OSHA denies petition for heat stress rule

Over the past 20 years, at least 563 U.S. workers have died and more than 46,000 have suffered serious injuries from acute heat stress, an entirely preventable hazard, according to a press release from Public Citizen. Yet there is no federal regulation in place to protect workers, despite decades of expert consensus that such a standard is both necessary and feasible.

Public Citizen petitioned for such a standard last year, and OSHA denied it last month, ironically during a week when parts of the U.S. were experiencing some of the hottest temperatures on record.

In justifying its denial, OSHA pointed to the second iteration of its “education and outreach” campaign, alerting employers and workers to the dangers of heat exposure, as reason not to pursue a standard. The agency lauded the campaign’s “success” without presenting any evidence of how the voluntary, self-enforcing campaign has led to a decrease in injuries or deaths from heat exposure.

OSHA can hold employers accountable only through an enforcement mechanism called the General Duty Clause (GDC). In its letter, OSHA claimed it has “increased its focus on heat as a hazard during its [GDC] inspections.” However, Public Citizen says an updated review of federal data since its petition was researched shows that federal OSHA has issued only seven citations for unsafe heat practices since last August. And with federal penalties averaging just over $2,000 per violation, even these rare citations do not serve as anything close to a deterrent, argues Public Citizen.

“It’s needlessly condemns additional tens of thousands of workers to serious injury or death from a completely preventable hazard over the next decade,” said Dr. Sammy Almashat, researcher with Public Citizen’s Health Research Group and lead author of the petition.

It should be noted that NIOSH urged OSHA to issue a heat stress standard 26 years ago. Go to citizen.org/petition-to-osha-for-a-heat-standard-2011.

FEMA issues heat tips

The Federal Emergency Management Agency posted quick tips to stay healthy during heat waves, including, but not limited to:

• Spending the warmest part of the day in air conditioned buildings;
• Avoiding strenuous outdoor work and play during the warmest part of the day;
• Using a buddy system and taking frequent breaks when working in extreme heat;
• Drinking plenty of water and eating well-balanced, light, and regular meals; and
• Dressing in loose-fitting, lightweight, and light-colored clothing and wearing a wide-brimmed hat.

For more, go to ready.gov/heat.

“Incorporation by reference” issue examined

Incorporation by reference (IBR) is a practice whereby federal agencies adopt industry consensus standards into their regulations simply by referencing them. Many of the consensus standards are copyrighted and many organizations fund their operations by selling these materials to the public.

However, it’s worth noting that the Office of the Federal Register (OFR) cannot legally publish an IBR unless the materials are “reasonably available” to affected persons. Last winter, a group of legal scholars filed a petition with OFR asking the agency to define the term “reasonably available,” including the possibility that it should mean available on the Internet for free.

In addition, the Office of Advocacy filed comment letters with the OFR and the Office of Management and Budget reflecting small entity input on this practice. Advocacy stated that agencies should have an affirmative obligation to consider and request comment on small entity issues associated with private technical standards. Scroll down to June 1, 2012, at www.sba.gov/advocacy/816.
Spot hazards of cleaning chemicals

Get the facts on ways to protect employee health when working with cleaning chemicals, including green cleaning products. OSHA and NIOSH issued a new “infosheet” that covers: potential health problems, choosing safer chemicals, reading the safety data sheet, training employees in safe work practices, and helpful resources. A corresponding poster provides guidelines for workers and goes over: potential chemical hazards, basic safe work practices, and employer responsibilities for protecting the employee. Check out jkjeller.com/wsc.

OSHRC says agency memo is not a regulation

On Mar. 19, 2010, OSHA issued an “enforcement policy” memo to clarify that failure to provide and use flame-resistant clothing (FRC) in oil and gas well drilling, servicing, and production-related operations violates 29 CFR 1910.132(a). Later OSHA inspected an oil and gas production site and cited the company under the regulation for not providing and requiring employees to wear FRC.

Contaminants at site: Is air monitoring required?

Would it be necessary to conduct air monitoring to evaluate respiratory hazards from an air contaminant even if the workers are already being required to wear full-face air-purifying respirators? That’s the question a recently posted OSHA letter of interpretation dated May 14 answers. While the letter is in reference to a specific spray foam operation with a specific contaminant, the answer’s rationale may be applied to other contaminants. The Respiratory Protection Standard requires employers to make a reasonable estimate of exposures to respiratory hazards (even if respirators will be worn). However, the regulation provides flexibility in how that estimate is made. The letter explains, “Although the most reliable and accurate method to determine exposure is to conduct personal air monitoring, it is not explicitly required.” Other methods used to estimate workplace exposures “include, but are not limited to, the use of objective data, application of mathematical approaches, and others.”

To help you determine what objective data and mathematical approaches would meet the standard, OSHA provides guidance in directive CPL 02-00-120, found at http://1.usa.gov/OqBAdv.

No-notice inspections aimed at construction

OSHA launched a no-notice “Construction Incident Prevention Initiative” campaign to curb construction fatalities in DC, DE, PA, and WV. Through September, agency inspectors will focus enforcement efforts on construction sites.

The initiative is designed to identify and eliminate the four leading causes of incidents: falls, struck-by/crushing events, electrocutions, and caught-in-between events. The initiative also will target health hazards like silica, lead, and chromium VI.

During the campaign period, the agency will send all of its compliance officers into the field to conduct immediate inspections when unsafe working conditions involving the four leading causes of incidents are observed at construction sites.

In brief

UCR fees

The Unified Carrier Registration Board will recommend that fees for 2013 remain unchanged. Current fees are set by the Federal Motor Carrier Safety Administration (FMCSA) at 49 CFR 367.

Noise and hearing tests

A recently issued OSHA letter dated Mar. 3, 2011, says, generally, the successor employer is not permitted to establish new baseline audiograms. See jkjeller.com/wsc.

ANSI Z10 and I2P2

The revised ANSI Z10, Occupational Health and Safety Management Systems, has been approved. It’s a voluntary standard to manage and improve occupational health and safety performance, but OSHA has stated the upcoming Injury and Illness Prevention Program proposal will build on approaches such as ANSI Z10. See www.aiha.org.

Mine rib failures

MSHA will distribute information to underground mine operators and miners about avoiding roof/rib failures. See www.msha.gov/S&HINFO/Prop/prophome.htm.

Family/Medical leave guide

The Labor Department prepared a booklet and webcast, available online, that explains the Family and Medical Leave Act (FLMA) and answers common questions. See dol.gov/whd/fmla/employeeguide.htm.

UST insurance

EPA updated its list of known insurance providers for underground storage tank owners and operators. See jkjeller.com/wsc.

Comments on ozone docs

EPA released two draft assessments as part of a review of air quality standards for ozone. Comments are due September 11. See jkjeller.com/wsc.
**Bill would put EOBR rule on hold**

You’ll remember the new transportation funding bill — which is now Public Law 112-141 — requires the FMCSA to issue a rule mandating commercial trucks to use electronic on-board recorders (EOBRs) to monitor compliance with hours-of-service (HOS) regulations. However, now a separate funding bill is working its way through Congress that, if passed, would, among other things, prohibit the agency from using funds in 2013 to promulgate or implement any regulations that would mandate EOBRs, global positioning system tracking, or event data recorders in commercial motor vehicles.

The bill, H.R. 5972, passed the House, and now awaits a Senate vote. The final wording of the bill may come down to a conference report, which is agreed to by both Senate and House leaders, and this report may or may not include the provision to delay funding for an EOBR rulemaking.

**FMCSA answers questions on EOBRs**

Seven frequently asked questions (FAQs) on EOBRs are now available. The FMCSA recently posted answers to the questions in its FAQ library about:

1. Agency reaction to claims regarding the use of EOBRs and their potential safety benefits;
2. How often are HOS violations discovered during roadside inspections;
3. The cost benefit of an EOBR rule given the significant expenses for the transportation industry;
4. Estimated cost of an average EOBR device;
5. Which EOBR device was used by the agency as the basis for estimated costs of such devices in a 2011 proposal;
6. Whether the agency has observed any changes in the marketplace for EOBRs that influence their costs; and
7. How the agency would ensure EOBRs purchased by fleets meet requirements.


**Agency testifies to CSA safety benefits**

On July 11, 2012, FMCSA deputy administrator Bill Bronrott testified about the Compliance, Safety, Accountability (CSA) program before a House committee. His written statements discuss CSA’s safety benefits and its impact on small businesses. Some of the key points were:

- There’s been a 35 percent increase in the number of carriers reached per safety investigator.
- The 200,000 carriers with sufficient data to be scored are involved in 93 percent of crashes reported.
- Carriers with five or less power units make up over 85 percent of the industry, but only seven percent of them score poorly.
- From December 2010 until the end of 2011, violations per roadside inspection declined by eight percent and driver violations per inspection declined by 12 percent.

**Rule change rolled out for HHG carriers**

FMCSA finalized new regulations that govern household goods (HHG) motor carriers. According to the revised 49 CFR 375.213, when an individual shipper signs a waiver of receipt of printed copies of consumer protection materials, these carriers must keep the signed receipt for one year from the date of signature. However, HHG carriers are not required to maintain the signed receipt when they do not actually transport HHG or perform related services for the individual shipper who signed the receipt. See jjkeller.com/tmc.
EPA changes EPCRA Tier I and Tier II forms

EPA issued a final rule that revises the Tier I and Tier II inventory forms under 40 CFR 370 by adding some mandatory and optional data elements and revising some elements. Specifically, the rule requires facilities to report:

- Latitude and longitude;
- Id numbers assigned under the Form R/Form A and the risk management programs;
- Whether or not the chemical storage location is manned;
- The maximum number of facility occupants at any one time;
- Contact information for the facility owner/operator, emergency coordinator, and person completing the forms; and
- A description for storage types and conditions.

The Tier II form would also include a table of range codes and amounts for reporting maximum and average daily amounts. In addition, separate fields are provided on the forms for reporting mixtures and pure chemicals.

The changes kick in with reporting year 2013 (Mar. 1, 2014 form).

GHG tailoring rule thresholds unchanged

EPA announced that it will not revise greenhouse gas (GHG) permitting thresholds under the Clean Air Act (CAA). These thresholds determine when CAA permits under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs are required for new and existing industrial facilities.

The announcement relates to a final rule that maintains a focus on the nation’s largest emitters, while shielding smaller emitters from permitting requirements, for now.

EPA is also finalizing a provision that allows companies to set plant-wide emissions limits for GHGs, streamlining the permitting process, increasing flexibilities, and reducing permitting burdens on state and local authorities and large industrial emitters. Visit jjkeller.com/wsc.

California extends tractor-trailer deadline

The California Air Resources Board (CARB) extended the reporting deadline to Sept. 1, 2012, for its greenhouse gas tractor-trailer regulation so that small fleets can take advantage of flexibility options. The extension pertains to owners of 20 or fewer, 2010 and older model year, 53-foot or longer, box-type trailers that operate on California highways. Small fleets can include both dry and refrigerated van trailers.

EPA is withdrawing a proposed rule that would have required information to be submitted to the agency about concentrated animal feeding operations (CAFOs). The 2011 proposal was in part a response to a settlement agreement, which required EPA to take final action by July 13, 2012.

The agency says that collecting CAFO information is important, so the agency will collect the data using existing information sources, including state National Pollutant Discharge Elimination System (NPDES) programs and other programs at the federal, state, and local levels. This action does not require CAFOs or states to submit information to EPA, however. Moreover, the withdrawal of this proposal does not change which CAFOs need permits under the NPDES. Go to jjkeller.com/wsc.