



June 9, 2021

Mr. Jay Withrow
Director, Legal Support, VPP, ORA, OPP, and OWP
Main Street Centre
600 East Main Street, Suite 207
Richmond, VA 23219

Re: Comments regarding Heat Illness Prevention Standard [under development] [16 VAC 25 - 210]

Dear Mr. Withrow:

The Virginia Agribusiness Council appreciates this opportunity to comment on the notice of intended regulatory action regarding a possible heat illness prevention standard. The Council is a Richmond-based trade association representing the agriculture and forestry industries. We believe a standard is not necessary at this time and feel the Department already has the necessary authority to protect workers from unsafe working environments in which heat illness and stress may be a threat. Every agribusiness sees the value in their workforce and the need to provide adequate resources to keep them healthy and productive. The specified nature of agribusinesses needs to be taken into account and so the Council has asked to participate in the planned Regulatory Advisory Panel. Given the focus of agriculture in the agency's background document, it is imperative that both the agriculture and the forestry industries are represented in this workgroup.

In the Council's opinion, the Department's background document has not made the case that the heat illness standard is necessary to protect the workforce. The Department cites only 11 workplace investigations over a 22-year period in Virginia. However, no outcome data is presented on those investigations or whether employer negligence was the cause of those incidents. Further, the agency cites data regarding both work-related and non-work-related heat illness injuries and fatalities. Additionally, the Council disagrees with the Department's assumption of undercounting in Bureau of Labor Statistics data regarding agricultural injuries and fatalities as cited in footnote 3 of the background document. Small operations with fewer employees tend to have less land and easier access to shade and water for their employees. Decisions by the Board to move forward with a standard should be made based on verifiable workplace-related data and not unprovable assumptions.

The Council notes that there is already a potable water requirement and the Department fails to give adequate reason as to why the "general duty" clause of the federal Occupational Safety and Health Act of 1970, requiring the employer to provide a safe working environment, is not a

sufficient enforcement mechanism to properly protect employees. Given the relatively few workplace investigations in Virginia over the number of years provided, the Council believes the “general duty” clause should be sufficient for VOSH to protect workers from unsafe working environments. The number of these investigations as compared with other states or other workplace hazards would seem to indicate a specific standard is not necessary. As noted by the Department, the Occupational Safety and Health Administration has not adopted a national standard and we would urge the Board not to adopt a Virginia specific regulation until one is adopted at the federal level.

If the Safety and Health Codes Board chooses to move forward with a standard, the regulation should allow farms and agribusinesses ample time to comply, provide any required training to their employees, and provide reasonable flexibility for compliance.

Heat illness is a serious concern for all agriculture harvesting – and it is taken seriously by farmers and agribusinesses. Many farms and agribusinesses employ family members, neighbors, and friends, and often are worked by the farm owners themselves. The industry largely follows the NIOSH guidelines for the prevention of heat illness and provide training for their permanent employees and seasonal workers. A renewed education effort surrounding OSHA’s Heat Illness Prevention Campaign and build on the efforts already being conducted by the industry. Producers and the agribusinesses they supply often work off these guidelines and create training and standards that are used nationally and internationally throughout the supply chain. The agriculture industry is seasonal in nature and relies on timing to complete planting and harvesting of their crop. If the Board moves forward with a standard, we urge the Board to provide needed flexibility for compliance and the needed time to adjust current training to fit any new requirements.

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 and relevant verifiable data to determine if current regulations are sufficient or if a heat illness prevention standard is necessary to prevent heat-related-injuries. As the process moves forward, we request a representative from the Council as well as representatives from the Virginia Farm Bureau and Virginia Forestry Association be included in any workgroup or panel the Department forms, to roundly represent the agriculture, agribusiness, and forestry industries – the largest combined industry sector in the Commonwealth.

Sincerely,



Kyle J. Shreve
Executive Director