirement of 15 minutes at least every two hours may not be feasible in all cases (e.g., employees engaged in Roadway Worker duties).

Drinking Water

When the initial heat trigger is exceeded, the NPRM requires the employer to provide access to potable drinking water that is placed in locations readily accessible to the employee, suitably cool, and of sufficient quantity to provide access to one quart of drinking water per employee per hour. Transit agencies have a few concerns. First, while transit agency employees are provided with water, it may not be possible to have this water in the immediate work area such as when performing duties along a track. Second, the requirement to provide employees with one quart of water per hour is unnecessarily specific and does not seem appropriate, as specific work conditions, individual body tolerance, and hydration needs vary. Finally, the terms “suitably cool” and “readily available” are unclear and rather subjective terms. It is recommended to change the phrase of, “Of sufficient quantity to provide access to one quart of drinking water per employee per hour” to “In amounts that are adequate to meet the health and personal needs of each employee.” This would additionally align with existing OSHA regulation 29 CFR 1915.88(b)(2).²

Timeline for implementation

The NPRM requires that employers must comply with all the requirements 150 days after the date of publication of the final rule in the Federal Register. Due to the size of the territory of transit agencies, and the various types of operations, preparation of site specific comprehensive HIIPPs, identification of all heat hazards, obtaining required equipment, and training each employee (contracted and non-contracted) within 150 days will create an undue burden.

APTA recommends extending and staggering the compliance dates to allow for adequate time to fully and properly implement the provisions of the NPRM so that appropriate strategies and procedures can be evaluated and adopted. It is recommended to allow 150 days to develop the HIIPP and associated procedures with 365 days to provide initial training from the effective date of the regulation.

Acclimatization

When conditions are at or above the initial heat trigger (defined in the NPRM as a heat index of 80 °F or a wet bulb globe temperature equal to the NIOSH Recommended Alert Limit), the NPRM requires specific acclimatization protocols for new and returning employees during the first week on the job. This includes a plan that at a minimum incorporates the measures required by high heat trigger during the employee’s first week of work or gradual acclimatization to heat in which the

² 29 CFR 1915.88(b)(2) states the employer shall provide potable drinking water in amounts that are adequate to meet the health and personal needs of each employee

employee's exposure to heat is restricted to no more than 20% of a normal work shift exposure duration on the first day of work, 40% on the second day of work, 60% on the third day of work, and 80% on the fourth day of work.

Certain parts of the United States can have sustained periods of time where the heat index does not drop below initial heat trigger of 80 °F. This would require all new and returning employees to be subject to the acclimatization requirement in the NPRM without any regard if acclimatization is needed. This approach is not risk-based and fails to consider relevant information in determining if a new or returning employee requires extended acclimatization.

Training

The NPRM requires that each employee promptly receive and understand supplemental training when:

- Changes occur that affect the employee's exposure to heat at work (i.e., new job tasks)
- The employer changes the policies or procedures
- There is an indication that the employee has not retained the necessary understanding; or
- A heat related injury or illness occurs at the work site that results in death, days away from work, medical treatment beyond first aid, or loss of consciousness

It is unclear what is meant by supplemental training, and it would not be feasible to provide formal training (whether classroom, virtual or online) to all employees in any instance when a heat-related injury or illness occurs at a work site. In the event of a heat-related injury or illness, issuing a safety alert or safety notice to employees should satisfy the requirement for supplemental training.

It is not reasonable to require the HIIPP to be made available in multiple languages because transit agencies in the United States use English-based rules, procedures, manuals, and other documentation. Nor is it feasible to assess the literacy level of each employee and then design and deliver training to meet each individual need.

APTA appreciates this opportunity to provide comments and hopes that OSHA will take these into consideration. If you have any questions, please contact Bryan Sooter, Director of Standards, at bsooter@apta.com.

Sincerely,



Paul P. Skoutelas
President and CEO