



New York Farm Bureau • 159 Wolf Road, Suite 300 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

January 14, 2025

Mr. Stephen Schayer
Director, Office of Physical Hazards and Others
OSHA Directorate of Standards and Guidance
200 Constitution Avenue, N.W.
Room Number N3626
Washington, D.C. 20210

RE: Docket No. OSHA-2021-0009 *Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*

Dear Mr. Schayer,

Thank you for the opportunity to submit comments on the Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings proposed rule. New York Farm Bureau (NYFB) is the state's largest general agriculture advocacy organization representing over 12,000 farmers across New York State. While we fully support measures to protect the health and safety of employees, this regulation as drafted may pose significant challenges for farmers and the greater agricultural industry while failing to achieve the intended outcome of protecting the health of farm employees.

Health and safety of farm employees continue to be a top consideration of farm employers when determining the tasks for the day. For example, if a farm employer knows a certain task will be more labor intensive, they will plan to work towards completing that task at an earlier time of the day, to avoid the heat. However, not all tasks can be completed early in the day due to the crop they are tending to or harvesting. Certain actions to grow or harvest a crop must only be done when the crop is completely dried, after the dew has dried. Additionally, many of our farm employers already implement heat stress mitigation measures voluntarily, such as providing shade and rest breaks based on the specific needs of the employees and daily operations. In New York, there are already requirements for providing drinking water at no cost to the employee. These are considerations and plans that farm employers have already been implementing.

Identify Heat Hazards and Training

One concern relates to identifying heat hazards. As farmers are not scientific experts in identifying heat illness, this would require OSHA to train farmers to identify what would be considered a heat hazard. While some heat hazards are obvious, there may be situations, such as

working in an indoor environment, where this may be more challenging to identify. Would there be a standard or formula farmers could utilize to determine what is considered a heat hazard? Additionally, to ensure compliance with OSHA, farmers would need to be trained properly to identify all signs of heat illness. All this information would have to be dispersed to farmers through some form of training. This training would be in addition to the training required for employees and supervisors. This is already a significant time requirement expected of farmers before any other part of the plan is put in place.

Heat Injury and Illness Prevention Plan (HIIPP)

By requiring farmers to formalize site-specific comprehensive policies and procedures (and have it be in writing if a farm has over ten employees) is an additional layer of paperwork and time that may not achieve the intent of the proposed regulations. Most farms in New York already have a heat illness plan in place that satisfies OSHA's proposed requirements. Adding this layer is duplicative, and subsequently, an additional expense. There are also concerns when farms have multiple locations. This rule states that the HIIPP would be site specific. Would a farmer who has three different locations across New York, for example, have to create three separate plans for each location? It is common for farms to have remote locations. The time and steps to satisfy the proposed requirements would be multiplied by the number of locations the farmer owns. Also, this creates additional steps to monitor local heat index forecasts or wet bulb globe temperatures. When a farmer has three different locations across the state, for example, this becomes more challenging to keep accurate records of each heat index forecast or wet bulb globe temperature for each location. All these concerns must be addressed prior to moving forward with the final rule.

Acclimatization

The proposed regulation states that protocols will be required for new and returning unacclimatized employees at the initial heat trigger. Many farmers utilize the H-2A program to secure a labor workforce. H-2A employees are seasonal, and are here for a short period of time, usually for planting of crops through the harvesting of crops. Due to the nature of the H-2A program, employees arrive immediately around the time of planting. The regulations suggest that gradual acclimatization is a preferred; something that may take up to two weeks. This cuts significantly into the time that H-2A employees intend to work. To fulfill the needs of planting the crop, farmers would likely have to secure a larger workforce—an already challenging issue. This acclimatization rule does not take into account the temperature and work that H-2A employees may have been doing prior to their arrival—they may already be acclimated to that temperature. Securing a labor workforce continues to be our farm employer's largest concern. This requirement will only exacerbate this issue.

Summary

By creating a one-size-fits-all federal mandate, it effectively eliminates the flexibility farmers need to adapt to their unique production circumstances and local climate conditions. It is vital that farmers have flexibility as their business operations rely heavily on the weather—an event they cannot control.

In New York, there are organizations such as the New York Center for Agricultural Medicine and Health (NYCAMH) who provide resources and services to farm employers and employees alike to prevent and treat occupational injury and illness on farms. At New York Farm Bureau, we work with organizations such as NYCAMH and Cornell Agricultural Workforce Development Program to continue to promote the respective organizations resources and programs so that farm employers and employees continually strive towards safer work environments. We recommend that greater efforts be used towards supporting these existing programs who continue to do the great work of reducing occupational illnesses on our farms.

In sum, farmers already do many of these proposed requirements. This proposed regulation to formalize the work farmers already do on their farms is duplicative and superfluous. It must not be underestimated the time and expenses this regulation will have on our farms. Our farmers continue to do more with less resources, but it is critical that we do not underestimate the cost of these regulations on our farms. While we appreciate the notion of what this regulation is trying to achieve, we do not believe this will achieve the desired outcomes it is expected to. Rather, we suggest putting efforts into existing resources to navigate towards a safer work environment on our farms. Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a series of loops and a final flourish.

David Fisher
President, New York Farm Bureau