



## **NDA Submits Comments to Congress on Heat Exposure Legislation**

On August 8, NDA joined the Construction Industry Safety Coalition (CISC) in submitting a comment letter to the House Education and Labor Subcommittee on Workforce Protections which expresses our coalition's significant concerns with H.R. 3668, the Asuncion Valdivia Heat Illness and Fatality Prevention Act of 2019. This bill was introduced last month by Congresswoman Judy Chu (D-CA) and recently received a hearing in the Subcommittee on Workforce Protections.

H.R. 3668 would require OSHA to issue an occupational safety and health standard to protect workers from heat-related injuries and illnesses. The bill requires OSHA to introduce a proposed standard on the prevention of occupational exposure to excessive heat within 2 years from the date of enactment of the legislation. OSHA would then be required to issue a final standard within 42 months after the date of enactment. According to the bill, the final standard must provide no less protection than the most protective heat prevention standard adopted by an OSHA State-plan State.

While NDA shares the Subcommittee's goal of ensuring employees are fully protected from the hazards of heat, we believe H.R. 3668 takes the wrong approach. Our comment letter highlights four areas of concern with the legislation as currently drafted:

1. Issues of heat exposure and the means to address it on the variety of construction worksites across the country are extremely complex. H.R. 3668, which essentially dictates how and what should be included in an OSHA standard for heat exposure, does not account for the complexities of the issue.
2. How "excessive heat" is defined in the legislation depends upon personal characteristics that would make compliance with any OSHA standard difficult and potentially infringe upon the privacy interests of employees. Defining "excessive heat" as heat at "levels that exceed capacities of the body" is not a standard that can be objectively applied. It has the potential to create significant compliance difficulties as employers must make a judgement as to what constitutes "excessive heat" based upon an individualized assessment of the health condition of their workers.
3. Requiring OSHA to publish a standard that provides "no less protection than the most protective heat prevention standard adopted by a State plan" is also problematic. A few states have implemented heat exposure standards and those states address the problem very differently. It would be almost impossible for OSHA to determine which state approach to heat exposure was more or less protective than another state's approach.
4. The CISC is concerned that the time frames set forth in the legislation for OSHA to issue proposed and final rules would not provide sufficient time for the Agency to complete important rulemaking steps. This includes convening a small business review panel under the Small Business Regulatory Enforcement and Fairness Act ("SBREFA") and engaging in meaningful consultation with the Advisory Committee on Construction Safety and Health ("ACCSH"), the standing advisory committee created to advise the Agency on all construction proposed rules.

You can read the full comment letter [here](#).

**Take Action:** NDA encourages all members to reach out to their Representative and ask them to oppose H.R. 3668. You can contact your Representative by visiting NDA's grassroots action center [here](#).