

Statement of

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To the

**The U.S. House Committee on Education and Labor**

**Workforce Protections Subcommittee**

**Hearing**

**“From the Fields to the Factories:**

**Preventing Workplace Injury and Death from Excessive Heat”**

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The Associated General Contractors of America (AGC) is the leading association in the construction industry representing more than 26,500 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more.

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Chairwoman Adams, Ranking Member Byrne and members of the House Education and Labor Subcommittee on Workforce Protections, thank you for inviting me here today. My name is Kevin Cannon and I am the senior director of safety and health services for the Associated General Contractors of America (AGC) in Arlington, Virginia. AGC is a national organization representing over 26,500 businesses—including union and open-shop contractors—involved in every aspect of construction activity in all 50 states, Puerto Rico and Washington, D.C. AGC and its nationwide network of chapters prioritize worker safety, regularly educate and provide services to ensure that our workforce comes home safely at the end of every day.

Personally, I have been involved in all aspects of safety and health policy in the general and construction industries over the last two decades, with the last thirteen years being in the construction industry. I hold a Certified Safety Professional (CSP) certification through the Board of Certified Safety Professionals (BCSP). I have been a member of the Advisory Committee on Construction Safety and Health (ACCSH) since 2011. ACCSH is a continuing advisory body established by statute that provides advice and assistance in construction standards and policy matters to the Assistant Secretary of the U.S. Occupational Safety and Health Administration (OSHA). And, I was honored to be selected for a two-year term as Chairman of ACCSH in June of this year.

Since its inception, safety and health has been a core value of AGC and its members. In our very early stages of existence, the founders recognized that safety is critical to the success of the industry and established a safety and health committee. Today, that committee is comprised of more than 200 safety and health professionals representing all sectors of the industry and contractors of various sizes from across the nation. During our bi-annual safety and health committee meetings, contractors share best practices addressing a wide variety of safety and health hazards, oftentimes with their direct competitors because safety should not be used as a business advantage. In addition to the sharing of best practices, attendees are offered up to twenty educational sessions at each committee meeting.

In my testimony today, I will discuss:

- The impact of heat exposure on workers;
- How the construction industry, AGC and its chapters are proactively addressing the heat exposure;
- Existing federal agency efforts and law addressing heat exposure;
- As such, why a new federal standard and/or law is unnecessary, unworkable and impractical; and
- How OSHA previously found that such a standard was unwarranted.

## **Background on Heat Exposure**

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 stress occurs when the body's natural mechanisms for returning it to its core temperature of 98.6

degrees Fahrenheit (plus or minus 1.8 degrees) become impaired. Heat stress can cause injuries, illnesses and fatalities. Heat-related illnesses range from heat cramps to heat exhaustion to heat stroke, which can result in death. Heat stress can also result in injuries from exhaustion and other, related workplace hazards. NIOSH also identifies workers at greater risk of heat stress to include those who are 65 years of age or older, are overweight, have heart disease or high blood pressure, or take medications that may be affected by extreme heat. Heat illnesses can be deadly but is preventable with proper education and team work.

## **The Construction Industry, AGC of America & its Chapters are Proactively Addressing Heat**

Construction contractors are keenly aware of the dangers of working in extreme temperatures and have taken appropriate steps to reduce the risk of injuries and illnesses related to extreme heat exposure. In speaking with AGC members, we have found that there are a range of policies and adjustments that are implemented to ensure workers are not overheated while performing their tasks. These include scheduling work earlier or later to avoid performing tasks during the time(s) of day when the temperatures are the highest and using jobsite trailers, or company vehicles on remote jobsites, as cool down areas. Some have taken a total wellness approach to educate their employees on the importance of a proper diet and properly managing their health, especially those with medical conditions or on regularly prescribed medications. Additionally, contractors hold routine toolbox talks prior to and during the summer months to raise awareness of the issue and reinforce the importance of proper hydration, being able to identify the symptoms of heat illness, and how to prevent it from occurring.<sup>1</sup>

AGC has also been proactive in addressing industry workplace safety. In 2017, AGC unveiled a study<sup>2</sup> designed to improve the safety of construction workers and help construction firms prevent workplace fatalities and injuries. AGC worked with the Virginia Tech Myers-Lawson School of Construction to undertake the comprehensive study of every construction fatality that took place over a three-year period including fatalities that occurred during the summer months. As a result of this analysis, recommendations offered to reduce the risk of overheating include:

1. Raising awareness about the summer seasonality of safety and health hazards, including adopting or adapting OSHA's "Water. Rest. Shade." guidance.
2. Sharing these statistics within training courses and encouraging trainees to share what they believe are the causes:
  - a. Health effects (e.g. fatigue, dizziness), associated with hot conditions.
  - b. Health conditions most likely to occur in summer:
    - i. Dehydration
    - ii. Sunburn
    - iii. Lightning strikes
    - iv. Burns and falls from heights (i.e. rooftop utilities get hot).
3. Considering the addition of a seasonal component to safety and health policies and procedures. For example:
  - a. Making accessible and recommending workers drink four cups water/hour.

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<sup>1</sup> A toolbox talk is an informal group discussion that focuses on a particular safety issue. These talks can be used daily to promote department safety culture as well as to facilitate health and safety discussions on job sites.

<sup>2</sup> <https://www.agc.org/industry-priorities/safety-health/construction-fatalities-study-0>

- b. Wearing gloves and sunglasses while working on roofs in summer.
4. Since there are more workers in summer, requiring a buddy system for risky tasks.

AGC chapters have long identified the risk of heat stress and the industry has made awareness a priority. In Texas, a state not immune to high temperatures, a local AGC chapter – TEXO: The Construction Association – has made heat stress awareness a priority by promoting its inclusion in safety toolbox talks. And while not considered formal education, the toolbox talks serve to educate workers on the subject matter, providing basic information on how to recognize and avoid various jobsite hazards. The talks are often led by the crew leader or foreman but can also be led by the workers themselves to increase involvement in the safety and health program.

Two other states known for their summertime heat, Alabama and Georgia, have both placed a focus on preventing injuries related to exposure to extreme heat. The AGC Alabama chapter took advantage of OSHA and the National Weather Service making May 31<sup>st</sup> National Heat Awareness Day by urging jobsites and workplaces to host a safety meeting focused on heat illness prevention. They teamed up with their workers' compensation provider, CompTrust, to support OSHA's campaign to educate field employees on the dangers of heat illness and how to look for warning signs in fellow employees. On April 29 – 30, 2019, the AGC Georgia chapter held a stand down focused on heat illnesses. They too partnered with their workers' compensation provider, CompTrust, and OSHA to raise awareness of the dangers of working in extreme temperatures.

### **Existing Federal Agency Efforts and Law Address Heat Exposure**

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

Employers are still responsible for providing workplaces free of known safety hazards. This includes protecting workers from extreme heat. An employer who fails to implement measures to protect workers exposed to high temperatures can be cited under the general duty clause of the Occupational Safety and Health Act. In FY 2017, the agency conducted over 100 such inspections. Under the current administration, the agency remains active in the enforcement of their existing standards and regulations. In construction alone, in FY 2018, there were 11,985 inspections conducted and 29,837 citations issued, totaling more than \$87 million in penalties. This is clear evidence that the agency remains committed to appropriately enforcing its laws.

### **Imposing a Federal Standard and/or Law is Unnecessary, Unworkable and Impractical**

Given the fact that current law already protects workers from extreme heat and OSHA is actively conducting inspections, another federal law and/or standard is simply unnecessary. Furthermore, attempting to regulate employee exposures to extreme heat by way of a federal standard and/or law is an unworkable solution. There is no one-size-fits-all approach to address this issue, for several reasons. First, climate varies from region to region and what may be considered extreme temperatures in one part of the country could be the norm in another. For example, Alaska

recently set a heat record of 90-degrees Fahrenheit, while this can be an average summer temperature in other states, like Alabama. In addition, there are a number of secondary factors that affect climate, such as nearness to large bodies of water, elevation, the rain shadow effect of mountains, global wind and ocean current patterns, cloud cover, and surface albedo.

On the practical side, every individual responds differently to the stresses of a hot environment. When considering the impacts of heat exposure on an individual, employers would have to take into consideration the age of the employee, pre-existing medical conditions, and whether an employee is taking certain medications. Essentially, an employer would need to have an individualized heat prevention program for each employee as an effective program would have to take into account the lifestyle habits among the workforce that the employer may not have control over. Examples include an individual's diet, the type and number of beverages consumed, and their level of physical fitness.

### **OSHA Previously Determined that Such a Standard Was Unwarranted**

Congress should not legislate on an issue where the federal government already has an agency with the authority and jurisdiction to promulgate such a standard: OSHA. In addition to circumventing the rulemaking process, the passing of legislation requiring OSHA to issue an emergency temporary standard (ETS) with rulemaking after, unfairly subjects employers to enforcement of a rule that the public was not afforded an opportunity to review and comment on.

This position was echoed in the response issued by then-Assistant Secretary of Labor for Occupational Safety and Health, Dr. Michaels, to the July 2012 petition submitted by Public Citizens. The response went further to cite other OSHA standards that offer protections to workers from exposure to extreme heat as well as additional barriers to issuing an ETS. Specifically, the response states:

Section 6(c) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue an ETS when it finds both that employees are exposed to a grave danger from exposure to substances or agents determined to be toxic or physically harmful, and that issuance of an ETS is necessary to protect employees from that danger. The "grave danger" finding required for an ETS includes compelling evidence of a serious health impairment involving incurable, permanent or fatal consequences. "Grave danger" also involves a degree of risk that is higher than the "significant risk" that is required to statutorily support a permanent standard under Section 6(b) of the OSH Act. OSHA agrees exposure to extreme heat can lead to death; however, the majority of workers with adverse health effects from heat exposure experience dehydration, cramps, exhaustion, and other effects and are able to recover fairly quickly when the appropriate measures are taken. As you mentioned in your petition, the Morbidity and Mortality Weekly Report (MMWR) stated that the annual rate of heat-related deaths among crop workers from 1992 to 2006 was 0.39 per 100,000 workers. While OSHA acknowledges that these deaths are most likely underreported, and therefore the true mortality rate is likely higher, the mortality rate reported in the MMWR does not exceed those of other hazards OSHA has deemed to be "significant" (e.g., benzene) and therefore, would likely not meet the legal requirement of "grave."

Furthermore, if OSHA were to determine that a grave danger was present, OSHA must have adequate evidence that an ETS is necessary because no existing OSHA requirements can substantially reduce the grave danger. Additionally, OSHA must show that the ETS would be technologically and economically feasible.<sup>3</sup>

AGC's believes that the rationale OSHA cited in their response in 2012 to not pursue an ETS remains valid today. If an ETS is not under consideration, we caution Congress against establishing an arbitrary deadline(s) for OSHA to promulgate a standard addressing heat illness prevention. We also caution Congress from drafting legislative text that is overly prescriptive as to warrant the rulemaking process useless by binding the agency to specific requirements. The rulemaking process is intentionally deliberate to allow for meaningful stakeholder input. Imposing an arbitrary, compressed deadline could compromise the ability of the regulated community to fully engage in the process and the ability of regulators do their job in creating the most feasible standard that results in the protection of workers in extreme temperatures. There must be a fair and transparent process in the promulgation of this or any rule that will impact a significant percentage of workplaces.

## **Conclusion**

In conclusion, a new federal standard and/or law is not a viable approach. Instead, OSHA should continue to increase awareness by working with the regulated community to further promote their Heat Illness Prevention campaign and build on the success of their past efforts. We strongly believe that building strong partnerships is the best approach to realizing the desired results.

As such, it may be fruitful for OSHA to consider developing clear and consistent guidance for all industry sectors that are impacted by hazards related to high temperatures. Such guidance could include what constitutes a hazard and effective abatement methods. The development of such guidance could help further build alliances with the regulated community, identify best practices, and better promote what employers and workers can do to prevent injury and death from exposure to high heat.

Madam Chairwoman, thank you again for allowing AGC to participate in today's important discussion and I look forward to your questions.

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<sup>3</sup> <https://www.citizen.org/wp-content/uploads/migration/denial-of-heat-stress-petition.pdf>