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August 15, 2022

Bradley Farrar
Division of Occupational Safety and
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Department of Labor and Industries
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Laura Rascón Padilla, MS, CIH
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Dear Mr. Farrar and Ms. Rascón Padilla:

I am writing on behalf of the Washington Trucking Associations (WTA)¹ to provide stakeholder feedback to the Department of Labor and Industries' (L&I) discussion draft to revise the current outdoor heat exposure prevention rules.² As the trade association representing the trucking industry in Washington, WTA is interested in all matters to mitigate recognized hazards in the workplace, particularly the effects of high temperatures. WTA supports L&I's efforts to review standards to protect employees from hazardous heat exposure. However, WTA is deeply troubled by L&I's suggested revisions. While well-intentioned, L&I's proposal could have disastrous results for Washington's already taxed supply chains. These proposed revisions could significantly impact Washington's economy, environment, and the health and safety of millions of Washingtonians, who rely on the trucking industry for their medical supplies, groceries, and other essential goods.

With the impacts of climate change becoming increasingly apparent in Washington, WTA's members recognize that greater attention is needed to prevent heat-related illnesses and injuries in the workplace. Since L&I established ambient heat exposure rules in 2008, Washington trucking companies have spent millions of dollars implementing high-heat exposure prevention policies and programs. With only 22 accepted heat-related injury worker compensation claims within the transportation and warehousing sector within the last 15 years, WTA believes the trucking industry's current company policies and procedures have been tremendously successful.

¹ WTA is a not-for-profit membership organization made up of over 600 member companies operating in Washington State. As the industry's representative, WTA works to promote a favorable and profitable operating climate for trucking in Washington.

² L&I Outdoor Heat Exposure Discussion Draft, (August 4, 2022) <https://lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/ambient-heat-docs/OHEDiscussionDraft8-2-2022.pdf>.

Given the trucking industry’s tremendous success in preventing heat-related injuries, WTA is deeply concerned with L&I’s proposed “one size fits all” and narrow regulatory approach to preventing heat-related illnesses. Our members have found that educating employees on prevention strategies, particularly about hydration, nutrition, and proper sleep *before* working in hotter temperatures, has had the highest level of success versus mandatory rest breaks and periodic “check-ins” by supervisors during the workday. As L&I develops revised ambient heat standards, the Department *must* consider the feasibility of implementing the new regulatory requirements and the indirect effects the regulatory requirements could have on Washington’s supply chain, environment, and health and safety of the general public.

To ensure revised outdoor heat exposure standards provide *effective* preventive measures, L&I must establish standards that are scientifically sound, cost-effective, and allow for flexibility to adjust to the wide variety of trucking operations. To support L&I’s efforts, WTA proposes the following modifications:

- **Exempt commercial driving operations from the ambient heat exposure requirements.**

The wide variety of commercial driving operations poses a significant challenge in developing a singular but effective outdoor heat exposure prevention standard for the entire trucking industry. For example, over-the-road truck drivers spend almost all their shift in the vehicle cab, with only short periods spent outside the truck to conduct mandatory pre- and post-trip vehicle safety inspections,³ fuel their vehicle, or other necessary job functions (e.g., ensuring load securement). On the other end of the spectrum, postal and delivery drivers leave their vehicle for short periods, multiple times per hour. However, the majority of trucking operations have one thing in common, which is that the primary job function is operating a commercial motor vehicle (CMV).

Most CMVs are equipped with air-conditioned or forced-air systems created to allow airflow around the driver/cargo areas to protect the driver from dangerous heat exposure. While L&I has exempted “incidental high heat exposure” of less than 15 minutes within one hour, that exemption would not be applicable to most of the trucking industry. As a result, WTA is concerned some drivers may rush federally mandated safety requirements, like pre- or post-trip inspections and ensuring proper cargo securement just to fall under L&I exemption, causing potential preventable highway safety risks.

WTA believes L&I’s proposed regulatory requirements are intended to protect employees from prolonged exposure whose *primary* job function occurs outside without frequent access to protective engineering controls, such as in-cab air-conditioning or forced air systems. With this in mind, WTA is requesting that L&I provide the trucking industry flexibility to maintain the current operational-specific strategies that have been successful over the last 15 years by exempting commercial driving operations.

³ Based on the size of a CMV being inspected, on average pre- and post-trip inspections take between 15 to 30 minutes to complete.

- **Modify Work/Cool-Down Rest Cycles Requirements.**

During the L&I stakeholder meeting on August 4, 2022, the Department's staff outlined the following mandatory work/rest cycles:

- **90-94 Degrees:** 10 minutes of rest every two hours
- **95-99 Degrees:** 10 minutes of rest every hour
- **100-104 Degrees:** 25 minutes of rest every hour
- **Over 105 Degrees:** 30 minutes of rest every hour

Even though motor carriers are currently experiencing some operational challenges and some loss in productivity with implementing the 2022 Emergency Rule's mandatory preventative cool-down rest breaks (i.e., 10 minutes every two hours), most trucking companies are adjusting operations and absorbing the financial impact to meet the rule's regulatory obligations without significant disruption to current operations. However, WTA is deeply concerned that implementing the proposed expanded rest breaks requirements could severely impact the trucking industry's operations, which would cause massive disruptions to Washington's supply chains.

To maintain current operational capacity, some WTA members indicated that complying with L&I's proposed mandatory work/rest cycles would require significantly increasing, if not doubling, operations (i.e., the number of employees and CMVs on the roads). With the current driver shortage at an all-time high⁴ and the waitlist to purchase new trucks around 12 months,⁵ a motor carrier's ability to double operations is extremely limited. If motor carriers could increase the number of CMVs out on the roads during periods of high heat, there would be a significant increase in miles traveled, resulting in a substantial increase in daily traffic congestion on our roadways and CO² emissions.

Without the ability to increase capacity, many WTA members foresee that compliance would require shutting down operations during periods of high heat. Although shutting down operations would reduce employees' exposure to high heat, the adverse ripple effect on daily life would be felt almost immediately, with goods and services critical to public health and safety constrained. While a shutdown of a few hours or even a few days may seem trivial, the backlog caused by a minor shutdown could require weeks, if not months, to recover.

Preparation, rest, hydration, and maintaining good health practices are key to working outdoors. WTA recognizes that preventative cool-down rest periods during atypical high-heat are an important component of an employer's hazardous assessment plan to reduce workplace heat-related injuries and illnesses. However, *mandatory* rest breaks without any consideration for effective alternatives proven within the trucking industry over the last 15 years, fails to meet L&I's directive to protect workers in the least disruptive manner to Washington employers and the economy. WTA strongly recommends that L&I eliminate the mandatory rest break requirements

⁴Industry Short 80,000 Drivers Today, May Be Short 160,000 by 2030, American Trucking Associations, October 25, 2021, <https://trucking.org/news-insights/ata-chief-economist-pegs-driver-shortage-historic-high>.

⁵ Class 8 orders remain level as OEMs continue to fight supply constraints, FleetOwner, April 5, 2022, <https://www.fleetowner.com/equipment/article/21238096/class-8-orders-remain-level-as-oems-continue-to-fight-supply-constraints>.

for high-heat and allow employers the flexibility to tailor company policies and procedures in a way that protects employees and is the least disruptive to company operations and the economy.

- **Eliminate Employee Monitoring Requirements for High Heat Periods.**

Unlike most Washington employers with stationary worksites, the trucking industry's professional drivers may travel hundreds of miles and/or across numerous weather zones, encountering various climate conditions. Some employers utilize onboard technology to automatically notify drivers of potentially hazardous weather conditions, including high heat. Since the trucking industry is comprised mostly of small business, most trucking companies do not have the financial and/or staff resources to monitor the location, outdoor temperature, and amount of time exposed to certain temperatures for every driver.

Within L&I's proposal, in addition to the 14-day close operation requirements for new and employees returning from an absence of 7 or more days, the Department added the requirement for employers to monitor employees during a "heat wave." WTA members have found that informing drivers of the forecasted temperatures and encouraging them to use elements of their company's written accident prevention program for heat exposure is the most effective means to reducing heat-related workplace injuries. WTA strongly recommends L&I allow employers with remote/mobile employees to replace the close operation requirement with the solutions that have been proven more effective.

- **Modify Mandatory Employee Refresher Training Requirement.**

WTA strongly believes training and preventative measures, like hydration, nutrition, and adequate sleep prior to coming on duty, are critical to implementing a successful heat illness and injury prevention program versus monitoring and mandatory rest breaks. Under L&I's current outdoor heat exposure standards, "training must be provided to employees and supervisors, prior to outdoor work which exceeds a temperature listed in WAC 296-62-09510(2) Table 1, and at least annually thereafter." Although employee and supervisor training is a fundamental element to prevent heat-related injuries and illnesses in the workplace, WTA believes the annual refresher training requirement is not necessary to achieve the standard's intended goal. With current staffing shortages, the number of trainings already required within the trucking industry, and the challenges to small businesses, WTA strongly recommends eliminating the annual refresher training requirement or, at a minimum, instituting the refresher training every three years.

- **Conclusion**

At the start of the COVID-19 pandemic, when businesses shut down, and many Washingtonians were able to work from home, trucking didn't stop. For over 30 years, the trucking industry's motto has been "if trucks stop, America stops." That motto never rang more true during the pandemic, when our nation realized how essential our dedicated professional drivers were to keep our grocery store shelves stocked and our hospitals equipped with lifesaving medical supplies. For the trucking industry to continue to supply the goods and services need to run the economy, worker safety regulations must take into consideration the indirect cost to the economy, environment, and public health and safety.

Thank you for the opportunity to comment on this rulemaking. If you wish to discuss these comments further, please contact the undersigned at (253) 838-1650 or abigail@watrucking.org.

Sincerely,

A handwritten signature in blue ink that reads "Abigail Potter". The signature is written in a cursive, flowing style.

Abigail S. Potter
Director of Safety and Compliance
Washington Trucking Associations