Natural Resources Defense Council (NRDC)

Please see attached for NRDC's comments on EIB 25-11 (R) - Proposed New Regulation, 11.5.7 NMAC - Heat Illness and Injury Prevention.

May 30, 2025

Acting Bureau Chief Kristy Peck
New Mexico Environment Department
Occupational Health & Safety Bureau
Office Phone: 505-476-8712
Cell Phone: 505-470-6401

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

Submitted online at https://nmed.commentinput.com/?id=4PbpDC9rG.

Dear Acting Bureau Chief Peck:

I am pleased to offer the Natural Resources Defense Council's support for the New Mexico Environment Department's (NMED) Proposed Heat Illness and Injury Prevention Rule. The proposal is a strong initial commitment to ensuring that workers exposed to dangerous heat will make it home safely at the end of each shift.

We particularly appreciate that NMED's proposal includes requirements to:

- protect indoor workers;
- protect emergency workers when they are engaged in non-emergency activities;
- develop written Heat Illness and Injury Prevention Plans in multiple languages;
- treat most preventative cooldown periods as paid duty time; and
- provide robust training to workers and their supervisors.

Now, NMED has an opportunity to further deepen its commitment to the lives and livelihoods of New Mexico's working people by making some key improvements to the proposed standard.

As discussed in greater detail below, the agency should consider sun exposure and work rate in its formulation of initial and high temperature triggers. NMED also should require employers to:

- comply with the heat standard when indoor workplaces exceed the initial heat trigger due to cooling equipment underperformance or failure;
- involve workers in heat safety planning and implementation;

- incorporate current best practices for emergency treatment of exertional heat stroke; and
- provide additional training about anti-retaliation protections and after serious heat-related incidents occur.

Recommendation 1: Consider sun exposure and work rate in the formulation of the initial and high temperature triggers.

NMED's choice of an initial trigger (a heat index of 80°F) is science-based[1] and consistent with statewide heat standards in Oregon[2] and Maryland.[3] However, the agency should consider requiring a lower trigger for workers wearing non-breathable clothing, as Washington State has done in its outdoor heat standard.[4]

The agency also should consider sun exposure and work rate in its formulation of the *initial* trigger, rather than requiring employers to consider those factors *after* the 80 degree threshold has been met.

An example of why this is important comes from research conducted in partnership with Turner Construction, one of the largest general contractors in the United States.[5] Researchers used an observational study to examine the effect of environmental heat stress on workers at a commercial building site in Missouri. Employees in uncovered areas of the jobsite, who were exposed to direct sunlight and had a higher work rate, were more likely to experience unsafe increases in core body temperature than employees in covered areas. However, the peak heat index *did not statistically differ* between covered and uncovered areas. In other words, relying on the heat index alone as a trigger for protections would likely have been insufficient for those workers.

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[1] E.g., Zaw Maung and Aaron W. Tustin, "The Heat Death Line: Proposed Heat Index Alert Threshold for Preventing Heat-Related Fatalities in the Civilian Workforce," *NEW SOLUTIONS: A Journal of Environmental and Occupational Health Policy* 30, no. 2 (2020): 138-145, https://journals.sagepub.com/doi/10.1177/1048291120933819.

[2] Oregon OSHA, "Frequently Asked Questions (FAQs): Heat Illness Prevention (OARs 437-002-0156 and 437-004-1131), June 2023, https://osha.oregon.gov/OSHAPubs/5866.pdf.

[3] Maryland Department of Labor, Subtitle 12 Division of Labor and Industry, Chapter 32 Heat Stress Standards, effective as of September 30, 2024, https://www.labor.maryland.gov/labor/mosh/09.12.32.pdf.

[4] Washington State Department of Labor & Industries, "Permanent Changes to Outdoor Heat Exposure Rules," June 2023, https://lni.wa.gov/forms-publications/F417-300-000.pdf.

[5] Fabiano Amorim and Zachary Schlader, Environmental Heat Stress and Physiological Heat Strain in Construction Workers During Work in the Summer, *The Center for Construction Research and Training*, May 2024, https://www.cpwr.com/wp-content/uploads/SS2024-Heat_Stress_During_Summer_Construction_Work.pdf.

Recommendation 2: Require indoor worksites to comply with the heat standard when mechanical cooling systems underperform or fail.

Every summer, employees across the country report unsafe temperatures at their putatively air-conditioned worksites.[6,7] This can occur when employers fail to set the thermostat appropriately or to keep cooling equipment in good working order, or during conditions that outstrip the capability of equipment originally designed for a less extreme climate.[8]

For instance, Baltimore's Office of the Inspector General investigated the City's Department of Public Works (DPW) after a worker died from heat-related causes in 2024. In the locker room at one DPW yard, neither the HVAC system nor a temporary indoor air conditioning unit were working, and hot water came out of the sink's cold-water taps. The air conditioner in the main trailer—which was supposed to serve as a cooling station for employees—did not work either. Although a temporary air conditioner in the trailer was set for 65°F, air temperatures indoors reached 85°F by 7 am, before the main heat of the day had even started.[9]

Indoor workplaces that are normally kept below the initial temperature trigger should be required to comply with the proposed heat standard when their cooling systems underperform or fail. However, employers, workers, and NMED inspectors cannot be certain that an indoor workplace is truly exempt without appropriate data. Therefore, all indoor workplaces also should be required to monitor the temperature to ensure cooling equipment is working correctly, especially in buildings with extensive open floor space (e.g., warehouses) or with transitional areas between hot and cool zones (e.g., food staging areas in bars or restaurants).

Recommendation 3: Involve workers in heat safety planning and implementation.

NMED should require employers to actively involve employees or their representatives in the development, review, and implementation of heat exposure assessments and injury and illness prevention plans. For example, under California's indoor heat standard, employers

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[6] E.g., Frida Garza, "Heat Waves Are Making Restaurant Kitchens Unsafe. Workers Are Fighting Back," *Grist*, June 10, 2024, https://grist.org/labor/heat-waves-are-making-restaurant-kitchens-unsafe-workers-are-fighting-back/.

[7] E.g., Ron Zeitlinger, "Relief Promised at Newport Centre Mall After Enduring Heat Wave Without Air-conditioning," *The Jersey Journal*, updated June 25, 2024, https://www.nj.com/hudson/2024/06/relief-promised-at-newport-centre-mall-after-four-days-without-air-conditioning.html.

[8] Tina Deines, "Swamp Coolers' Ability to Beat the Heat is Evaporating in Record Southwestern Temperatures," *Inside Climate News*, May 13, 2025, https://insideclimatenews.org/news/13052025/southwest-swamp-coolers-affected-by-high-temperatures/.

[9] Office of the Inspector General, City of Baltimore, *Investigative Report Synopsis, OIG Case #24-0784-C*, July 10, 2024, https://inspector-general.baltimorecity.gov/sites/default/files/Public%20Synopsis%2024-0784-C%20F%20II.pdf.

must involve employees and their union representatives in monitoring indoor temperatures and "identifying and evaluating all other environmental risk factors for heat illness."[10]

As the federal Occupational Safety and Health Administration points out, workers "often know the most about potential hazards associated with their jobs," meaning they will also have valuable knowledge about the best ways to address those hazards.[11]

Recommendation 4: Provide additional guidance on best practices for emergency treatment of exertional heat stroke.

The likelihood of surviving exertional heat stroke (i.e., heat stroke associated with strenuous activity, regardless of temperature) depends heavily on the policies and protocols of local emergency medical services (EMS). For instance, a recent nationwide survey found that workers in states without "cool first, transport second" EMS guidelines were 3.7 times more likely to die from work-related exertional heat stroke than workers in states with such guidelines.[12]

Most employers have no control over state or local EMS protocols. Where feasible, however, NMED should encourage employers to adopt cold-water immersion and/or "cool first, transport second" procedures, and to be prepared to communicate to EMS providers whether potential victims of heat stroke have already received cooling treatment onsite.

Recommendation 5: Strengthen the heat training requirements.

As a recent review of decades of military research points out, heat stress training needs to be an "on-going mission."[13] Personnel changes, shifting organizational priorities, the seasonality of heat hazards, and other factors can contribute to a sense of complacency and, ultimately, to the occurrence of preventable tragedies.

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[10] California Department of Industrial Relations, §3396. Heat Illness Prevention in Indoor Places of Employment, effective July 23, 2024, https://www.dir.ca.gov/title8/3396.html.

[11] U.S. Occupational Safety and Health Administration, "Recommended Practices for Safety and Health Programs, https://www.osha.gov/safety-management/worker-participation (accessed May 28, 2025).

[12] Faton Tishukaj et al., "Exertional Heat Stroke Best Practices in U.S. Emergency Medical Services Guidelines," *The Journal of Emergency Medicine*, 67, no. 4 (2024): E327-E337. https://linkinghub.elsevier.com/retrieve/pii/S0736467924001367.

[13] Yoram Epstein, "Exertional Heat Illness: International Military-oriented Lessons Learned and Best Practices for Prevention and Management," Frontiers in Physiology 16 (2025): https://www.frontiersin.org/journals/physiology/articles/10.3389/fphys.2025.1456984/full.

At minimum, the agency should require employers to re-evaluate their training materials and methods and then retrain workers in the wake of heat-related incidents that result in death or serious injuries or illnesses.

Fear of retaliation can also create or perpetuate unsafe conditions and behaviors. Therefore, instruction on the protections afforded by New Mexico's existing anti-retaliation rules should be part of onboarding, annual, and post-incident heat training for supervisory and non-supervisory employees.

Finally, heat training should be as interactive as possible to increase understanding and retention of key concepts. For example, an experimental heat training program for construction workers in the southern United States found that workers had the largest improvements in content areas that involved opportunities to interactively learn, and then immediately apply, new skills and knowledge.[14]

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Thank you for your commitment to keeping New Mexico workers safe from the preventable harms of heat. These commonsense safeguards have been needed for a long time, but the need is ever more urgent as the federal government rolls back all manner of worker protections,[15] New Mexico's climate warms,[16] and the number of heat-related visits to emergency rooms in the state increases.[17]

This summer is already expected to be hotter than average in New Mexico.[18] NMED should move without delay to strengthen and finalize its proposed heat standard.

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[14] Raissa Marchiori, Siyuan Song, and Jewoong Moon, "Developing Heat Stress Training Assessments: A Training-Driven Methodology Approach to Enhance Safety in the Construction Industry," Journal of Safety Research, 92 (2025): 262-271, https://www.sciencedirect.com/science/article/pii/S0022437524002081?via%3Dihub.

[15] Economic Policy Institute, "Federal Policy Watch," https://www.epi.org/policywatch/ (accessed May 28, 2025).

[16] U.S. Environmental Protection Agency, "Climate Change Indicators. A Closer Look: Temperature and Drought in the Southwest," last updated May 9, 2025, https://www.epa.gov/climate-indicators/southwest (accessed May 28, 2025).

[17] NMED, "Extreme Heat and Public Health," Water and Natural Resources Committee, July 22, 2024, https://www.nmlegis.gov/handouts/WNR%20072224%20Item%205%20NMED%20Extreme%20Heat%20and%20Public%20Health.pdf.

[18] National Weather Service, "Three-Month Outlooks, Official Forecasts, Jun-Jul-Aug 2025," issued May 15, 2025, https://www.cpc.ncep.noaa.gov/products/predictions/long_range/seasonal.php?lead=1 (accessed May 22, 2025).

Please do not hesitate to contact NRDC if you have questions or desire further information about aspects of these comments.

Respectfully,

Juanita Constible
Senior Advocate, Environmental Health
NATURAL RESOURCES DEFENSE COUNCIL