May 20, 2025

New Mexico Environment Department, Occupational Health and Safety Bureau
1190 St. Francis Drive, Suite N4050
Santa Fe, New Mexico 87505
Submitted via NMED Online Public Comment Form

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

The undersigned groups appreciate the opportunity to share our thoughts on the proposed new heat illness and injury prevention regulation. **We strongly support the NMED's proposed rule to protect workers from exposure to dangerous heat in the workplace**. This rule will save hundreds of lives and protect hundreds of thousands of workers from entirely preventable heat-related illness and injury on the job.

New Mexico's workers need these protections as workplace heat becomes an increasing problem.

Since 2023, the NMED has received more than 140 complaints of heat-related workplace incidents from workers as part of implementing the National Emphasis Program on workplace heat established by the federal Occupational Safety and Health Administration (OSHA).[1] These incidents are undoubtedly underreported; numerous studies have concluded that due to inconsistent reporting, a lack of knowledge about the symptoms of heat-related illness (HRI), and employer disincentives for reporting, we lack accurate data on the magnitude of this workplace hazard. OSHA has estimated that HRIs are underreported by a magnitude of 14,[2] which would mean that New Mexico may have actually experienced nearly 2,000 incidents in the last decade.

Data from these complaints show that workers in a wide range of New Mexico's industries suffer from occupational heat-related illnesses, including construction workers, food service workers, teachers, agricultural workers, warehouse workers, and public works employees.[3] Workers in a convenience store went without air conditioning for a month, including in temperatures of 98 degrees, leaving them dizzy, nauseous, and light-headed. Municipal waste workers on site without personal protective

[1] New Mexico Environment Department, Extreme Heat and Public Health Presentation to the Water and Natural Resources Committee, July 22, 2024. https://www.nmlegis.gov/handouts/WNR%20072224%20Item%205%20NMED%20Extreme%20Heat%20and%20Public%20Health.pdf
[2] Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70966. https://www.govinfo.gov/content/pkg/FR-2024-08-30/pdf/2024-14824.pdf
[3] Heat NEP Complaints Data, 2015-2025, on file with the National Employment Law Project.

equipment or water were threatened with retaliation if employees reported issues to human resources. Agricultural workers were exposed to sun and heat while doing their work. Construction workers used excavating machines with broken air conditioners, while management failed to order parts to repair them. More than 80 high school workers were trying to do their jobs in the heat without drinking water available.

NMED's proposed standard includes many elements that have protected workers in other states.

We commend the NMED for incorporating elements with a proven record of success at preventing worker HRI, including:

- **Application to both outdoor and indoor worksites (11.5.7.2).** As the complaints to the NMED reveal, workers across all industries are suffering from workplace exposure to heat. It is important that this standard protects as many workers as possible.

- **Establishing an initial heat trigger of a heat index of 80 degrees Fahrenheit (11.5.7.10) and a high heat trigger of a heat index of 95 degrees Fahrenheit (11.5.7.7(d)).** These temperature triggers are in line with those of California, Washington, Oregon, Colorado, Maryland and the proposed federal standard, and by using a heat index rather than only ambient temperature New Mexico has accounted for a relative lack of humidity. In its thorough literature review in preparation for the federal proposed standard, OSHA concluded that a heat index trigger of 80 degrees would capture more than 95 percent of fatalities and virtually all non-fatalities.[4] We also appreciate calculations to account for the use of Personal Protective Equipment (PPE) and the impact those safety measures can have on exposure to heat.

- **Calling for a written Heat Illness and Injury Prevention Plan (11.5.7.8).** A written plan is a key part of building a workplace culture of injury and illness prevention allowing employers to identify workplace risks and for workers and managers to study and understand the strategy for mitigating and eliminating those hazards as well as their expected role in keeping the workplace safe.

- **Calling for engineering controls like mechanical ventilation systems and cooling areas alongside administrative controls like rest breaks, providing water, monitoring, and acclimatization (11.5.7.10).** Eliminating hazards and reducing worker exposure is recognized as being more effective than relying on worker behavior or PPE to mitigate hazards.

[4] Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, 89 Fed. Reg. 70745.

• **Provisions that protections like water, training, and rest breaks should come at no cost to the worker, either in monetary charges or lost wages. (11.5.7.10)** It is a fundamental tenant of OSHA law that employers are responsible for providing a workplace free of hazards, and therefore mandatory measures to ensure worker safety must be paid for by employers as part of meeting that duty of care.

• **Mandatory annual worker training (11.5.7.12).** As the National Institute for Occupational Safety and Health (NIOSH) has recommended, workers and supervisors must be well-versed in HRI symptoms and prevention before temperatures start going up, and the information should be reinforced on hot days.[5]

NMED could further improve its proposed standard with some additions and clarifications.

While the current draft proposal is very strong, we do believe that it could benefit from some further drafting. We offer these suggestions in the spirit of applying still more best practices and lessons from existing standards to help NMED in protecting New Mexico's workers. We have organized these suggestions into two sections, one that lists changes we feel are key to making this the strongest standard possible and one that lists changes that may simply serve to clarify the existing provisions of the standard.

Key proposed changes to strengthen the proposed rule for workers

Ensure that employers of exempted indoor workplaces comply when engineering controls fail.

11.5.7.2(1)(d) listing the exemption for buildings, structures, motor vehicles, and motorized equipment with mechanical ventilation systems that keep temperatures below 80 degrees Fahrenheit.

The exemption should specify that it applies only when these systems are functional. According to NMED data, at least 19 workplace heat complaints between 2015 and 2025 were for worksites where air conditioning had been broken for days, months, or even a year. The standard should clearly state that when these engineering controls are not working, employers are expected to implement the provisions of the standard until such time as they are repaired.

The standard should further specify that delivery trucks or vehicles are exempt only if workers would also qualify under the incidental heat exposures exemption.

[5] National Institute for Occupational Safety and Health, "Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments," pps. 78-79. https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf

In other words, if time spent in areas of the vehicle without air conditioning (such as a cargo area) or physically leaving the truck to deliver packages or other items took workers out of the cooled area of the truck for more than 15 minutes in any 60-minute period, the exemption is not applied.

Ensure that the Heat Illness and Injury Prevention Plan is a robust and iterative tool that helps managers and workers understand their role in preventing HRIs.

11.5.7.8 Heat Illness and Injury Prevention Plan

We recommend adding an element H calling for the identification of a designated heat safety coordinator to implement and monitor the HIIPP.

We recommend adding an element I requiring the employer to review nonretaliation rights under NM Stat § 50-9-25 (which states that no person or employer shall discharge or discriminate against any employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Occupational Health and Safety Act or has testified or is about to testify in any such proceeding or because of the exercise by the employee on behalf of himself or others of any right afforded by the Occupational Health and Safety Act). Workers will be more likely to report heat hazards to the NMED or to speak up when they see possible violations to supervisors or managers if they have been reminded of their nonretaliation rights.

We recommend that NMED add a provision stating, “To the extent possible, the employer should seek the input and involvement of non-managerial staff and their representatives in developing the HIIPP.” Frontline workers who perform work tasks daily are best placed to understand the specific dangers of the workplace, adding crucial knowledge to the HIIPP. Furthermore, engaging workers in the drafting of the plan will aid in ensuring worker comprehension with the finalized product.

We further recommend that employers should be required to review and evaluate the effectiveness of the HIIPP if a serious HRI occurs at the workplace that results in citation, death, days away from work, or medical treatment beyond first aid, or if work processes significantly change, or at a minimum annually. By definition, if an employer is found in violation of provisions of the heat standard or the workplace suffers a serious injury or death, their HIIPP has not been fully effective. It is crucial that employers and employees alike learn from these events and refine workplace heat safety protocols to stop additional worker HRIs.

Ensure that worker training fully prepares workers to protect themselves in hot workplaces, to recognize the early signs of HRIs, and to follow safety protocols.

11.5.7.12 Training.

We commend NMED for specifying that training should be conducted in a language and vocabulary readily understood by the employees. We suggest that this section also specify that training should be done in person and with time for workers to ask questions and receive answers. The greatest goal of these trainings should be full comprehension and workers feeling that they have the ability to play their part in preventing HRIs.

As noted above in the discussion of the HIIPP, we recommend that section I be rewritten to include a provision that training must be evaluated and re-delivered in the event of an OSHA heat citation, a serious injury on the site, or a fatality. Those events demonstrate that earlier training was either forgotten or insufficient to protect workers and therefore those continuing to work onsite should be reminded of symptoms, policies, and procedures.

Ensure that all staff on site have full comprehension of the immediate actions necessary to save a worker from a severe life-threatening HRI.

11.5.7.11 Emergency Medical Care.

Rapid treatment of heat stroke is critical for workers' survival. According to the New England Journal of Medicine, without prompt treatment, mortality from heat stroke is close to 80 percent.[6] As currently written, the proposed standard references OSHA standards that do not include adequate guidance for heat-related or heat-associated illnesses. We recommend that employers are instead directed to NIOSH's classification, medical aspects, and first aid for heat-related illness materials available in its "Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments."[7]

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[6] Cecelia Sorensen and Jeremy Hess, "Treatment and Prevention of Heat-Related Illness," 387: 15, September 28, 2022. https://www.nejm.org/doi/full/10.1056/NEJMcp2210623#:~:text=Severe%20illness&text=Move%20patient%20to%20cool%20environment,on%2Dsite%20cooling%20is%20performed.

[7] National Institute for Occupational Safety and Health, "Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments," Table 4-3, pages 48-51.

Particularly, the recognition of an emergency and the 'immediate response' if an employee is experiencing signs and symptoms of a heat emergency. The employer shall be directed to take immediate actions within minutes to reduce the employee's body temperature. Employers shall implement emergency response tools in their HIIPP that are as protective as, or more protective than, the 'HASTE' protocol,[8] which is defined as follows:

- **H**eat exposure: Determine if the affected individual has been in a hot environment or participated in rigorous activity.
- **A**ltered mental status: Assess for symptoms such as loss of consciousness, vertigo, nausea, headache, confusion, disorientation, or bizarre behavior
- **S**tart cooling: Begin cooling the individual aggressively and immediately using copious amounts of cold or ice water. If the individual does not have a pulse, start CPR.
- **T**ime: Recognize that if you observe any of these signs, it is time to call 9-1-1 because this is an emergency situation that requires immediate attention.
- **E**mergency: Act as quickly as possible to prevent further complications.

Additionally, we recommend that the emergency medical training section includes language like that in the Oregon heat standard stipulating that employers must designate and equip one or more employees at each worksite as authorized to call for emergency medical services and allow others to call for emergency services when designated employees are not immediately available.[9]

Ensure that workers have access to breaks before HRIs set in and that there are no disincentives for taking them.

11.5.7.10 (C) Regular Rest Breaks.

We suggest that these be referred to as "preventive rest breaks" throughout the standard to make clear that employers should be providing cooling breaks when

[8] Jacob Berry, et. al., "Improved Public Health Messaging on Exertional Heat Stroke," Journal of Occupational and Environmental Medicine, November 2024.
https://journals.lww.com/joem/fulltext/2024/11000/improved_public_health_messaging_on_exertional.22.aspx
[9] OAR 437-002-0156 §5(c).
https://osha.oregon.gov/OSHARules/proposed/2022/text-chngs-proposed-heat-exposure.pdf

hot conditions exist even if workers do not yet show symptoms of HRI. This section also instructs employers to follow the table provided in Index Table 3, which provides for breaks generally only once the temperature has exceeded the high heat trigger. We are concerned that supervisors and managers might thus deny a rest break if a worker states they need one. Even if the standard encourages employers to offer a break without requiring it, this could result in confusion for workers. As NMED noted in its comments to federal OSHA on its proposed heat standard, "encouragement can often be presented by employers along with conflicting priorities, such as productivity goals, so the employee would be forced to choose between their health and their employment performance." The NMED correctly notes that workers may choose unsafe work due to limited knowledge of the physical dangers of heat, piecework incentives, peer pressure from fellow employees, and mixed messages from managers.[10]

We also recommend clarification that workers who are paid by the piece must also receive paid preventive rest breaks. Research has shown that workers who are paid on a piece rate basis may be particularly concerned about losing earnings or being replaced by another worker and will therefore not take the necessary preventive rest breaks.[11] California's labor code §226.2 has laid out a methodology for calculating comparable pay for piece -rate compensation and specifies that an employer cannot treat piece-rate compensation as including rest and recovery periods.[12]

Clarifying changes to improve clarity of the proposed standard.

11.5.7.2 SCOPE:

As written, the industries that are expected to comply with the heat standard may be unclear to some employers and could be read by some as applying only to the industries with separate provisions in New Mexico code. We suggest small changes so that it reads: "All indoor and outdoor places of employment subject to the provisions of the Occupational Health and Safety Act, including those

[10] New Mexico Environment Department comments on OSHA's Proposed Rules for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings, dated January 14, 2025. Available here: https://www.env.nm.gov/comments-and-testimony/

[11] Gail Wadsworth, et. al., "Pay, Power, and Health: HRI and the Agricultural Conundrum," Labor Studies Journal 44(2): April 2018. https://soc.ucla.edu/wp-content/uploads/2023/07/Wadsworth-Courville-Schenker-2018-pay-power-and-health-hri-and-the-agricultural-conundrum.pdf

[12] State of California Department of Industrial Relations, Frequently Asked Questions: Piece-Rate Compensation – Labor Code §226. https://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm#PieceRate Washington State also offers an explanation of how to calculate rest break pay for piece-rate workers on its web page. https://www.lni.wa.gov/workers-rights/agriculture-policies/rest-breaks-and-meal-periods

covered by the standards for General Industry, Construction Industry, and Convenience Stores."

11.5.7.7 Definitions:

B. "Drinking Water." The definition should include a maximum distance or walking time for workers to access water. There have been numerous reports nationally of warehouse workers who cannot cross the entirety of the facility to reach water stations during allotted time and of agricultural workers whose tasks take them too far from water stations to reasonably refill bottles. We suggest language like that of the Colorado heat protection standard which states that water must be: "located as close to the worksite as practicable to the worksite, no further than 0.25 miles from the worksite for employees accessing the water source by foot, and not otherwise too far for employees to reasonably access."[13]

D. "High Heat Conditions." The inclusion of both Fahrenheit and Celsius in the definition of the heat trigger may be confusing for some employers. Using only the most common measurement—Fahrenheit—may support better compliance outcomes. (Note: this dual temperature measurement is also listed in 11.5.7.2. 1(a), 11.5.7.7 B and D, 11.5.7.10, and in Appendix 1.)

E. "Heat Illnesses." should also include rhabdomyolysis as its symptoms are ones that workers could recognize in themselves and the health outcomes if left untreated can include permanent organ damage.

G. "Personal risk factors for heat illness." We recommend adding pregnancy as a factor which may affect physiological responses to heat.

H. "Shade." The definition of shade should add that shaded areas should not expose workers to other well-known safety hazards such as chemical fumes or truck exhaust. We suggest language similar to that of Oregon ("Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions, and that not deter or discourage access or use") or that of Colorado ("A shaded area is not adequate if any source, such as exhaust, running machinery, heat-radiating structures, or heat in a non-air-conditioned vehicle (including a bus), yields additional heat in the shaded area").[14]

We further recommend adding definitions to 11.5.7.7 for "indoor" and "outdoor" to clarify expectations for compliance for employers. The proposed federal OSHA

[13] 7 CCR 1103-15-3 – Heat Illness and Injury Protection, §3.2(D).
[14] OAR 437-002-0156 §2(e); 7 CCR 1103-15-3 §3.3(A).

heat standard defined “indoor” as “an area under a ceiling or overhead covering that restricts airflow and has along its entire perimeter walls, doors, windows, dividers, or other physical barriers that restrict airflow, whether open or closed.” It defines “outdoors” as “an area that is not indoors.”[15]

We also recommend adding the following definition as described in OSHA’s proposed heat standard:

Heat emergency. “Means the physiological manifestations of a heat-related illness that requires emergency response and includes loss of consciousness (i.e., fainting, collapse) with excessive body temperature, which may or may not be accompanied by vertigo, nausea, headache, confusion, disorientation, ataxia, or bizarre behavior. This could also include staggering, vomiting, acting irrationally or disoriented, having convulsions, and (even after resting) having an elevated heart rate.”[16]

11.5.7.10 Control Measures

B. Provision of Fluids. As noted above, the language in (b) regarding proximity should specify that water is no more than 0.25 miles from work areas.

D. Cooling Areas. NMED should include evaporative coolers as an example of mechanical systems. We suggest adding the word “misting” before fan as research has shown that in very hot temperatures a basic fan may not provide adequate cooling.[17]

11.5.7.12 Training

Section F stating that workers should be trained on the “procedures for observing, reporting, and responding to symptoms of heat illness” should continue “including rapid cooling techniques while waiting for emergency services.” This language would ensure continuity with responsibilities under a buddy system under 11.5.7.10 E(b) and with our proposed refinements of 11.5.7.11.

11.5.7.13 Record Keeping

We suggest that Section B should include not only a list of all attendees, but also of who gave the training. Section C should specify “A record of all work-related

[15] Proposed Amendments to Standards, Part 1910 – Occupational Safety and Health Standards, p. 1159. https://www.osha.gov/sites/default/files/Heat-NPRM-Final-Reg-Text.pdf
[16] 89 Fed. Reg. 70792.
[17] “When is it too hot to use a fan?” Science, November 6, 2024. https://www.science.org/content/article/when-is-it-too-hot-use-fan

> cases of heat illness, including heat exhaustion, heat stroke, and rhabdomyolysis that require medical treatment beyond first aid (e.g., IV fluids, hospitalization, physician-directed care, or time away from work) must be recorded in the OSHA 300, 301, and 300A logs. Cases should be presumed work-related when exposure to high temperatures occurred during work unless there is clear, documented evidence of a non-occupational cause."

The signatory organizations appreciate the work that NMED has put into crafting an already strong worker heat protection standard and we appreciate the opportunity to share our comments as part of the process. We believe that with these changes, particularly those we identified as being key changes, this could be a model standard that will protect hundreds of thousands of New Mexico's workers and could serve to inspire other states to protect their workers as well.

Sincerely,

Conservation Voters New Mexico

Conservation Voters New Mexico Education Fund

Healthy Climate New Mexico

National Employment Law Project

New Mexico Center on Law and Poverty

New Mexico Interfaith Power and Light