



New Mexico Chile Association



May 28, 2025

New Mexico Environment Department
Occupational Health and Safety Bureau
Harold Runnels Building
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

RE: EIB 25-11 (R)- Proposed New Regulation 11.5.7 NMAC- Heat Illness and Injury

Dear Occupational Health & Safety Bureau:

On behalf of the Board of Directors of the New Mexico Chile Association, a non-profit organization representing chile farmers, processors, distributors, and manufacturers, I write to express significant concerns and our opposition to the proposed Heat Illness and Injury Prevention Rule (11.5.7 NMAC). The Chile Association recognizes and appreciates the goal of protecting workers from heat illness however believe that current language is ambiguous and creates uncertainty for New Mexico businesses. We respectfully request that the Board postpone implementation to allow for additional industry dialogue and discussion on what is needed in the workplace to protect workers from heat illnesses.

The New Mexico Chile Association submits the following concerns regarding the proposed rule:

1. Operational Efficiency Hurdles

Businesses within the chile industry operate in geographically dispersed and resource-constrained environments. Complying with the proposed requirements—such as developing site-specific written plans, conducting heat index-based assessments, monitoring employee acclimatization, and providing shaded cooling areas and hydration resources across multiple remote job sites—will require a substantial investment of time, training, and infrastructure that many businesses are currently unprepared to meet.

Mandated acclimatization schedules, buddy systems, and new training programs will require businesses to adjust work schedules and staffing models, which may reduce service delivery, particularly in smaller departments with limited personnel.



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The required Heat Illness and Injury Prevention Plan requirements outlined in section 11.5.7.8 of the proposed rule will put a strong administrative burden on businesses in the chile industry who do not have the expertise and/or experience in developing such plans. **The New Mexico Chile Association requests that trainings and/or templates for plans are developed by NMED if the proposed rule is implemented.**

Mandated rest times will reduce income potential of farm workers who are compensated on a piece mill compensation plan. The reduced work time will result in workers not receiving compensation and have the potential to pressure employees to stress their bodies while working to maximize output and earnings to make up for break time compensation loss. This additional stress during work periods may lead to fatigue, reduced productivity and increased injury risk (counter productive to the goal of the proposed rule). While section 11.5.7.10.C states *Employers must provide paid rest breaks to employees when working in the heat*. There is no guidance on how piece mill employees shall be compensated.

2. Business Financial Burden

While the proposed rule mandates hydration equipment, cooling stations, and expanded rest break requirements it is not currently funded by state or federal sources. This places a disproportionate burden on rural and under-resourced businesses that currently struggle financially. Specially, during the Town Hall Meeting for Industry scheduled on May 21, it was presented that a 10-employee business would incur an annual cost of approximately \$17,000 for the implementation of this new rule. The presented example did not accurately reflect the impacts of the proposed rule on the New Mexico Chile Industry where trainings and all documents will have to be given in multiple languages, all work is completed in full sun exposure, and significant work breaks will be needed. The financial burden of this proposed rule will be significantly higher than that of the given example. **The New Mexico Chile Association requests that the state provide funding sources to New Mexico Businesses to assist with the implementation of the rule if approved.**

3. Rule Ambiguity and Uncertainty

The proposed rule includes several requirements for employers to minimize heat illness, however the language included is unclear in their implementation. This unclear and ambiguous language creates opportunities for litigation and increases liability for employers. Example of this includes:

11.5.7.10.A: Acclimatization Methods



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Chile Industry farm workers are used for several differing tasks in various locations. There is no guidance or language in the rule that clarifies whether an acclimatization period is needed for a worker who moves from one field location to the next if environmental conditions are different.

11.5.7.10.E.a: *Regular communication with employees who are working alone by radio, cellular phone or other reliable means of communication.*

There is no definition or guidance on what constitutes “regular communication” with workers working alone. Without a clear understanding of “regular communication” an employer is vulnerable to potential litigation and fines by NMED if a heat illness event occurs.

11.5.7.10.E.c: *Require self-monitoring and communication with supervisor.....*

No guidance is given on how frequent self-monitoring is required to take place. Will that frequency be determined in the required heat illness and injury prevention plan? If so, that creates potential for differing standards of safety based on work area location.

11.5.7.10.E.d: *Other equally effective means of observation and communication.*

There is no additional guidance to clarify what qualifies as “equally effective”. This vague language will result in differing approaches by businesses and create unequal treatment of workers within the industry.

Appendix I: Tables

The heat exposure calculation is cumbersome and confusing to determine. At what intervals shall the heat experienced by workers be calculated? There is no guidance to the frequency of testing requirements nor who is responsible for the testing. Does the responsibility fall on the determined crew supervisor or employer.

Table 3: Work Rest Schedule

The proposed rule does not provide guidelines or clarification on how each level of work (light, moderate, and heavy) is defined. How are rest breaks calculated when employees are conducting various levels of work?

Lack of Enforcement Information



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The proposed rule does not include **any** language on how NMED plans to enforce the rule and what businesses should expect during the implementation of the rule. Without clear guidance on the enforcement of the rule businesses have no understanding of what to expect when approached by NMED in the case of heat illness complaint.

4. Additional Concerns/Questions

How can "Personal risk factors for heat illness" be truly determined if confidential health information can not be requested by employer?

Are pre-shift meetings required daily?

Chile fields are in various counties/locations. Does each field require individual heat Illness and Injury Prevention Plans?