



National Grain and Feed Association
TRANSFORMING AMERICA'S HARVEST™

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OSHA Docket Office
Docket No. OSHA 2021-0009
U.S. Department of Labor
Occupational Safety and Health Administration
200 Constitution Ave., NW
Room N-3653
Washington, DC 20210

Re: Docket ID–OSHA–2021–0009 – Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings

The National Grain and Feed Association (NGFA) and the Agricultural Retailers Association (ARA) are pleased to respond to the Occupational Safety and Health Administration's (OSHA) Advance Notice of Proposed Rulemaking (ANPRM) in the October 27, 2021, *Federal Register* on issues related to heat injury and illness in the workplace that the agency could potentially use in developing a proposed standard for heat injury and illness prevention. As discussed more fully below, we oppose the creation of a one-size fits all regulation.

The NGFA, established in 1896, consists of more than 1,000 grain, feed, processing, exporting and other grain-related companies operating more than 8,000 facilities handling the large majority of the U.S. grains and oilseeds used for domestic and export purposes annually. Its membership includes private companies and farmer owned cooperatives, including grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; transportation companies; and associated firms that provide goods and services to the nation's grain, feed, and processing industry. In addition, affiliated with the NGFA are 27 state and regional grain and feed trade associations.

ARA represents agricultural retailers who supply farmers and ranchers with products and services. These products include seed, nutrients, crop protection products, feed, equipment, and technology. Retailers also provide consultative services such as crop scouting, soil testing, field mapping, custom planting and application and development of nutrient management and conservation plans.

Agricultural retailers' range in size from small, family-held businesses to large companies and farmer-owned cooperatives with many outlet stores. Large and small retail facilities are scattered throughout all 50 states and provide critical goods and services, as well as jobs and economic opportunities in rural and suburban communities.

The NGFA, as the principal representative of the grain handling, feed manufacturing and processing industry, has been in the forefront of research, education and training designed to enhance safety in the grain handling, processing and feed sectors.

The industry is dedicated to pursuing and promoting technological innovations, new practices and safety training and education programs that contribute to safe and efficient grain-handling operations. These programs are vital, first and foremost, to safeguard human lives. We have demonstrated a commitment to fostering safety, prior to and after the promulgation of the grain handling standard, *29 CFR 1910.272*.

Existing OSHA Heat Illness Prevention Campaign

Currently, the grain, feed and processing industry is proactively addressing heat exposure and has taken appropriate steps to reduce related risks. As a result, NGFA urges the agency to cease the rulemaking process since there are existing federal agency efforts and laws that address this matter.

According to the National Institute for Occupational Safety and Health (NIOSH), workers who are exposed to extreme heat or work in hot environments may be at risk of heat stress. Heat-related illnesses range from heat cramps to heat exhaustion to heat stroke. Heat illnesses are preventable with proper education and teamwork. A proven strategy to combat heat stress is OSHA's Heat Illness Prevention campaign approach.

Since 2011, OSHA has raised awareness of the dangers associated with working in extreme temperatures through its Heat Illness Prevention campaign. Through education sessions, outreach events, information sessions, social media messaging, and more, millions of workers and employers have learned how to protect themselves from extreme heat.

Further, an employer with workers who could be exposed to hot environments must establish a heat illness prevention program to satisfy OSHA. The agency has said that such a program should include:

- Training all employees and supervisors on heat illness prevention.
- Providing enough fresh water for each employee and encouraging them to drink.
- Providing access to shade and encouraging employees to take a cool-down rest in it; they should not wait until they feel sick to cool-down.
- Closely observing all employees and monitoring for signs of illness.
- Allowing new or returning workers to gradually increase workloads and take more frequent breaks as they acclimate to, or build a tolerance for, working in the heat.
- When possible, creating engineering controls such as air conditioning and ventilation which is not only a preventative measure, but can be used to assist in emergency situations as well.

- Developing and implementing written procedures, specific to the worksite, for heat illness prevention, including plans on how to handle medical emergencies and steps to take if someone shows signs or symptoms of heat illness.
- Planning for emergencies and training workers on prevention, including any of the previous written procedures.
- Documenting any and all training, discussions and emphasis on heat-related prevention, training and safety.
- Overall, OSHA’s message is “Water. Rest. Shade.” Ingrain this slogan in your workers’ minds during pre-work meetings.

On a practical level, employers could use this existing prevention program as a guide in making work assignments designed to avoid overexposure, and then rely on experience based on climate and location to develop a program with recognized protective measures that required workers to take a break or get assistance if they sensed more than the normal heat-related discomfort.

Based on the existing guidance, imposing a federal standard is unnecessary, unworkable, and impractical given that: (1) current federal regulations already protects workers from extreme heat; (2) OSHA is actively conducting inspections; and (3) employers may be cited for not providing a safe workplace via the OSH Act general duty clause.

There is no one-size-fits all approach to address this, as climate varies from region to region and the health and underlying factors that contribute to heat stress vary by employee.

Existing State and Other Standards

OSHA has numerous questions in its ANPRM, including some about existing efforts at the state level to prevent occupational heat-related illness and the validity of incorporating other standards into a Federal standard.

While the hazard of exposure to excessive heat is real, the development of a reliable and practical model that can be used to set appropriate permissible exposure limits (PELs) and action levels (ALs) is complicated. First, the general understanding is that the impact of heat exposure should be based on its effect on the core temperature of the body. We believe, consistent with the **NIOSH Criteria Document for a Recommended Standard for Occupational Exposure to Heat and Hot Environments**, this requires a model that accurately and reliably takes into account total metabolism, external work performed, convective heat exchange, radiative heat exchange, conductive heat exchange, and evaporative heat loss.

These factors are significantly affected by the nature of the work, the duration of the work, the timing of breaks, where it is being performed, humidity, wind, and the clothing worn by the worker. It seems questionable whether the approach taken in California, Washington and Oregon, which is based on two temperature levels, would satisfy the rulemaking criteria of the

OSH Act. Second, studies indicate that individuals have varying capacities to deal with heat exposure. Third, assuming OSHA proceeds to develop a PEL and AL, employers would need a readily available means of determining whether employee exposures exceed the PEL or AL. Implementation of the American Conference of Governmental Industrial Hygienists Threshold Limit Values (ACGIH TLV) for heat stress or a similar model would require job-specific assessments and, in many cases, task-specific assessments, taking into account the range of conditions under which the work will be performed.

As a result, all of factors for protecting workers against heat strain should be considered by places of employment and not be based on a complex formula. In addition, places of employment should respond to all situations where employees report what they have been trained to recognize as the physical signs of heat strain. However, the singular focus on temperature and heat stress index is not appropriate. Heat stress is much more complex than temperature or heat index. Using temperature or heat index is too simplistic and not based on real risk of disease.

In addition to the factors mentioned above, there are other factors that contribute to an employee's ability to respond to heat stress. Some of these factors include personal factors, such as not eating or poor wellness habits. Such factors need to be managed as part of a heat illness prevention program but cannot be addressed by engineering controls.

National Advisory Committee on Safety and Health (NACOSH) Work Group on Heat Injury and Illness Prevention

Within OSHA's NACOSH, OSHA is forming a Heat Illness Prevention Work Group to provide a better understanding of challenges and best practices in protecting workers from heat hazards. This group will include three members of the full NACOSH—a public representative, labor representative, and management representative—as well as new members from a range of sectors and industries. OSHA will convene periodic meetings of the work group to provide diverse perspectives on topics including identification, monitoring, and response to workplace heat hazards; heat emergency response plans; and worker training and engagement.

NGFA and ARA state affiliate member, the Wisconsin Agribusiness Association (WABA) has been invited to participate on the workgroup as a management representative for the agriculture industry. In addition, WABA serves on the NGFA Safety, Health and Environmental Quality Committee. As a result, the grain, feed and processing and retailers industries will be able to provide input to NACOSH on the effectiveness of the current heat illness prevention programs being implemented throughout the industry.

Further, NGFA and ARA recommend that the agency not develop a one-size fits all regulation but instead use the recommendations of the workgroup and Advisory Committee to modify their existing heat illness prevention campaign to address the needs of specific industries based on lessons learned since the campaign began in 2011.

Conclusion

In closing, the NGFA and ARA reiterate their opposition to the creation of a one-size fits all federal regulation to replace an existing program that OSHA can currently enforce through the General Duty Clause. We firmly believe that employers should be responsible or address heat hazards at individual facilities as climate varies from region to region and the health and underlying factors that contribute to heat stress vary by employee. Further, existing state and other standards are based on complex formulas that do not take into task the wide variety of tasks that could be performed or other factors that cannot be addressed through engineering controls.

Further, through the NACOSH Work Group on Heat Injury and Illness Prevention, NGFA and ARA looks forward to working with you to further modify existing outreach and educational programs in order to expand the number of employers and employees that take part in the Heat Illness Prevention campaign.

Thank you for your consideration of our views. We would be pleased to respond to any questions you may have.

Respectfully submitted,



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