May 23, 2025

New Mexico Environment Department
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505

RE: Public Comment on Proposed Rule 11.5.7 NMAC – Heat Illness and Injury

Dear New Mexico Environment Department,

On behalf of the New Mexico Retail Association (NMRA), thank you for the opportunity to submit these comments on the proposed Heat Illness and Injury Prevention Rule (11.5.7 NMAC).

NMRA represents national, regional, and local retailers operating across the state, employing thousands of New Mexicans in both customer-facing locations and critical warehousing and logistics functions. While we support the Bureau's intent to protect worker safety, we are deeply concerned that the proposed rule imposes novel, complex, and operationally unworkable requirements that would undermine rather than promote the Bureau's stated goal of "protecting the health of workers and safeguarding our rapidly growing economy."

The rule, as drafted, departs from national precedent and exceeds the compliance frameworks adopted in other jurisdictions with mature heat safety programs. It should be withdrawn in its current form, and the Department should conduct a comprehensive economic and operational impact analysis before proceeding.

1. Heat Index Modifiers Are Without National Precedent and Unworkable
The rule requires employers to adjust National Weather Service heat index values based on sun exposure to determine compliance with mandated work/rest schedules. Such a requirement is without precedent nationally, and for good reason. Sun exposure can change rapidly throughout a shift and may vary significantly within even a single work area. Retail employers, particularly those operating warehouses or loading docks, cannot reasonably be expected to constantly recalculate the heat index and modify worker schedules in real time in response to changing sun conditions.

The Bureau's stated goal of safeguarding workers and supporting economic growth is not advanced by a rule that demands continuous environmental recalculation in dynamic work environments. At a minimum, any adjustments for sun exposure should be optional, not required.

2. Heat Exposure Assessments Impose Clinical and Legal Burdens
The rule requires employers to conduct heat exposure assessments that take into account "personal risk factors" such as an individual's age, acclimatization, health, hydration status, and use of prescription medications. Requiring employers to assess such individualized health factors imposes clinical decision-making responsibilities on retail managers that are beyond their training and legal authority.

These assessments mirror the types of evaluations governed by OSHA's Medical Examination Program and would require the involvement of licensed medical professionals. Furthermore, the rule offers no guidance for clinicians on how such assessments should be conducted or applied, which will lead to inconsistent outcomes and unnecessary operational complications. This provision must be removed or substantially rewritten.

Additionally, the rule lacks clarity as to whether assessments must be conducted on a per-employee basis. To the extent the rule is interpreted to require individualized assessments for each employee, New Mexico would stand alone in imposing such a burden. No other jurisdiction—California, Maryland, Minnesota, Nevada, Oregon, or Washington—requires individual employee-level heat assessments. Even if read as a site-specific requirement, the rule still fails to account for multi-site employers with standardized processes and engineering controls.

3. Acclimatization Mandates Are Inflexible and Unprecedented
The proposed acclimatization standard mandates a rigid phased-in work schedule (e.g., 20% of the normal workday on day one) that does not account for environmental factors, break access, job intensity, or prior worker experience. This "one-size-fits-all" approach would present serious obstacles for retailers, particularly during peak seasonal periods when temporary workers are frequently onboarded. It would be functionally impossible to implement these schedules for new hires across large or dispersed workforces.

No other state imposes a codified acclimatization schedule in regulation. Instead, jurisdictions such as California, Maryland, Nevada, Oregon, and Washington allow for employer discretion to implement appropriate acclimatization protocols tailored to their environment and industry. New Mexico should follow this example.

4. Work/Rest Schedules Are Overly Complex and Impractical
Table 3 of the rule mandates work/rest schedules that change based on minor differences in temperature and humidity—often varying by a single degree. For example, within a five-degree range, there may be five distinct work/rest schedules. The rule is also silent on how temperature changes within the hour affect break scheduling, further complicating compliance.

These schedules are lifted from a 2016 NIOSH publication that explicitly described them as examples, not mandates. NIOSH recognized that employers should first consider engineering or administrative controls, with break schedules as a last resort option where other controls are not feasible. Mandating these schedules misuses the NIOSH guidance and disregards the flexibility that is foundational to their recommendations.

In practical terms, implementing this table in retail and warehouse environments—especially where operations rely on continuous, timed throughput—would be unworkable.

5. Recordkeeping Requirements Are Overbroad and Duplicative
The rule would require employers to:

- Maintain individualized acclimatization records for all new or returning employees;

- Record every instance of heat illness or “heat-related injury,” even those requiring only first aid;
- Log the heat index at the time of every incident.

These requirements are excessive. Federal OSHA already requires employers to maintain a log of all work-related injuries that require treatment beyond first aid. The new rule would duplicate and expand this obligation without providing meaningful safety benefits.
In addition, the rule appears to require employers to determine whether heat contributed to any workplace injury that occurs during warm weather. This would necessitate medical causation analysis for every injury—an unreasonable and legally fraught demand.

Finally, “heat-related injury” is defined so broadly that it could include any momentary fatigue or dizziness that resolves with hydration or shade. This would force employers to document numerous minor incidents that offer no actionable insight into overall workplace safety trends.

Request for Withdrawal & Impact Analysis
New Mexico Retail Association urges the Environmental Improvement Board to withdraw the rule in its current form and initiate a full stakeholder engagement process—one that includes detailed economic and operational impact analysis.

If after an economic and operational impact analysis is performed, the Department wishes to move forward with rulemaking, the New Mexico Retail Association would recommend shifting toward a performance-based standard that gives employers the discretion to develop tailored, risk-based heat illness prevention programs. Such an approach would better align with national best practices and support both worker safety and operational sustainability.

Thank you for the opportunity to submit these comments.

Sincerely,

Jason Espinoza
President & CEO
New Mexico Retail Association