

APRIL 14, 2025 | OSHA RULEMAKINGS & STANDARDS

# Biden's OSHA Pushes Heat Illness Prevention Rule Close to the Finish Line

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On January 14, 2025, just six days before the transition from the Biden Administration to the second Trump Administration, OSHA closed the books on collecting public comments about the agency's [Notice of Proposed Rulemaking \("NPRM"\) for a Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings standard](#), taking the proposed rule one step (perhaps a very long step now) away from issuing a final Heat Standard.  On behalf of the Employers Heat Illness Prevention Coalition, we submitted a robust set of [written comments](#) detailing our concerns about some of the more onerous and rigid aspects of the proposed rule.

Although OSHA has now moved the Heat Rulemaking so close to the finish line, it is likely that the finish line will be pushed back, potentially for at least four years. We do not expect Trump's OSHA to engage in much, if any, rulemaking activity, other than de-regulatory actions. From a process standpoint though, the next time there is a Democrat in the White House, OSHA would inherit this flawed proposed rule and could issue it without having to navigate through any of the rigors of Administrative Procedure Act notice-and-comment rulemaking (i.e., there will not be another Small Business Advocacy Review ("SBAR") Panel, or another NPRM and public comment period). So, that written comment period was one of the last chances for stakeholders to submit written comments about a proposed federal heat illness prevention standard.

Below we provide a history of the rulemaking, an outline of key requirements in the proposed rule, a high-level summary of the comments submitted by our Employers Rulemaking Coalition, our thoughts on the upcoming public rulemaking hearing, and a reminder about OSHA's Heat National Enforcement Program ("NEP"), since, before you know it, summer temperatures will be here again.

## Heat Illness Rulemaking History

As a brief recap, OSHA initiated its rulemaking for a standard regulating Heat Injury and Illness Prevention in Outdoor and Indoor Settings on October 27, 2021, when OSHA published an Advanced Notice of Proposed Rulemaking ("ANPRM") in the Federal Register. On behalf of our Employers Heat Illness Prevention Coalition, we submitted [comments on the ANPRM](#) in January 2022.

Throughout 2022 and 2023, OSHA oversaw numerous meetings of the National Advisory Committee on

Occupational Safety and Health (“NACOSH”) Heat Working Group, followed closely each time by a full NACOSH meeting. OSHA also held a Heat Injury and Illness Stakeholder Meeting on May 3, 2022. CMC’s rulemaking coalition contributed actively in those meetings, providing written and/or oral testimony at each NACOSH Heat Working Group and full NACOSH committee meeting (see e.g., February 15, 2022 comments [here](#), and June 23, 2022 comments [here](#)), and [testified at OSHA’s Heat Injury and Illness Stakeholder Meeting](#).

As the rule progressed into the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) process, our coalition advanced multiple Small Entity Representatives (“SERs”), who provided key feedback on OSHA’s draft regulatory framework. Their input really shaped the SBAR Panel Report, influencing OSHA to adjust its initial proposals, including, importantly, by raising the temperature threshold triggers (though, not enough) for mandatory controls. In late 2023, we [submitted comprehensive public comments](#) to address, largely supporting, the SBAR Panel’s recommendations, which, among other things, includes recommendations for a proposed standard that provides employers maximum flexibility through a broad performance-oriented regulatory approach.

On July 2, 2024, we entered the NPRM phase of the rulemaking, with OSHA unveiling an unofficial version of its NPRM for an indoor and outdoor heat injury and illness prevention standard. The NPRM was officially published in the Federal Register on August 30, 2024. As noted above, comments became due January 14, 2025 after our Coalition’s request for an extension of the comment period was granted.

## **Key Requirements of Proposed Rule**

Key requirements of the proposed rule include:

### **1. HIIPP Requirements:**

- Develop and review, at least annually, a site-specific Heat Injury and Illness Prevention Plan (“HIIPP”).
- Include covered activities, policies, choice of heat metric (i.e., heat index or WBGT), and identification of Heat Safety Coordinator(s).
- Ensure employee participation and provide the HIIPP in understandable languages.

### **2. Acclimatization Protocols:**

- Gradual heat exposure schedule option for new workers (20%–80% over 4 days).
- Modified gradual heat exposure schedule option for returning workers (50%–80% over 3 days).

### **3. Heat Monitoring:**

- Outdoor: Track or measure heat index or WBGT.
- Indoor: Assess and monitor high-heat areas, updating monitoring plans as needed.

### **4. Initial Heat Trigger Requirement (≥80°F heat index, or WBGT equal to RAL):**

- Provide cool drinking water (1 quart/hour), shaded/air-conditioned break areas, and engineering controls for indoor areas (e.g., fans, barriers).
- Encourage and allow paid as-needed rest breaks and maintain communication.

### **5. High Heat Trigger Requirements (≥90°F heat index, or WBGT equal to REL):**

- 15-minute paid breaks every 2 hours, buddy systems or other forms of supervisor, hazard alerts, and excessively high heat indoor area signage.

6. **Emergency Response and Planning**
7. **Initial, Refresher, Supervisor, and Supplemental Training**
8. **Recordkeeping**

### **Summary of Employers Heat Illness Prevention Coalition NPRM Comments**

On behalf of the Employers Heat Illness Prevention Coalition, CMC’s OSHA rulemaking team submitted [comprehensive written comments](#) about the NPRM to OSHA’s rulemaking docket, emphasizing our commitment to advocating for the most reasonable, workable standard possible. Among other things, our comments underscore:

- Any Final Rule Should Provide Maximum Flexibility for Employers and be Performance-Based.
- Certain Provisions in the Proposed Rule are Technically or Economically Infeasible (i.e., OSHA’s Time/Cost Estimates are Too Low).
- This Rule Should Not Cover Indoor Work Settings.
- The Heat Triggers Should be Higher, Include an Option Based on Ambient Temperature, and Account for Local Environmental Conditions.
- OSHA Should Add Flexibility to the Proposed Requirements for Outdoor Heat Monitoring, and if the Final Standard Covers Indoor Work Settings, OSHA Should Add Flexibility to the Proposed Requirements for Indoor Heat Monitoring.
- OSHA Should Add Flexibility to Any HIIPP Requirement and Reasonably Limit Any HIIPP Review Cycles.
- Hydration Requirements Should be Limited to Making Cool Potable Water Readily Accessible and Training Employees on Dehydration Hazards.
- OSHA Does Not Have Authority to Require Employers to Pay for Rest Breaks.
- Mandatory Rest Break Requirements are Unnecessary Given That Employees Can Already Take Rest Breaks on an As-Needed Basis.
- Any Final Standard Should Provide Flexible Acclimatization Requirements and Allow for Self-Managed Acclimatization.
- OSHA Should Not Include New Recordkeeping Requirements in the Final Rule.

### **Next Steps: Upcoming Informal Public Hearing**

Biden’s OSHA scheduled an informal public hearing on the proposed rule for June 16, 2025. The decision to schedule the hearing in June even before the public comment period had closed likely reflects an effort by the Biden Administration to keep momentum going for this rulemaking even after the transition this week to the Trump Administration. This maneuver places the incoming Trump Administration in a position where it will have to either proceed with that near-final step of the rulemaking OR take an affirmative action to cancel the hearing, which could draw public criticism. At the very least, this will limit the next Administration’s ability to quietly sideline the heat illness rulemaking – if that is its intention. Regardless, it remains entirely possible that OSHA  under the Trump Administration will cancel the hearing and likely move the heat rulemaking to “Long Term Action” (i.e., the back burner).

If this hearing does occur in 2025, it presents a critical opportunity for stakeholders to advocate for a more

practical standard and to ensure that diverse industry perspectives are heard. Our rulemaking coalition plans to submit multiple requests to testify, leveraging the collective voice of our members to maximize impact.

### **Heat National Emphasis Program Remains Active ... For Now**

While the rulemaking road might be hitting a dead end for a few years, employers would be wise to keep heat illness prevention on their front burner because of [OSHA's ongoing Heat National Emphasis Program \("NEP"\)](#). The Heat NEP took effect on April 8, 2022 to underscore the importance of employers implementing proactive measures to mitigate heat injury and illness hazards. To the extent that the NEP is extended, we will be sure to keep you posted.

**UPDATE:** On January 16, 2025, just a few days before the transition, OSHA quietly extended its Heat NEP by a year, until April 8, 2026, or until superseded by an updated directive

If you have any questions about the NEP, the rulemaking, or any of the State OSH Plans' efforts to regulate occupational heat illness, please contact any of the OSHA-specialist attorneys in Conn Maciel Carey's national [OSHA Practice](#).