



BY ELECTRONIC MAIL

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OSHA Docket Office
Docket No. OSHA 2021-0009-0059
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 – 0059 – Memorandum Reopening the Comment Period on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings to Allow for the Submission of Documents and Comments

The NGFA, established in 1896, consists of more than 1,000 grain, feed, processing, exporting and other grain-related companies that operate more than 8,000 facilities and handle more than 70 percent of all U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that provide goods and services to the nation's grain, feed and processing industry. The NGFA also consists of 27 affiliated State and Regional Grain and Feed Associations.

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*.

NGFA member companies are considered essential critical infrastructure. Grain handlers, producers, retailers and transportation companies are crucial for community resilience and the continuity of significant functions including the U.S. human food and animal feed supply chains. These companies come from all sectors of the grain, feed and processing industry that range from large multinational companies to producer owned cooperatives to small family businesses.

A majority of NGFA's membership consists of small to mid-size regional cooperatives that are owned by farmers. Many of these independent businesses are involved in both grain handling and agricultural retail operations. This includes purchasing and storing grain from farmers as well as the selling of seed and fertilizer. The potential heat injury and illness prevention in indoor and outdoor settings standard being considered by the Small Business Advocacy Review (SBAR) Panel under the Small Business Regulatory Enforcement Fairness Act will primarily impact the grain handling side of these small businesses.

NGFA appreciated the opportunity to participate in the September 12, 2023 SBAR session and these written comments memorialize the input provided by Small Entity Representative, Brian Corderman with NGFA member company Farmers Cooperative Association in Alva, Oklahoma.

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. 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. As Mr. Corderman noted, there have been no recorded heat injuries or illnesses at his company, over the last five years, based on the current program that his company already has in place (that are also the main framework for the proposed rule) includes:

- Training employees in the symptoms of Heat Stress, Heat Stroke, Heat Exhaustion, Heat Cramps, and Heat Rash (including first aid for each symptom);
- Water Breaks;
- Acclimation;
- Rest Breaks; and
- Monitoring Environmental Conditions and Workers.

Our primary concern with the proposed rulemaking on heat injury and illness prevention is that it will place an undue regulatory burden on grain handling facilities in both indirect (employee time) and direct costs (equipment) and additional paperwork requirements. Some examples include: 1) additional paperwork burdens related to monitoring and recording the proposed initial heat (80°) or high heat index (87°) in numerous locations throughout a facility both indoor and outdoor; 2) retrofitting facilities and purchasing new equipment related to ventilation and thermometer measurement (wet bulb) in outdoor environments; and 3) acclimation and employee training, preparedness and equipment, to name a few.

With the draft that was shared with the SBAR panel, a critical issue is the current shortage of employees. In the midst of an already severe labor shortage, additional training requirements followed by additional equipment would create yet another barrier to hiring much needed and scarcely qualified full-time, part-time and seasonal workers in the grain, feed, processing, milling, export and transportation industries.

Recruiting those to work in U.S. agriculture is already a challenge. Further those with expertise in the field is difficult when the industry is already facing a lack of truck drivers, facility workers, warehouse labor, and other logistical workers. As a result, these additional responsibilities for small businesses, would lead to increased costs in both time and equipment to implement the burdensome requirements on the proposed regulation. The additional costs will lead many of the grain operations in these small companies to either consolidate with a larger company or close altogether which could then have a significant impact on the local economy. This ripple effect will increase costs for farmers, who will have fewer options on where to purchase their supplies and sell their products which will then lead to increased food prices for the consumer. Also, the decrease in the number of facilities for farmers to purchase products from and sell commodities to will lead to an increase in hazardous chemicals on the roadway since many will have to drive longer distances to access the material.

Two critical issues in the proposal are related to monitoring and acclimation. Specifically, the monitoring requirement will require a designated individual for this position to monitor the heat index and various indoor and outdoor locations throughout the day. For small businesses with limited personnel, this will impact the amount of time that the designated monitor can contribute to the functions of their job description. As Mr. Corderman noted, at certain times of the year, the temperature at the beginning of the day exceeds the high-heat index if humidity is included. In place of monitoring, a simple “buddy system” of employees looking out for another is the more appropriate action to take. By training employees in the symptoms of heat stress, heat stroke, heat exhaustion, heat cramps, and heat rash and the appropriated first aid treatments, the employees can complete their task while also making the safety of their co-workers a priority.

In the grain handling industry, a majority of facilities’ employees are working outside in the heat a daily basis. This includes “indoor” work in grain storage bins, head houses, unloading pits and warehouses that are located “outdoors.” In some cases the temperature in the unit can exceed the high heat index based on the outdoor temperature. However, many of these units do not have any mechanical ventilation devices for cooling (outside of venting) due to the impact that the cooling device could have on the quality of the bulk commodities e.g., corn, wheat, and soybean stored in the location. In addition, additional cooling units or ventilation in these locations could have an impact on dust control and suppression which is a critical factor in dust explosion prevention within the grain handling industry. Further, there is no need for costly, additional “cooling area” for employees, e.g. trailer with air conditioning when they can use the administrative office space at the facility for this purpose. Finally, OSHA does not specifically identify what is considered to be defined as “indoor” and/or “outdoor;” therefore, it is very difficult to determine what should be done in each circumstance to address the issue.

In addition, breaks can eliminate the proposed gradual acclimation process of exposure to heat. 20 percent or 40 percent exposure to heat during a workday is not possible in certain environments. Regular work breaks can be scheduled into the workday for employees that can provide cover for employees.

As Mr. Corderman noted, an example of the increased costs is illustrated with his company consisting of 27 full-time personnel. Based on the proposed requirements, it is estimated that the proposed costs to implement the proposed rule e.g., monitoring, training,

equipment, etc. will cost \$30,000 in indirect costs (time lost) and equipment \$100,000 – \$200,000 in the purchase of cooling and ventilation equipment for “indoor” facilities such as grain bins and elevators. This doesn’t include the costs to make sure each of the locations has the correct electrical wiring and the appropriate rating. In addition, the time to comply and implement the procedures identified on pages 28-29 of the SER Background Document will be approximately three times more hours than proposed by OSHA. He further estimates that maintaining and onboarding new employees would be \$10,000 in costs annual costs per employee in terms of training and equipment e.g. PPE.

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 and action levels is complicated. 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 also be applicable to Oklahoma, North Dakota or Ohio.

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 heat index 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.

Conclusion

In closing, the NGFA reiterates 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, OSHA’s proposal is based on a heat index formula that do not take into account the wide variety of tasks that could be performed or other factors that cannot be addressed through engineering controls.

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

Respectfully submitted,



Michael Seyfert
President and Chief Executive Officer