

# New Mexico Utility Contractors Association

New Mexico Utility Contractors Association  
PO BOX 90847  
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May 12, 2025

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

New Mexico Utility Contractors Association (NMUCA) submits the following comments on the petition for the Heat Illness and Injury proposal.

NMUCA and its members support protecting our workers from the threat of heat illness and injury. However, NMUCA opposes the proposed regulation because of its unreasonable mandates in relatively normal New Mexico weather conditions, and the absence of common-sense solutions for our unique industry challenges.

The data referenced by the New Mexico Environment Department (NMED) encompasses the general public and is not specified as workplace related. The data referenced is not verifiable. However, data has been provided by two of the largest worker's compensation groups in the state, and operating businesses, with data that suggests that heat stress and illness is rare in the workplace thus resulting in the NMED attempting to provide solutions where there is not a problem. NMOSH has been and is still able to inspect, assess, and fine companies that are putting their employees at risk of heat exposure under the General Duty Clause.

## 11.5.7.8 Heat Illness and Injury Prevention Plan

NMUCA agrees that companies should have a heat illness and injury prevention plan to protect workers from heat hazards. An employer should establish a written safety program and prepare a written job hazard analysis to assess working conditions that may cause occupational exposure to heat illness. This plan should be unique to the company, the industry, and the working environment. A One-Size-Fits-All Doesn't Work because applying the same standard across diverse industries and regions ignores the unique conditions and safety controls already in place on New Mexico's construction sites.

## 11.5.7.9 Heat Exposure Assessment

NMUCA is most concerned with this section of the proposal since mitigation measures would start with a mere eighty degrees Fahrenheit.

- Under this segment and calculating Index Table 1, Table 2 and Table 3, it would create unworkable rest break requirements: The proposed mandate for paid rest breaks when the heat index exceeds 103°F would trigger a 40-minute break every 20 minutes. Given New Mexico's climate and solar exposure adjustments, this threshold would be reached frequently, making the requirement impractical on most jobsites.

- Operational Disruption: Time-sensitive activities such as concrete and asphalt pours cannot be paused without compromising structural integrity and safety. A rigid rest schedule would directly impact these critical operations.

In 2023 OSHA recognized Dunn Construction Safety Training in their 2023 Beat the Heat Contest. Dunn's work/rest cycles were as follows:

Work/Rest cycles (or schedules) should be considered when heat index exceeds:

95 F regular rest periods for cool down

103 F heat index – Work/Rest cycle should be 50 min / 10 min every hour

115 F – Work/Rest cycles of 40 min / 20 min every hour

([https://www.osha.gov/sites/default/files/2023BeatTheHeatWinners/Contest\\_Message\\_JEDUNNConstruction\\_TrainingExample\\_508c.pdf](https://www.osha.gov/sites/default/files/2023BeatTheHeatWinners/Contest_Message_JEDUNNConstruction_TrainingExample_508c.pdf))

## 11.5.7.10 Control Measures

Again, implementing some control measures starting at eight degrees Fahrenheit is not plausible for New Mexico's environment.

A. Acclimatization Methods – NMUCA agrees that acclimation measures should be part of the company's Heat Illness and Injury Prevention Safety Program. However, the mandates in the petition are very rigid and do not take into consideration the employees' history for previous heat exposure, i.e. coming from a similar job in the same area or coming from a hotter area of the country to work in NM. Acclimatization schedules should not prevent already acclimatized workers from working. Construction workers are far more likely to be naturally acclimated to their work environment before starting a job than other workers due to the transient nature of the construction industry workforce with workers who move from job to job seamlessly.

B. Provision of Fluids – NMUCA agrees that provision of fluids should be part of the company's Heat Illness and Injury Prevention Safety Program. NMUCA is concerned about 11.5.7.10 B which equates to two gallons of water in an eight-hour period. According to The Cleveland Clinic, this could lead to water intoxication and kidney damage. (<https://my.clevelandclinic.org/health/diseases/water-intoxication>)

C. Regular Rest Breaks - NMUCA agrees that regular rest breaks should be part of the company's Heat Illness and Injury Prevention Safety Program. However, the rest schedule from Table 2 of the petition is not applicable with New Mexico's climate. NMUCA is concerned that these tables and their results for rest mandates were calculated in hotter and/or humid areas of the country.

D. Cooling Areas - NMUCA agrees that measures for cooling of employees should be part of the company's Heat Illness and Injury Prevention Safety Program. This may be one of the most challenging aspects of the proposals but can be implemented with reasonable guidelines.

E. Personnel Monitoring - NMUCA agrees that personnel monitoring should be part of the company's Heat Illness and Injury Prevention Safety Program. This should be part of the company's safety training program for all employees including labor crews and supervisors.

11.5.7.11 Emergency Medical Care – No objections for emergency medical care. Procedures should be part of the company's Heat Illness and Injury Prevention Safety Program.

11.5.7.12 Training - NMUCA agrees that training should be part of the company's Heat Illness and Injury Prevention Safety Program.

11.5.7.13 Record Keeping – NMUCA feels that this mandate is extremely burdensome and is not feasible as written in the petition. Companies should keep records of their Heat and Illness Injury Prevention Training for employees; however, the proposed recording of the daily heat index and working conditions for five years is an overburdensome administrative requirement.

Other major concerns for NMUCA are as follows:

- Exacerbation of Labor Shortages: With the construction industry still operating below its pre-recession workforce levels, this regulation would further strain limited labor resources and reduce overall productivity.

- Increased Costs and Logistical Challenges: The proposed rule introduces significant administrative burdens such as mandatory heat exposure assessments, detailed recordkeeping, and provision of shaded rest areas that are not feasible on large or multi-phase job sites. With the potential cost to taxpayers in New Mexico, it is concerning that there was no impact study before the introduction of this petition.

- Safety Risks of Alternative Work Hours: Suggestions to shift work to night or early morning hours are unrealistic due to childcare obligations, apprenticeship training schedules, mental health concerns, and the elevated safety risks associated with low-light conditions.

- The data used to justify this sweeping regulation proposal does not accurately reflect workplace conditions in New Mexico. Many incidents that were mentioned in industry hearings were not specific and probably not work related when you compare actual recorded data provided by the workers' compensation groups.

- This petition would exponentially increase the longevity of construction projects which would also prolong the exposure of other hazards to the public, and delay improvements to our communities.
- Existing Protections Are Already in Place: Contractors are already accountable for heat-related safety under the federal General Duty Clause, and many voluntarily follow OSHA's Heat Illness Prevention Campaign guidelines. The proposed rule duplicates and overextends these existing requirements.

Our recommendation for the EIB is to allow the construction industry to continue to use current methods for abating heat stress and illness hazards, and allow the construction industry to create their own written safety programs that include:

- Heat Exposure Assessments
- Acclimatization Methods
- Provision of Fluids
- Regular Rest Breaks
- Cooling of Employees
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- Record Keeping of injury and illness due to heat

NMUCA and its members, like much of the construction industry, have effectively protected workers from heat hazards for many years. According to data, these efforts have proven successful.

NMUCA urges the EIB to reevaluate the data referenced by NMOSHB, produce a cost analysis, consider a separate standard or exemption for the construction industry, and consider industry input. We urge the Environmental Improvement Board to reject this sweeping mandate in its current form. A more effective approach would focus on flexible, industry-informed solutions and strategies that support both worker safety and project viability.

Respectfully Submitted,  
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- **Increased Costs and Logistical Challenges:** The proposed rule introduces significant administrative burdens such as mandatory heat exposure assessments, detailed recordkeeping, and provision of shaded rest areas that are not feasible on large or multi-phase job sites. With the potential cost to taxpayers in New Mexico, it is concerning that there was no impact study before the introduction of this petition.
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- **This petition would exponentially increase the longevity of construction projects which would also prolong the exposure of other hazards to the public, and delay improvements to our communities.**
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