

Albuquerque Hispano Chamber of Commerce

Albuquerque Hispano Chamber of Commerce
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May 23, 2025

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

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

Dear Secretary Sandoval and Members of the Environmental Improvement Board,

On behalf of the Albuquerque Hispano Chamber of Commerce (Hispano Chamber) and the more than 1,400 member businesses we represent, thank you for the opportunity to provide comments on Proposed Rule 11.5.7 NMAC – Heat Illness and Injury Prevention.

As a matter of reference, the Hispano Chamber is organized to promote economic development, to enhance economic opportunities and to provide business and workforce education for the Hispanic and small business community in Albuquerque and New Mexico.

We share your commitment to worker health and safety. Our members recognize that protecting employees—especially those working in high-heat environments, is both a moral responsibility and essential to long-term business success. However, we also believe that workplace regulations must be effective, practical, and balanced to achieve their intended goals in a manner that businesses can actually implement. Unfortunately, the current version of the proposed rule does not meet strike that balance.

As drafted, the rule suggests an inflexible and burdensome compliance framework that goes well beyond federal OSHA requirements and exceeds what any other state currently mandates. If implemented, it would create legal uncertainties, operational difficulties, and significant costs—particularly for small and midsize employers. At the same time, many of its provisions are unlikely to deliver clear or measurable improvements in worker outcomes, which is significantly compounded by how burdensome the proposed rules would be if implemented.

With that in mind, we urge the Department to withdraw the proposed rule and instead pursue a more collaborative and performance-based approach, one that reflects New Mexico's diverse industries, geography, and workforce while maintaining a strong commitment to health and safety.

I. We Support Protecting Workers—But This Rule Is Not the Right Solution

The Hispano Chamber's mission is rooted in supporting economic opportunity, entrepreneurship, and inclusive prosperity especially for small business and the communities they support, serve, and become a part of as they grow. While safe and healthy workplaces are an essential part of that vision, any regulation that seeks to impose requirements on how private businesses operate should be clear, narrowly tailored to accomplish their stated goals, easily enforceable and practical from an implementation standpoint. Regulation must be designed in a way that businesses can implement in an effective and sustainable way. Unfortunately, the proposed heat rule is none of those things. Rather, it is overly complexity and prescriptive, lacks flexibility, legally ambiguous and creates challenges that will not only burden employers, but also limit job opportunities, suppress productivity, and divert resources away from safety investments that could have greater impact on worker safety.

Here is a fully refined and slightly expanded version of Section II – Key Concerns with the Proposed Rule, integrating all significant legal and policy points from the attached 2025-05-18 legal analysis. The tone remains balanced and professional, while offering justifications and workable alternatives for each provision:

II. Key Concerns with the Proposed Rule

1. Sun-Based Heat Index Adjustments Are Unworkable and Unprecedented

Section 11.5.7.10(C) requires employers to add degrees to the National Weather Service (NWS) heat index to account for sun exposure. While intended to improve accuracy, this approach is not used in any other state and introduces serious logistical challenges. Sun exposure can fluctuate rapidly throughout the day and vary even within the same job site, making real-time recalculation both infeasible and prone to error—especially for small businesses or mobile crews.

This approach also creates compliance uncertainty, since even a small deviation in a reading could trigger a different work/rest cycle and fails properly account for relative humidity below 40%, which is common in New Mexico and acknowledged in California's indoor heat rule (8 CCR 3396).

Recommendation: Sun-based modifiers should be optional rather than mandatory, in line with NIOSH guidance. Any heat index tables should reflect regional climate norms, including low-humidity environments.

2. Heat Exposure Assessments Improperly Require Medical Judgments

Section 11.5.7.9(E) calls for individualized heat exposure assessments that account for "personal risk factors," including hydration, age, health status, and medication use. This effectively requires employers to make ongoing clinical evaluations—an inappropriate expectation for non-medical personnel.

This language goes significantly beyond what is required in any other state. For example, California, Oregon, and Maryland all require site-level evaluations but do not require employers to make personal medical determinations. Additionally, the rule provides no standards for how licensed clinicians—if used—should evaluate these factors, creating further ambiguity.

Recommendation: Limit the scope of required assessments to site conditions and job-specific risk factors. Remove or clarify language that would compel employers to evaluate individual medical status unless done by a qualified healthcare provider.

3. Acclimatization Mandates Are Overly Rigid and Economically Disruptive

Section 11.5.7.10(A) imposes a strict acclimatization schedule limiting new or returning workers to 20% of their normal shift on the first day, followed by incremental increases. While acclimatization is critical to heat illness prevention, this prescriptive formula does not account for the range of conditions that influence risk, including job intensity, shade, elevation, or access to water.

No other jurisdiction codifies such specific percentages in regulation as proposed by this rule. Instead, states like Nevada and Oregon offer flexibility by allowing employers to adopt acclimatization protocols based on operational context and varied practical situations, which are very common in an actual work setting. A fixed-schedule model would be particularly disruptive for industries that rely on seasonal or short-term labor, such as agriculture, construction, and hospitality.

Recommendation: Replace rigid percentage-based schedules with a flexible, risk-based standard that allows employers to implement effective acclimatization protocols tailored to their environment.

4. Work/Rest Schedules in Table 3 Are Overly Prescriptive and Difficult to Apply

This table introduces mandatory rest break schedules based on heat index readings. While these schedules are drawn from a 2016 NIOSH document, in that document, they were presented as optional examples—not mandates as suggested by this rule. In fact, NIOSH recommended that employers first use engineering or administrative controls, turning to rest cycles only if those are not sufficient.

The rule's reliance on precise temperature thresholds—where a one-degree change can shift the required schedule—creates instability and invites enforcement confusion. For instance, within a five-degree band in the "moderate work" category, an employer could be required to switch between five different rest break cycles. This level of micromanagement is not found in any other state, including California, Minnesota, or Maryland.

Recommendation: Make Table 3 non-binding guidance and allow employers to develop work/rest schedules that reflect job duties, environmental controls, and practical feasibility. Employers with appropriate engineering controls in place should be exempt from rigid rest mandates.

5. Record-keeping Requirements Go Beyond Federal Standards Without Clear Benefit

Section 11.5.7.13 would impose expansive record-keeping obligations on employers, including:

- Keeping acclimatization schedules for each new and returning employee;
- Logging every heat-related illness or injury, including those requiring only first aid;
- Recording the heat index at the time of each incident.

This far exceeds OSHA's record-keeping standards under 29 CFR 1904.7, which require logs only for incidents involving medical treatment beyond first aid. New Mexico already follows these federal rules under NMAC 11.5.1.16. Creating a parallel set of requirements would generate significant compliance burdens, especially for small businesses, without improving outcomes. Furthermore, the rule defines "heat-related injury" in overly broad terms, including slips or falls that may be indirectly linked to heat exposure. This could force employers to speculate on causation and make judgments that would normally require the diagnosis of a medical professional which is not only inappropriate but creates more liability for employers and managers.

Recommendation: Align record-keeping provisions with federal OSHA standards and limit documentation to incidents that involve objective, reportable injuries. Employers should not be asked to determine medical causation or maintain individualized acclimatization records unless they already do so as part of a documented safety plan.

III. Broader Economic Impacts Cannot Be Ignored

Beyond the legal and operational issues, the proposed rule risks unintended economic harm. New Mexico's small businesses—especially those in hospitality, agriculture, construction, and field services—will be disproportionately affected by requirements they lack the resources to implement. At the same time, larger companies evaluating where to expand or invest will see this regulation as a red flag, given its departure from national norms.

Perhaps most concerning, the rule could limit workforce participation. Seasonal, entry-level, and returning workers may find their hours sharply restricted or delayed due to rigid acclimatization rules. That's not a path to worker empowerment—it's a barrier to opportunity.

If New Mexico is serious about growing and diversifying its economy, we must avoid becoming an outlier in ways that deter investment and innovation. We believe safety and growth are not mutually exclusive—and this rule, unfortunately, does not reflect that balance.

IV. A More Constructive Path Forward

Given all the very practical and significant issues the current rule could cause for businesses of all sizes, we encourage the Department to:

1. Withdraw the current proposal and start a revised rule making process that is more deliberative, intentional and fair;
2. Engage a broader stakeholder coalition that includes small businesses, large employers, workers, and industry associations;
3. Develop a performance-based framework that prioritizes outcomes and allows employers to design site-specific solutions;
4. Align with federal OSHA standards and successful state programs to ensure clarity, consistency, and credibility;
5. Consider examples and points of compromise from other states to develop a more balanced heat policy that consider New Mexico's unique economic circumstance and environment.

V. Conclusion

The Hispano Chamber supports the goal of reducing heat-related illnesses in the workplace. However, the Department's current draft of Rule 11.5.7 NMAC overreaches in ways that are legally questionable, practically unworkable, and economically risky—without delivering clear benefits to workers. We respectfully urge a pause, reconsideration, and renewed collaboration on a rule that protects people, supports business, and strengthens New Mexico's future.

Thank you for your consideration.

Sincerely,
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President & CEO
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