



October 15, 2021

Mr. Jay Withrow
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 provide further comment on proposed draft heat illness standard. We have appreciated the opportunity to participate in the Regulatory Advisory Panel (RAP)'s deliberations. However, in light of the recent announcement by the Biden Administration, we believe that Virginia should wait for that federal standard to be developed rather than to move forward with a state program. Moving forward with a state standard, only to have to reconvene the Safety and Health Codes Board to evaluate how the state standard would comply with the federal standard is unnecessary and provide confusion to employers to implement should the requirements differ between the two. This would also allow employers that operate in multiple states to have one set of policies and training across jurisdictions rather than a patchwork of differing materials and messages.

Moreover, the Commonwealth still has relatively few heat illness investigations compared with the national average and a state specific standard is unnecessary at this time. The investigations presented during the RAP suggest that increased training and planning could prevent a vast majority of cases in the Commonwealth.

Should the Department move forward with a heat illness standard, the proposed regulation is overreaching and would be nearly impossible for our industry to comply. Specifically, having a heat index threshold of 80-degrees for mandatory breaks and access to shade without other risk factors would significantly hamper planting and harvesting seasons. Most harvest days for major Virginia crops such as tobacco, apples, soybeans, peanuts, and grains are done in days that are regularly over 80 degrees. This would make harvesting these crops, which in most cases are perishable with limited harvesting windows, impossible with the amount of work stoppages required. Similarly, the agriculture industry already uses acclimatization schedules for their temporary migrant labor. However, 80-degree threshold is lower than needed for such procedures or schedules and the Department should consider raising the threshold to that of high heat procedures.

In the proposed section 16VAC25-210-40, the requirements call for 32-ounces of water per hour per day. This amounts to nearly a case of water per day for each worker. Regarding any mandated amount of water provision, it is noted by medical experts – and was discussed during the workgroup’s deliberations – that slowly consuming smaller amounts over a period of time is a better way to combat heat illnesses. In the same section, employers are to ensure workers have the opportunity to consume 8 ounces of water per hour. This language is contradictory and we would suggest the current potable water standard is sufficient to safeguard workers hydration needs.

The Council is supportive of employers having proper emergency response procedures to ensure the health of their employees. However, we are concerned that employers operating in rural areas may have difficulty contacting emergency personnel if the worksite is in areas of low cell phone reception. We would suggest language be included requiring the employer contact the necessary emergency medical personal as soon as physically possible.

We have more than 400 members and have spoken with many who reiterated to us their existing commitment to the safety of their workers in every way, not just regarding heat illness. Our members have policies and training regarding heat illness not just for their employees in the United States, but around the world. 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. In closing, we would reiterate that the board defer action on such a regulation until the federal government has had ample time to implement a standard nationwide.

Thank you for this opportunity to comment and participate in this regulatory process.

Sincerely,

Beck Stanley
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