

Submitted Electronically October 15, 2021

Mr. Jay Withrow, Director
Division of Legal Support, VPP, ORA, OPPPI, and OWP
Virginia Department of Labor and Industry
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RE: Comments of the Virginia Farm Bureau Federation on the Heat Illness Prevention Standard [under development] [16 VAC 25 - 210]

Dear Mr. Withrow:

The Virginia Farm Bureau Federation (VFBF) appreciates the opportunity that has been provided to us to participate in the Heat Illness Prevention Advisory Panel. We have provided comments and suggestions throughout the process, and further submit these additional comments.

Virginia Farm Bureau is the largest agricultural advocacy organization in the Commonwealth, and represents 35,000+ farmers engaged in nearly every area of agriculture, livestock, and forestry production. Regardless of farm size, location, or production focus, heat illness prevention is a serious issue, and it is a priority for farms and farm managers. The industry largely follows the NIOSH & OSHA guidelines for the prevention of heat illness and stress, and provides training for both permanent and seasonal workers. Additionally, industry groups have developed guidelines, training, tools, and standards that are used nationally and internationally throughout the supply chain.

Speaking to the draft standard we have seen so far in the Heat Illness Prevention Advisory Panel, we would like to reiterate the following comments:

- A heat index threshold of 80-degrees for additional-mandatory-breaks, shade requirements without other risk factors, and other requirements would be burdensome to the industry. The overwhelming majority of harvest days in Virginia are regularly over 80 degrees. This would make harvesting perishable crops challenging, and create consequences related to food quality & security, and farm viability.
- In the proposed section 16VAC25-210-40, the requirements call for employers to provide 32-ounces of water per hour per day. However, we question why this proposed standard specifically requires 32oz per worker per hour. Symptomatic hyponatremia can occur when one drinks 3-4 L of water¹. Severe hyponatremia occurs when too much water, more than what the kidney can excrete, is inhaled. The water excretion rate of a healthy adult is about 20 L/day and does not exceed 800-1,000 mL/hr². Thus, the maximum amount of water that a person with normal renal function can drink is 800-1,000 mL/hr to avoid hyponatremia symptoms. The proposed requirement of 32 oz. (946ml) is at the far upper reaches of what is safe to consume, particularly if electrolytes are not being replenished. The existing VOSH requirement of "an adequate supply of potable water" being required is sufficient to safeguard workers' hydration needs, and does not encourage consumption of a potentially unsafe volume of water.
- We question why heat index is being used rather than actual temperature. How does an employer accurately determine heat index in outdoor work sites?
- In the proposed section 16VAC25-210-60 it states that an employee who has been newly assigned or has returned to work after an absence of seven calendar days shall be closely observed by a supervisor or

¹ 8. Jose CJ, Perez-Cruet J. Incidence and morbidity of self-induced water intoxication in state mental hospital patients. *Am J Psychiatry*. 1979;136:221-222.

² 9. Verbalis JG, Goldsmith SR, Greenberg A, Schrier RW, Sterns RH. Hyponatremia treatment guidelines 2007: expert panel recommendations. *Am J Med*. 2007;120(11 Suppl 1):S1-S21.

designee for the first 14 days of the employee's employment. Given the definition of "employee" used for this proposed standard, an exception should be added to address migrant or contract workers who are fully acclimatized from previous job sites.

- The proposed section 16VAC25-210-100 does not address migrant or temporary workers who have received the training at a previous work site.
- The proposed section 16VAC25-210-50 requires employers to encourage and allow employees to take a preventative cool-down rest in the cool down area when they feel the need to do so to protect themselves from overheating. Will this time be considered paid time? What recourse does an employer have if an employee decides to take an unreasonable amount or length of breaks considered to be unnecessary to prevent heat illness?

However, in addition to existing heat illness protections in place, in September 2021, the Biden Administration and OSHA announced they are initiating enhanced measures to further protect workers in hot environments and reduce the dangers of exposure to ambient heat. As part of this initiative, OSHA Area Directors across the nation (including Region 3 which includes Virginia) will institute the following:

- Prioritize inspections of heat-related complaints, referrals and employer-reported illnesses and initiate an onsite investigation where possible.
- Instruct compliance safety and health officers, during their travels to job sites, to conduct an intervention (providing the agency's heat poster/wallet card, discuss the importance of easy access to cool water, cooling areas and acclimatization) or opening an inspection when they observe employees performing strenuous work in hot conditions.
- Expand the scope of other inspections to address heat-related hazards where worksite conditions or other evidence indicates these hazards may be present.

Additionally, OSHA will begin work this month to develop a federal heat standard to ensure protections in workplaces across the country by issuing an Advance Notice of Proposed Rulemaking on heat injury and illness prevention in outdoor and indoor work settings. The advance notice will initiate a comment period allowing OSHA to gather diverse perspectives and technical expertise on topics including heat stress thresholds, heat acclimatization planning, exposure monitoring, and strategies to protect workers.

Based on Virginia's relatively few heat illness investigations compared with the national average, and the advanced steps being taken at the national level, we believe the most prudent step forward for the Heat Illness Prevention Advisory Panel is to recommend waiting for that federal standard to be developed rather than developing a state program. Developing a state standard while knowing a federal standard is in development on the same or similar timeline would create confusion and a burden for employers, employees, and enforcement agencies.

Thank you for the opportunity to file these comments. It is our hope that the board will consider our suggestions and weigh both stakeholder feedback, relevant data from verifiable sources, and look to the national standard already under development to determine if current regulations are sufficient, or if a heat illness prevention standard is necessary to prevent heat-related-injuries.

Sincerely,



Wayne Pryor
President & CEO
Virginia Farm Bureau