

**Testimony of
The Kitchen Cabinet Manufacturers Association
June 25, 2025
at the U.S. Occupational Safety and Health Administration**

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I. (Natz) Introduction

- Good afternoon.
- My name is Betsy Natz.
- I am the chief executive officer of the Kitchen Cabinet Manufacturers Association.
- We are grateful for this opportunity to provide comments on the proposed rule.
- KCMA was founded in 1955 and, represent kitchen and bath cabinet manufacturers throughout North America.
- Our members employ thousands of workers and operate hundreds of manufacturing facilities across the United States.
- The Association and our membership are committed to maintaining rigorous workplace safety and health standards, including in the area of heat stress.
- KCMA members have implemented effective measures to manage workers' exposure to heat. These are measures specifically tailored to the unique environmental conditions of their facilities.
- We urge the agency to carefully reconsider whether it has the authority to promulgate a one-size-fits-all federal heat standard and whether such a standard, if adopted, would meaningfully improve worker safety.
- I am joined today by the Association's regulatory counsel, Manesh Rath, from the law firm Keller and Heckman.

II. (Rath) Our members are concerned about whether OSHA has the Statutory Authority to Promulgate a National Heat Standard

- In *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.*, the U.S. Supreme Court opined that Congress did not grant to OSHA the authority to issue a COVID-19 Temporary Standard because the hazard, the spread of COVID-19, was not a hazard unique to the workplace.
- The OSH Act empowers OSHA with “ensuring occupational safety . . . by enforcing occupational safety and health standards,” and not general public health measures.
- NIOSH stated in its 2016 NIOSH Report on “Occupational Exposure to Heat and Hot Environments” that “heat stress is considered to be the sum of (a.) the heat generated in the body (metabolic heat), plus (b.) the heat gained from the environment (environmental heat), minus the heat lost from the body to the environment.”
- Yet, as one example, the draft standard’s initial heat trigger is entirely premised upon the environmental heat index (which is not occupational in nature), and pays no regard to the worker’s metabolic heat, which is the only component that could be generated by work.

III. (Natz) This leaves some sectors, like manufacturing, disproportionately affected by the draft standard’s requirements.

- For example, workers of manufacturers, such as those represented by KCMA, are often stationary, and often generate much less metabolic heat than can typically be found in construction or agriculture.
- Manufacturing workers are mostly indoors, already under shade, and have access to water and to electrical outlets where fans can be connected thereby creating forced convection for rapid bodily heat dissipation.
- Additionally, employers in manufacturing, as with many other sectors, often set shift schedules to avoid peak daytime temperatures, typically, by requiring employees to begin their work early in the morning and conclude by the early afternoon.

- Yet, despite the fact that these interventions are already abundantly present in manufacturing, OSHA's one-size regulation would still impose upon manufacturers the remainder of the programming requirements — such as testing, training, monitoring, recordkeeping.
- Also, the standard, tying these requirements solely to environmental heat, ignores NIOSH's clear finding relating to generated or metabolic heat.
- OSHA's trigger, based on environmental heat, ignores the best available science, and, further, exceeds the Agency's statutory mandate to only regulate hazards that are occupational in nature, and only in instances where there is a significant health risk.

IV. (Natz) The proposed rule's specifications as to break schedules is not workable in manufacturing.

- Most manufacturing operations are dependent on teamwork. To eliminate one member from a task not only affects operations (requiring the team to slow or stop its process),
- But, more importantly, will also affect worker safety. Many two-person or multiple-person tasks have been designed that way to improve worker safety.
- For example, spotters, two-man lifting techniques, and two-person tasks where one person loads or stabilizes material while another performs a task like cutting or polishing, have all been designed to reduce injuries and musculoskeletal disorders.

V. (Natz) Similarly, a uniform acclimatization protocol for employers nationwide is unreasonable.

- Heat conditions vary significantly across the country. For example, our members have informed us that changes to environmental temperatures in different locations occur at different rates, necessitating a tailored acclimatization schedule based on the location of their facilities.
- Mandating a nationwide protocol will impose an unnecessary regulatory burden on employers in cold weather states.

- KCMA supports the other commenters who have raised concerns about the uniform acclimatization protocol since the proposed rule was released on the grounds that it is highly prescriptive, is not tailored to work, and ignores the many confounding factors that may obviate the need for acclimatization or may support a shorter acclimatization schedule.

VI. (Rath) Mandatory Breaks (if time permits)

- In addition, our members question whether OSHA has the statutory authority to mandate that breaks be paid. The U.S. Supreme Court, again in its recent decision *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin.* opined that Congress must “speak clearly when authorizing an agency to exercise powers of vast economic and political significance.”
- In this case, two facts are clear:
- Congress did not expressly authorize OSHA to regulate worker pay, and;
- Congress did expressly grant power to regulate terms of labor to the Department of Labor’s Wage and Hour Division.
- Breaks may relieve the effects of heat stress, but OSHA has not presented any data indicating that paid breaks are more effective at addressing workplace heat stress than unpaid breaks.
- (We note as a parenthetical that the record references, in the NPRM at 70787, 70800, the interviews by Wadsworth, published in 2019, of piece rate workers who brought their own water to reduce their number of breaks, or took fewer breaks. While this Wadsworth report may, arguendo, support a proposition that an employee is less likely to take a voluntary, self-scheduled breaks, it carries no probity on the heat stress-reductive effect of an employer-mandated, unpaid break.)

VII. (Natz) Conclusion

- The Kitchen Cabinet Manufacturers Association is grateful for the opportunity to share its concerns about the proposed rule as it is currently drafted.

- We welcome an opportunity where the Agency collaborates with a wide spectrum of manufacturers in order to make a final rule more workable – and, thereby, safer, for workers in our nation’s manufacturing sector.
Thank you.