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May 30, 2025

New Mexico Environment Department
c/o Ms. Kristy Peck, Acting Bureau Chief, Occupational and Health and Safety Bureau
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 875050

RE: Comment on *Proposed New Regulation, 11.5.7 NMAC – Heat Illness and Injury Prevention*

Dear Bureau Chief Peck,

On behalf of the New Mexico Mining Association, we would like to submit the following comments to the New Mexico Environment Department's (the "Department") Proposed New Regulation, 11.5.7 NMAC – Heat Illness and Injury Prevention Rule (the "Rule"). While the New Mexico Mining Association fully supports the objective of safeguarding employees from heat exposure, we believe that a tailored, flexible approach to ensuring worker safety will be more effective than a universal, one-size-fits-all solution. As written, the current draft of the Rule imposes rigid and ambiguous compliance obligations that would hinder practical implementation.

Introduction

The New Mexico Mining Association is a trade association and serves as the spokesman for the mining industry in New Mexico. Our members include companies and individuals that are engaged in various phases of the mineral industry, including exploration, production, manufacturing and distribution. Our primary objective is to advance the mineral resources and related industries in New Mexico. Although worker health and safety within the mining industry is largely regulated by MSHA, some workplaces are regulated under OSHA.

Personal Risk Factors

Section 11.5.7.9 requires employers to follow certain criteria when assessing an employee's exposure to heat illness. The most concerning of these factors is the requirement to consider an employee's personal risk factors for heat illness. Personal risk factors include alcohol consumption, caffeine consumption, and use of prescription medications. Not only does this introduce a level of ambiguity and risk that an employer will have to act as a medical professional, it also infringes upon an employee's protected health information.

This requirement goes beyond the bounds of the employer/employee relationship, and we recommend that this criterion be removed.

Acclimatization

As the Rule is currently drafted, the acclimatization measures in Section 11.5.7.10 (A) impose a strict work-schedule formula for new and returning workers. This rigid schedule overlooks many personal employee factors and would be particularly burdensome for employers with shift workers. While other jurisdictions have adopted acclimatization protocols, these jurisdictions have incorporated flexibility into the protocols to allow employers the ability to customize the protocols based on work settings.

We request a reconsideration of the proposed fixed-schedule acclimatization protocol to allow employers to tailor their protocols to specific operations. We further request a focus and differentiation of acclimatization for new employees or employees returning to work after long, extended absences, rather than temporary absences.

Work/Rest Schedules

The work/rest schedules in Table 3 introduce mandatory rest break schedules based on heat index and type of work performed. However, there would be a level of uncertainty in implementation of this measure, as there is no definition of “light” versus “moderate” versus “heavy” work. A difference in interpretation of “light” versus “moderate” work at the same heat index results in a different work/rest schedule. This will have the practical effect of unpredictability in the workplace as an employer could be required to switch a break schedule multiple times in an hour based on employee work effort.

Additionally, the Table relies on the assumption that workers are physically fit, well-rested, fully hydrated, under the age of 40, and have adequate water intake. This introduces many factors that are highly variable and contradicts the heat exposure assessment in Section 11.5.7.9. We recommend allowing employers to develop work/rest schedules that properly reflect job-site variables.

Record Keeping

Section 11.5.7.13 introduces record keeping requirements that would be burdensome and expansive for an employer to complete. The requirement mandates that an employer record the heat acclimatization schedule and procedure for all new and returning employees, as well as a record of all heat illnesses or related injuries including those that only require first aid. This goes beyond the bounds of OSHA’s record-keeping requirements under 29 CFR 1904.7, which only requires records of incidents involving medical treatment beyond first aid. Creating an additional requirement beyond the federal OSHA standards will increase employer administrative time and require an employer to speculate what a “heat related injury” may be.

We recommend all record-keeping provisions be aligned with federal OSHA standards.

Conclusion

While we appreciate and support the goal of protecting employees from heat exposure, we believe that a measured, customized method for employee safety will have a better result than a one-size-fits all approach. As currently drafted, the Rule would result in inflexible and unclear compliance requirements. We request that the Department work with industry on a one-on-one basis to implement or refine existing heat protection measures, rather than enact a sweeping rule.

Sincerely,

The New Mexico Mining Association