

City of Las Cruces - Las Cruces Utilities

These comments are being submitted on behalf of the City of Las Cruces - Las Cruces Utilities.

Las Cruces Utilities (LCU) agrees that workers should be protected from heat illness and injury. However, we approve of guidelines and mandatory training for employers and their staff and disagree that a "Rule" is necessary for ALL places of employment as identified in the Scope of the Rule. Additionally, according to osha.gov:

"Under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, employers are required to provide their employees with a place of employment that "is free from recognized hazards that are causing or likely to cause death or serious harm to employees." The courts have interpreted OSHA's general duty clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard. This includes heat-related hazards that are likely to cause death or serious bodily harm."

Therefore, as it exists, employers must ensure steps to protect workers from heat exposure by employing measures such as providing cool drinking water, rest breaks, shade or cool-down areas, etc. Conclusively, there is no need for a new state level Rule and the associated redundancies. If the state must implement the new rule please consider, if places of employment can demonstrate that they already have a safety program that includes training and measures for ensuring heat safety they should be exempt from the Rule. Please consider making the Rule applicable to businesses in which there is significant record of neglect, complaints, or accidents for employees in heat conditions, rather than imposing on ALL places of employment. This rule is being drafted with one-size fits all approach and all businesses are not equal.

Businesses like LCU and other local governments already do a diligent job to ensure the health and safety of ALL employees as it applies to heat hazards without there being a Rule. LCU currently implements Heat Stress Annual Training for all Utilities staff, which includes most components of the Rule aside from some specific requirements of the heat exposure assessments, acclimatization control measures and having an official Heat Illness and Injury Prevention Plan. LCU does not contest the implementation of guidelines for a Heat Illness and Injury Prevention Plan.

Las Cruces Utilities has identified some of the components of the rule that could burden our business operations. Some of these burdens would lead to increased costs/unfunded mandates, potential delays in projects, and disruptions to work schedules. Examples of potential burdens and additional comments include:

- Work Delays, for the sake of conducting a non-sensible Heat Exposure Assessment for each employee during a Job Hazard Review every time the temperature reaches 80 degrees or more. LCU does not agree that 80 degrees and temperatures in the 80–90-degree Fahrenheit range warrant implementation of heat assessments nor some of the listed control measures like acclimatization and rest breaks; especially for workers accustomed to working outside throughout the year. Workers

accustomed to working outside often employ controls at their own discretion anyway, such as extra fluids and shade or sitting in an air-conditioned vehicle to cool off when needed and when temperatures are extreme.

- Control measures, specifically acclimatization can be subjective and specific to the individual, some people handle heat better than others, some take longer and shorter periods to acclimate. LCU does not concur with 11.5.7.10 Part A. - Acclimatization, subparts B. and C. These parts could be a burden for field operations that need to be completed according to specific schedules to ensure essential services to our customers (Water, Gas, Wastewater, and Solid Waste) are provided. Potential employees should not be applying for a job that includes outdoor work if they don't think they can handle working in the heat and make judgements of when it's time to cool their bodies and employ caution and control measures for the sake of their health. It's not the employer's fault if the employees don't understand their own limitations, there needs to be some personal responsibility for judgement and common sense in these conditions. LCU works with our employees and not against them to ensure their health and safety.
- Continued from previous bullet - Shouldn't we provide a commonsense approach, educate our employees of heat hazards and expect that our employees and managers are looking after themselves and each other? Assess the heat index, wear sunscreen, take breaks as needed, hydrate, get in a work vehicle and cool off if needed, have shade available on the jobsite if needed, etc.
- Regular rest breaks according to the rest schedule. Once again this is subjective and should be according to the individual employee's needs aside from standard OSHA break and lunchtime requirements. The Rest schedule is a useful guideline to consider; however, if an individual feels they are ok to continue working that is a personal choice and can vary amongst individuals. Further, being required to adhere to the rest schedule to ensure compliance could delay essential services from being delivered to our customers, which include but are not limited to - hospitals, schools, daycares, businesses, people of all ages and conditions - homes and workplaces, etc.
- Record Keeping. LCU disagrees with the acclimatization requirements for 11.5.7.13. Part A. due to reasons previously mentioned regarding acclimatization control measures in general. However, LCU has no problem keeping records of Heat Illness training and heat illness and related injuries.
- To note, the City of Las Cruces - Risk Management and Las Cruces Utilities-Safety Officer, have indicated there have been zero heat related accidents or illnesses reported over the past 10 years.
- LCU requests that NMED extend the deadline for comments at least another 30-days to allow other City stakeholders and City Departments to review and comment. LCU also requests that NMED attempts to improve methods of advertisement of the Rule and comment period to reach stakeholders that have no idea that the rulemaking process for this is taking place. Contractors that work for the City of Las Cruces indicated they were unaware of the existence of the proposed Rule or comment period in general as of 5/30/2025. The City of Las Cruces – Risk Management Program was not aware of the proposed rule until the final week of the comment period when LCU provided notice. The Director of LCU had not received notice until 5/23/2025. The LCU Deputy Director Regulatory Compliance and Safety Officer, were unaware until last Friday, 5/23/2025, when the LCU Director provided notice. It would be a good idea to send notice to organizations such as the NM Municipal League prior to the opening of ANY proposed Rule and associated comment period, to ensure municipalities with potential to be impacted are informed and can participate in

the rulemaking and providing comments. It appears NMED is rushing this rule through with limited notice and opportunity for public participation in the rulemaking process.

- In response to 11.5.7.2 Scope – please provide a definition of "emergency response operations" and allow for public/stakeholder input. Does this include utility repairs and essential operations and maintenance to ensure continued service to our customers?
- If the Rule is going to require places of employment's adherence to the acclimatization and rest schedule requirements, NMED should further consider this leading to unfunded mandate burdens on utility service providers which will lead to increased rates and further dissatisfaction of customers who are already dealing with exponential inflation increases. Utility companies are currently facing numerous existing and emerging regulations that are resulting in increased rates for New Mexico consumers.
- Please provide clarity on 11.5.7.10 Part D. "Cooling Areas include shade and artificial cooling such as mechanical ventilation system such as air conditioning or fans"; does this imply shade and artificial cooling are required in the same cooling area? It seems it should be corrected to read – "Cooling areas include shade and/or artificial cooling dependent on the work location (indoor or outdoor)".
- Please provide clarity on 11.5.7.10 Part D. h., "...demonstrate that these measures are at least as effective" – How will the employer "demonstrate," the measures are effective?
- Appendix I, Table 1: Please define "Double-layer Woven Clothing".
- Appendix I, Table 3: Please define "Light Work", "Moderate Work", "Heavy Work".

5/30/2025 NMED - New Mexico Heat Illness and Injury Prevention Rule Comments

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Prevention Plan. LCU does not contest the implementation of guidelines for a Heat Illness and Injury Prevention Plan.

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