

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED NEW REGULATION.

11.5.7 NMAC – *Heat Illness and Injury Prevention*

No. EIB 25-__ (R).

**Occupational Health and Safety Bureau
Environmental Health Division
New Mexico Environment Department,**

Petitioner.

**PETITION FOR REGULATORY CHANGE
AND REQUEST FOR HEARING**

The Occupational Health and Safety Bureau (“Bureau”) within the Environmental Health Division of the New Mexico Environment Department, pursuant to 20.1.1 NMAC – *Rulemaking Procedures*, respectfully submits this Petition (“Petition”) to the Environmental Improvement Board (“Board”) in the matter of the adoption of proposed new regulation 11.5.7 NMAC – *Heat Illness and Injury Prevention*.

As support for this Petition, a Statement of Reasons is attached hereto as Attachment 1.

A copy of the proposed new regulation, 11.5.7 NMAC is attached as Exhibit 1.

JURISDICTION

The Board has the authority to adopt occupational health and safety regulations pursuant to the Occupational Health and Safety Act, pursuant to NMSA 1978, Sections 50-9-7, 50-9-12, and 74-1-8(A)(9).

WHEREFORE, the Bureau requests that the Board schedule a hearing and appoint a Hearing Officer in this matter during its regular March 2025 meeting. The Bureau estimates that

the hearing will take two days and requests the dates of June 24 and June 25, 2025, for the hearing.

Respectfully submitted,

**NEW MEXICO ENVIRONMENT DEPARTMENT
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ATTACHMENT 1

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STATEMENT OF REASONS

The Occupational Health and Safety Bureau (“Bureau”) in the Environmental Health Division of the New Mexico Environment Department (“Department”) petitions the Environmental Improvement Board (“Board”) to adopt a Heat Illness and Injury Prevention rule in accordance with the New Mexico Occupational Health and Safety Act and the federal Occupational Safety and Health Act. Under NMSA 1978, Section 50-9-7, the Board “shall promulgate regulations that are and will continue to be at least as effective as standards promulgated pursuant to the federal Occupational Safety and Health Act of 1970 to prevent or abate detriment to the health and safety of employees.”

In compliance with the New Mexico Occupational Health and Safety Act, Section 50-9-2, it is the role of the Occupational Health and Safety Bureau to assure every employee safe and healthful working conditions. In New Mexico, we have seen a trend over the past several years of significant increases in high temperatures. Physical exertion in high heat conditions is a

known hazard that can result in heat exhaustion and heat stroke as well as long term conditions such as heart and kidney damage, neurological dysfunction, and death. The Bureau is proposing this new regulation to establish standards related to the occupational health and safety of employees to prevent heat illnesses and related injuries.

I. FEDERAL OSHA RECOGNIZES HEAT EXPOSURE IMPACTS ON NATIONAL WORKFORCE

Federal OSHA has recognized that heat is a significant hazard in the workplace and has undertaken several important actions to address the concern. In September 2021, Federal OSHA announced a plan to implement an enforcement initiative on heat-related hazards by implementing a National Emphasis Program (NEP) on heat inspections and by launching the rulemaking process to develop a heat related standard. The Bureau of Labor Statistics (BLS) Survey of Occupational Illnesses and Injuries reports there have been 33,890 work-related heat injuries and illnesses causing days away from work from 2011–2020 resulting in an average of 3,389 injuries and illnesses occurring per year nationwide. Additionally, according to the BLS Census of Fatal Occupational Injuries, exposure to environmental heat has killed 999 U.S. workers from 1992–2021, with an average of 34 fatalities per year during that time period. In 2015, environmental heat exposure contributed to 37 work-related deaths and 2,830 nonfatal injuries nationwide.

Outdoor workers are particularly at risk for dangerous heat exposure. BLS estimates that 33.0 percent of workers nationwide were exposed to the outdoors as a regular part of their job in 2023. Occupations with a high level of outdoor exposure include those involved in construction,

highway construction, oil and gas extraction, agriculture, and public safety. Over the 2021–22 period, the trade, transportation, and utilities industry had 1,420 workplace injuries that resulted in at least one day away from work due to exposure to heat. Manufacturing had 980 days away from work cases and professional and business services had 740 cases.

The National Institute for Occupational Safety and Health (NIOSH) first recommended a standard for exposure to heat in 1972, which was updated in 1986 and again in 2016 (NIOSH 2016). Recommendations include implementing engineering and administrative controls, providing effective training for employees and supervisors, adopting an acclimatization schedule, and offering rest breaks with cool potable water. Several other occupational safety and health organizations, such as the American Conference of Governmental Industrial Hygienists (ACGIH), the American Industrial Hygiene Associations (AIHA), and several OSHA state plans such as California, Oregon, Washington, Colorado, Maryland, Minnesota and most recently Nevada have implemented recommendations and regulations for protecting workers from heat exposure.

OSHA initially addressed heat exposure in the workplace through adoption of a Regional Emphasis Program for Heat Illness in October 2019 for the Dallas Region, formerly Region VI, which covers Arkansas, Louisiana, New Mexico, Oklahoma and Texas. The Regional Emphasis program was later incorporated with the Dallas Region adoption of the National Emphasis Program for Outdoor and Indoor Heat Related Standards. Since the adoption of the Heat emphasis programs the Dallas Region has conducted 1,761 heat-related inspections to date.

The Bureau adopted the National Emphasis Program for Outdoor and Indoor Heat Related Standards for implementation in the state of New Mexico in April of 2022. The adoption

of the National Emphasis Program (NEP) gave the Bureau the tools necessary to track heat as a hazard in the state, and a means by which heat related hazards in the state could be effectively evaluated.

II. PROPOSED NEW REGULATION WILL ADDRESS HEAT ILLNESS AND INJURY PREVENTION IN NEW MEXICO

According to state-by-state studies, New Mexico is one of the fastest warming states in the continental U.S. Summer temperatures have risen by an average 0.6 degrees Fahrenheit per decade, resulting in an increase of 2.7 degrees F over the last 45 years (Tebaldi et al. 2012). These trends are likely to continue for several more decades even as the world strives to reduce greenhouse gas emissions. Average annual temperatures in New Mexico are projected to rise another 3.5 to 8.5°F by 2100 (Kunkel et al. 2013).

Heat exposure has been a topic of interest in New Mexico since the early 2000s. The New Mexico Department of Health conducted a study of all reported heat related illness for the two-year period between 2008 and 2010. Thirty-six acute care non-federal hospital facilities in New Mexico reported data to NMDOH for these two years. During this period there were 526 heat-stress emergency department (ED) visits among New Mexico residents. Overall, June and July were the months with the highest burden of heat stress visits. By health region, the South and Southwest parts of the State had the highest rate of ED visits. There were low rates of ED visits across health regions from October through April (Woods et al. 2012).

In the state of New Mexico, the Bureau has received 232 heat related complaints from workers since adopting federal OSHA's NEP for heat related illness and injury in May of 2023.

Additionally, the Bureau conducted 20 Heat NEP related inspections since the inception of the NEP. The New Mexico Department of Health Environmental Public Health Tracking Program documented over 900 Emergency Department (ED) visits due to heat in 2023. Of those ED visits approximately 120 have indications that they are work related. The same program has documented over 830 heat related ED visits since April 1, 2024.

Mental and physical impairment is a symptom of heat exhaustion according to the Mayo Clinic (Mayoclinic.org 2017). Among these symptoms are faintness, dizziness, fatigue, and muscle cramps. While proximate causes of fatality and injury are more often recorded, it is plausible that some of the aforementioned symptoms may be causal precursors to other recorded types of injuries, such as falls. Since heat is not required to be reported as a contributing factor to other injuries and physicians nationwide are not required to report heat related illness, the National Institute of Health recognizes that heat related injuries and illnesses are likely underreported (Morris and Patel 2019). As an example, of the more than 900 reports of ED visits due to heat, only about 44% contained contextual information indicating where and under what conditions the heat exposure occurred. There are some demographic indicators that many more heat exposure ED visits may be work related, such as the majority of heat related ED visits are from patients in the 18-44 years of age category.

The proposed rule will provide the Bureau with the tools necessary to assist New Mexico employers in keeping their workforce safe from heat related illnesses and injuries. The rule, if adopted, would provide OHSB with the necessary tools to focus their enforcement inspections and cooperative outreach efforts with employers. The rule will also provide a regulatory framework to hold employers accountable if they fail to protect workers from known hazards

such as heat, including the authority to prevent employers from exposing workers to conditions which pose an imminent danger.

III. PART 7 – Heat Illness and Injury Prevention

The proposed Heat Illness and Injury Prevention regulation would create Title 11, Chapter 5, Part 7 of the New Mexico Administrative Code (“NMAC”):

- 11.5.7.1 NMAC (“Issuing Agency”);
- 11.5.7.2 NMAC (“Scope”);
- 11.5.7.3 NMAC (“Statutory Authority”);
- 11.5.7.4 NMAC (“Duration”);
- 11.5.7.5 NMAC (“Effective Date”);
- 11.5.7.6 NMAC (“Objective”);
- 11.5.7.7 NMAC (“Definitions”);
- 11.5.7.8 NMAC (“Heat Illness and Injury Prevention Plan”);
- 11.5.7.9 NMAC (“Heat Exposure Assessment”);
- 11.5.7.10 NMAC (“Control Measures”);
- 11.5.7.11 NMAC (“Emergency Medical Care”);
- 11.5.7.12 NMAC (“Training”); and,
- 11.5.7.13 NMAC (“Record Keeping”).

The proposed 11.5.7.1 NMAC (“Issuing Agency”) identifies the Board as the issuing agency.

The proposed 11.5.7.2 NMAC (“Scope”) identifies the scope of Part 7.

The proposed 11.5.7.3 NMAC (“Statutory Authority”) cites the statutes that provide authority for the adoption of new occupational health and safety regulations.

The proposed 11.5.7.4 NMAC (“Duration”) indicates that the regulations would be permanent.

The proposed 11.5.7.5 NMAC (“Effective Date”) states that the effective date of the regulation would be July 1, 2025.

The proposed 11.5.7.6 NMAC (“Objective”) states that the regulation will establish standards related to the occupational health and safety of employees to prevent heat illnesses and related injuries.

The proposed 11.5.7.7 NMAC (“Definitions”) provides all applicable definitions in the proposed regulation.

The proposed 11.5.7.8 NMAC (“Heat Illness and Injury Prevention Plan”) provides the requirement for an employer to implement a heat illness and injury prevention plan.

The proposed 11.5.7.9 NMAC (“Heat Exposure Assessment”) provides requirements for employers to conduct heat exposure assessments at the worksite.

The proposed 11.5.7.10 NMAC (“Control Measures”) provides requirements for employers to implement specific control measures at the worksite to reduce risk of heat illness and related injuries.

The proposed 11.5.7.11 NMAC (“Emergency Medical Care”) provides requirements for employers to provide access to emergency medical care.

The proposed 11.5.7.12 NMAC (“Training”) provides requirements for employers to provide training for employees and supervisors on the risks of heat exposure and workplace practices.

The proposed 11.5.7.13 NMAC (“Record Keeping”) provides the recordkeeping requirements for employers regarding heat exposure assessments and documentation of heat illnesses and related injuries.

IV. CONCLUSION

New Mexico's desert climate and naturally hot summer months, including the region's rapidly warming climate, present a unique need for employee protection from heat illness and related injuries. Although Federal OSHA has a draft heat standard, it has not adopted the draft standard, and exposure to heat in the work environment continues to result in significant numbers of occupation fatalities, injuries, and illnesses. The proposed regulation is written to be at least as effective as the draft OSHA standard, in accordance with Section 18 (c) (2) of the federal Occupational Health and Safety Act, requiring no updates if or when OSHA adopts a standard. In sum, the proposed regulation will establish standards related to the occupational health and safety of employees to prevent heat illnesses and related injuries.