

AGC New Mexico

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

Associated General Contractors New Mexico (AGC NM) respectfully submits the following comments in response to the proposed Heat Injury and Illness Prevention Rule under Title 11, Chapter 5, Part 7.

While AGC NM fully supports proactive measures to protect workers from heat-related illness and injury, we strongly oppose this proposal in its current form due to its overly prescriptive mandates, its lack of flexibility, and its failure to reflect the complex realities of construction in New Mexico.

Key Concerns:

- **Mandatory Rest Breaks at 90°F for Construction Workers:**

Construction is classified as "heavy labor." With New Mexico's regular summer temperatures exceeding 90°F—and the rule's required 13°F adjustment for solar exposure, most job sites will routinely exceed the 103°F threshold. This would trigger a 40-minute paid rest break every 20 minutes of work, a schedule that is logistically unworkable.

- **Operational Impacts:**

Critical work like concrete pours and utility tie-ins requires continuous, coordinated labor. Imposing prolonged and frequent rest breaks undermines jobsite productivity and, ironically, increases safety risks by disrupting planned workflows.

- **Labor Force Shortages:**

The construction workforce in New Mexico remains approximately 11% below its 2006 peak. Contractors cannot rotate additional crews to compensate for forced downtime because there simply aren't enough workers available.

- **Mental Health and Workforce Wellbeing:**

Construction already faces a national mental health crisis. Our industry's suicide rate is over 3.5 times the national average, and it surpasses the rate of all other OSHA-covered fatalities combined. The U.S. Department of Labor and OSHA themselves warn that irregular shifts, extended work hours, and fatigue disrupt the circadian rhythm and significantly increase mental health risks (see: OSHA - Long Work Hours, Extended or Irregular Shifts, and Worker Fatigue).

By effectively forcing early morning or nighttime shifts to avoid temperature thresholds, this rule would intensify mental health stressors, diminish sleep quality, and create more risk.

- **Financial Burdens:**

The combined cost of downtime, schedule delays, and compliance infrastructure will significantly increase the cost of construction for both public and private sector projects. These cost burdens will ultimately be passed down to taxpayers and project owners.

- **Logistical and Safety Concerns with Shift Timing:**

Recommendations to perform work in early mornings or overnight hours fail to account for:

- Family and childcare obligations
- Apprenticeship or training classes typically held in the evenings
- Increased risk of injury due to reduced visibility and fatigue (see: OSHA - Extended/Unusual Work Shifts Guide)
- Diminished team cohesion

• Employer Responsibility Already Exists:

Employers are already bound by OSHA's General Duty Clause and can be cited for failure to address heat-related hazards. The national Heat Illness Prevention Campaign, active since 2011, provides training, resources, and enforcement mechanisms to improve awareness and accountability.

• One-Size-Fits-All Rule Is Not Practical:

This rule attempts to apply uniform standards across vastly different industries and work environments. Such a rigid approach disregards practical, proven heat safety measures already implemented on New Mexico job sites. Responsible contractors should not be penalized for maintaining effective jobsite-specific safety protocols.

Reasonable Provisions Contractors Can Support:

Rather than imposing a rigid and unrealistic mandate, AGC NM recommends a revised framework that reflects field-tested, achievable safety practices.

1. Hydration

- Provide suitably cool drinking water per employee.
- Already standard practice across jobsites during the summer months.

2. Rest, Access to Shade & Cool-Down Areas

- Pop-up tents, shade trailers, or naturally shaded areas near the work zone.
- Allow access to cool-down rest as needed, not tied to a fixed schedule.

3. Heat Acclimatization

- New workers assigned to hot environments will receive pre-work Heat Illness Awareness Training to recognize symptoms, understand prevention strategies, and know when to seek help.
- Supervisors and crew leads will conduct regular check-ins with new or returning workers to monitor for signs of heat stress and ensure early intervention if needed.

4. High-Heat Administrative Controls ($\geq 95^{\circ}\text{F}$)

- Use buddy systems, pre-shift safety briefings, and hydration reminders.
- Reinforces awareness without disrupting productivity.

5. Training & First Aid Preparedness

- Provide Heat Illness Prevention training during new hire orientation and annual safety refreshers.
- Ensure team leads and supervisors are trained to identify symptoms and respond to heat-related emergencies.

6. Written Heat Illness Prevention Plan (HIPPP)

- Incorporate heat illness protocols into existing Injury & Illness Prevention Plans (IIPP).
- Avoid redundant documentation requirements.

7. No Excessive Recordkeeping or Scheduling Mandates

- Eliminate burdensome hourly records or rigid break schedules that are incompatible with construction workflow.

AGC New Mexico urges the Environmental Improvement Board to reject the current version of the rule and instead work collaboratively with the construction industry to craft a more flexible, outcome-based approach to heat safety.

Let's protect our workforce without undermining it. Support a rule that reflects the realities of construction, values mental health, and rewards responsible safety practices.



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Reasonable Provisions Contractors Can Support:

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Respectfully,



Kelly Roepke-Orth, CEO