Advisory Committee on Construction Safety and Health (ACCSH) Meeting on Proposed Rules Related to Infectious Diseases, Heat Injury and Illness Prevention

April 24, 2024

OSHA Infectious Disease Proposed Rule

OSHA's Jessica Schifano provided a presentation of the potential proposed rule on infectious diseases. She noted that it is intended to be a general industry 1910 standard and not a construction or 1926 standard other than with regard to the multiple employer provision discussed below.

Schifano stated that the intent of this rule is to protect workers who perform tasks that routinely expose them to infectious diseases. The agency initiated this effort in 2010, and has published a Request for Information, conducted stakeholder meetings, conducted site visits, and completed the Small Business Regulatory Enforcement Fairness Act (SBREFA) process. She said that OSHA is considering a settings-based approach to this rule that is further refined to focus on particular job tasks within those settings and to cover workers in settings where they are regularly exposed to infectious agents in their workplaces and are at increased risk of contracting infectious diseases, such as tuberculosis. Schifano said that diseases can be transmitted through a variety of exposure routes for which there are established and effective controls; and while OSHA's bloodborne pathogens standard addresses some occupational exposure to infectious agents, it only covers those transmitted by the blood, leaving significant gaps. Schifano said this rule would supplement the bloodborne pathogens standard and raise the baseline of protections for workers in healthcare, healthcare-related, and biomedical lab settings against transmission of infectious diseases. The proposed rule will cover approximately 15 million workers who are primarily medical professionals or perform health care support. She said that the potential protections in the proposed rule are structured to ensure that good infection control practices and good biosafety practices are regularly implemented in typical daily operations in these settings. These are accepted practices that are applicable specifically to the healthcare and biomedical laboratory settings intended to be covered by the proposed rule. It was noted during questions and answers that the proposed rule would also apply to medical clinics embedded at construction sites.

Schifano said that the foundation of the proposed rule is the workplace infection control plan, which would potentially include a hazard identification process and the development and implementation of policies and procedures for each covered setting. Employers would be required to identify job tasks that involve exposure to patients, clients, and residents; contaminated materials; human remains; and infectious agents. Employers would then be required to develop policies and procedures to prevent or minimize workplace transmission of infectious diseases. These policies and procedures would be developed and implemented in accordance with good infection control practices and good biosafety practices. This includes providing access to hand washing facilities or hand rub, personal protective equipment policies, and policies and procedures around engineering controls—specifically ventilation—that include operating and maintaining systems in facilities where direct care is provided in accordance with manufacturer's instructions, systems design specifications, and certain consensus standard

requirements. It would also include policies and procedures regarding vaccinations, monitoring employee health, identifying exposure incidents, and responding to employee reports of suspected or confirmed infectious disease and exposure incidents.

Multiple Employers

The proposed rule would also include provisions dealing with multiple employers that would address scenarios when different employers perform work in the same facility. This provision would establish certain shared and assigned responsibilities for hosts and the contractor employers, and specifically requirements for construction work inside healthcare and other related facilities. Schifano said that many of the key proposed provisions would not apply to construction activity inside a covered setting. As noted above, the proposal relies heavily on good infection control practices, which are those accepted practices that are applicable specifically to the healthcare and biomedical laboratory settings intended to be covered by the proposed rule. Therefore, Schifano said OSHA's proposed approach for addressing construction inside these covered facilities under the multiple employer provision would include two key elements. The first is that when an employer is engaged in construction activity inside a covered setting, the proposed rule would require the employer that operates or controls the covered setting to provide the construction employer with the information necessary to ensure that employees engaged in construction are not exposed to any source of infectious agent. The second is that, based on information provided by the employer operating or controlling the covered setting, construction employers would be obligated to protect employees from site specific hazards under the existing requirements of 1926 subpart C. Schifano said that this approach would also be consistent with the approach unanimously recommended by ACCSH during OSHA's consultation on the COVID-19 healthcare rulemaking.

Small Construction Projects

One specific scenario was also discussed during the presentation, and that is how small construction projects that may not be fully segregated from patient care areas would be addressed under OSHA's proposed approach. Schifano said that OSHA heard during its outreach on the proposal that large construction projects in healthcare facilities are typically completely segregated from patient areas. She noted that there may be smaller projects that meet OSHA's definition of a construction activity that are not fully segregated from patient areas and are potentially performed by employees who are also responsible for more typical maintenance activities. She noted that the proposed rule recognizes that employers seeking to fulfill their duties under 1926 subpart C for a small construction activity performed by employees who typically perform maintenance activities in a patient care area will typically be able to rely on those established policies and procedures.

Motion

At the conclusion of the discussion, ACCSH unanimously agreed to a motion recommending that OSHA provide clarity in the proposed rule on a host employer's responsibility for sharing information about infectious disease hazards, modes of transmission, and control measures associated with the contractor's working in the area.

Heat Injury & Illness Rule

OSHA's Dr. Stephen Schayer provided a presentation on the status of the agency's proposed rule on heat injury and illness prevention (HIIP). Schayer noted that OSHA received 965 unique comments on the October 2021 advanced notice of proposed rulemaking, and that the agency completed the SBREFA process on November 3, 2023 with the issuance of the final report of the Small Business Advocacy Review Panel on OSHA's proposed regulatory framework. OSHA is currently in the process of developing language for the proposed rule and completing the analysis required to issue it.

In terms of the proposed HIIP standard, OSHA envisions a programmatic standard that could require employers to create a plan to evaluate and control heat hazards in their workplace. The standard could cover outdoor and indoor work in any/all general industry, construction, maritime, and agriculture sectors where OSHA has jurisdiction. The potential elements of the rule would include scope and application, definitions of key terms, and requirements for an employers' HIIP plan, which would include several specifications such as:

- Identification of heat hazards;
- Requirements for employers at or above both initial and high heat triggers, for which OSHA is considering proposing temperature triggers at which point certain controls and requirements would take effect;
- Heat illness and emergency response, which would involve a plan for responding if someone is having signs and symptoms of a heat injury or illness;
- Training;
- Recordkeeping and requirements for monitoring records; and
- Clarifying that none of the standards or requirements would come at any cost to workers.

Schayer also noted that OSHA is considering possible exclusions for short duration exposures, emergency response activities (those activities and employees covered under OSHA's separate Emergency Response standard), indoor sites kept below 80 degrees where there is air conditioning, telework employees who are teleworking, and indoor sedentary activities (such as "office work"). Regarding short duration exposures, Ryan Papariello from LIUNA asked if OSHA had developed a definition for that term. Schayer said that they have not settled on one yet, but are considering adopting a definition that is reflective of some of the state heat injury/illness standards.

Emergency Response Exemption

There was a great deal of discussion surrounding a possible emergency response/responders exemption. An ACCSH employer representative noted that some companies do emergency response construction activities in the wake of natural disasters (such as power and electricity restoration) and that an exemption would be helpful particularly as it relates to requirements for acclimatization which would be extremely difficult to put into practice. At the end of question and answers, an ACCSH employer representative offered a motion that the ACCSH recommend that in a declared state of emergency, disaster response and critical infrastructure repair is exempt

from the HIIP standard. The employer representative noted that OSHA's emergency response standard is currently out for public comment and these workers would be covered by that standard, which is in many ways more robust than the proposed HIIP standard. ACCSH Chair Christina Cain stated that the way the motion was drafted, it could also encourage the exemption of the "people who repair potholes on the road." She also noted that during every major disaster, OSHA's suspends enforcement activities and goes into consultation mode. A labor representative expressed concerns with the motion, noting it would also apply to workers who do disaster response work and the scope of their work includes construction and demolition. In the vote, only two employer representatives voted "yes" and the motion was defeated.

Requirements for HIIP Plan

In terms of the requirements for a HIIP plan, Schayer noted that OSHA is considering requiring employers to have all policies and procedures necessary to comply with the standard in the HIIP, including a designated heat safety coordinator who would be responsible for monitoring and implementing the HIIP plan. The coordinator could be a supervisor or non-supervisor specified in the HIIP plan to ensure it is being implemented effectively, for which Schayer said there would be a training but not necessarily a competency requirement. During Q&A, a labor representative stated that the person acting as safety coordinator needs to be a competent person, someone who knows how to read temperature and recognize the signs and symptoms of illnesses. He also said that there should be a requirement for them to attend quality, in-person training and not just virtual training. Schayer said that OSHA is also considering a provision requiring employee input in the development of and updates to the HIIP plan as well as a requirement for review and evaluation of the HIIP plan at some periodic interval (possibly annual or when there is a heat-related incident at the workplace).

Options for Identifying Heat Hazards and Monitoring Heat Conditions

OSHA is considering two options for identifying heat hazards and monitoring heat conditions, either by tracking local forecasts or to actually measure the heat index on sites based on the wet bulb globe temperature (WBGT). Schayer noted that the WBGT takes into account the ambient temperature, humidity, air velocity, and radiant heat sources such as the sun or a furnace; however, WBGT is technically more complicated to measure and that is why they are considering giving employers two options. The possible heat index triggers under consideration for an initial heat trigger is 80 degrees or a WBGT equal to the NIOSH Recommended Alert Limit; and a heat index of 90 degrees or a WBGT equal to the NIOSH Recommended Exposure Limit for the high heat trigger. For indoor work, OSHA is considering requiring identification of work areas with hazardous heat exposure, developing and implementing a monitoring plan that is customized to their workplace, and seeking employee input in the developing of the plan for monitoring the areas where there is hazardous heat exposure. During question and answers with ACCSH members, Schayer noted that OSHA is still working out the details with respect to temperatures given the differences in various geographic regions, but is considering just one "nationwide trigger" for the initial heat trigger and one for the high heat trigger. In response to a question from a labor representative, Schayer said that OSHA is considering requiring employers to identify work areas within the indoor environment where there's potential for exposure to hazardous heat, essentially above the initial heat trigger, and then come up with a monitoring

plan to ensure that if the triggers are exceeded that proper controls are put into place. Schayer noted they are trying to make this part of the standard simple and scalable based on the feedback the agency received from small entity representatives. Schayer also noted that, based on the feedback received, OSHA is considering only a record keeping requirement for the monitoring results for indoor workplaces.

Control Measures for Heat Triggers

Schayer also discussed possible control measures for each of the heat triggers. For an initial heat trigger, this could include a requirement for employers to provide access to drinking water that is placed in locations that are readily accessible to the employee and that is suitably cool and of sufficient quantity, break areas for indoor and outdoor settings that are readily accessible to the work area and (for outdoor) to have shade or air conditioning/increased air movement from fans or dehumidification (indoors). These break areas would also need to be able to accommodate the number of employees on site. Additional requirements at or above the high heat trigger could include paid rest breaks at a minimum of 15 minutes every two hours (and where the unpaid meal break may also serve as a rest break), direct observation or supervision of employees for signs of heat injury or illness (which could be through the "buddy system" or by the supervisor or heat safety coordinator), and issuing a hazard alert to remind employees when the high heat trigger is or may be exceeded.

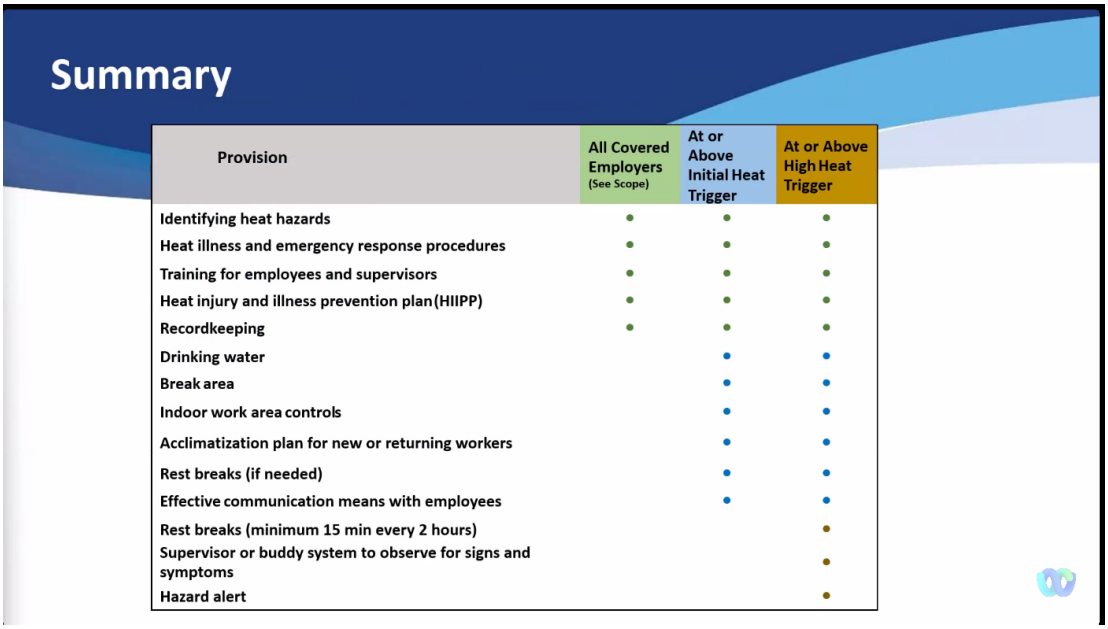
Acclimatization

In terms of acclimatization, OSHA is considering two options for new and returning employees. The first option would incorporate the high heat trigger requirements during the first week of work, while the employee is acclimatizing. The second option would be a gradual acclimatization schedule where employees increase their exposure each day. During questions and answers, a labor representative noted that OSHA including a time period for acclimatization was important, because you have employees who could perform work in very different climates during a short period of time—such as going from work in Fairbanks, Alaska to Las Vegas, Nevada. OSHA is also considering a requirement for rest breaks if needed to prevent overheating, and finally a requirement for effective two-way communication between the employer and employees.

OSHA is also considering including required steps for an employer to take if an employee is experiencing signs and symptoms of a heat-related illness and a heat emergency response plan with specific details to efficiently respond in a heat emergency.

Finally, OSHA is considering including requirements for training, which would include initial and annual refresher training for supervisors, heat safety coordinators, and employees—which is something OSHA heard from many representatives during the SBREFA process—and especially when there are changes to policies or procedures or an exposure to a heat hazard.

Summary of Provisions under Consideration



Motions

At the end of questions and answers, a motion was passed unanimously that ACCSH recommends that OSHA proceed expeditiously with proposing a standard in heat injury and illness prevention. A second motion that ACCSH recommend that OSHA consider all the feedback and questions from the meeting in developing the HIIP standard was also passed unanimously.