

INFORMATIONAL STATEMENT OF ADOPTED REGULATIONS
AS REQUIRED BY NRS 233B.066

The following informational statement as required by NRS 233B.066 is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 618 as follows:

1. EXPLANATION OF THE NEED FOR THE ADOPTED REGULATION

The proposed regulations are necessary to mitigate occupational injuries and illnesses resulting from heat exposure in the workplace. From FY 2018 to FY 2021, there were an average of 73 workers' compensation claims per year in Nevada arising from heat issues. The number of heat stress complaints reported to Nevada OSHA has been rising over the past several years from a low of 74 complaints in 2016 to a high of 202 complaints in 2021. The industries with the highest number of complaints over this time period were accommodation and food services, retail trade, and manufacturing.

2. DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED, A SUMMARY OF PUBLIC RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

Copies of the proposed regulation, notice of workshop, and notice of intent to act upon the regulation were sent by e-mail and U.S. Mail to persons who were known to have an interest as well as any persons who had specifically requested such notice. These documents were also made available at the Division's website, <http://dir.nv.gov/Meetings/Meetings> and were also posted at the following locations:

The State of Nevada Website (www.notice.nv.gov)

The Nevada State Legislature Website (<http://leg.state.nv.us/App/Notice/A/>)

The Division of Industrial Relations Website (<http://dir.nv.gov/Meetings/Meetings>)

A Workshop was held to solicit comments on the proposed regulation on March 4, 2021. On June 3, 2021, the first Public Hearing was held to solicit comments from the public on the adoption of the regulation. Thereafter, a second Public Hearing was held on October 14, 2021. The Division also received written public comment. Further, prior to holding the third public Notice of Intent to Adopt hearing on March 30, 2022, the Division held public stakeholder meetings on January 7, 2022 and February 2, 2022, to solicit additional comments and feedback from members of the public. Through these several meetings, the Division considered the comments from members of the public and amended the language of the proposed regulations accordingly.

A summary may be obtained by contacting Rosalind Jenkins, Legal Secretary II, Division of Industrial Relations, 702-486-9014, or by writing to the Division of Industrial Relations, 3360 W. Sahara Ave., Ste. 250, Las Vegas, Nevada 89102.

3. THE NUMBER OF PERSONS WHO:

a.	ATTENDED THE MARCH 4, 2021, WORKSHOP:	2
b.	ATTENDED THE JUNE 3, 2021, PUBLIC HEARING:	5
c.	ATTENDED THE OCTOBER 14, 2021, PUBLIC HEARING:	17
d.	ATTENDED THE MARCH 30, 2022, PUBLIC HEARING:	39
e.	TESTIFIED AT THE MARCH 4, 2021, WORKSHOP:	0
f.	TESTIFIED AT THE JUNE 3, 2021, PUBLIC HEARING:	3
g.	TESTIFIED AT THE OCTOBER 14, 2021, PUBLIC HEARING:	4
h.	TESTIFIED AT THE MARCH 30, 2022, PUBLIC HEARING:	4
i.	SUBMITTED WRITTEN COMMENTS RELATED TO MARCH 4, 2021, WORKSHOP:	0
j.	SUBMITTED WRITTEN COMMENTS RELATED TO JUNE 3, 2021, PUBLIC HEARING:	3
k.	SUBMITTED WRITTEN COMMENTS RELATED TO OCTOBER 14, 2021, PUBLIC HEARING:	3
l.	SUBMITTED WRITTEN COMMENTS RELATED TO MARCH 30, 2022, PUBLIC HEARING:	3

4. FOR EACH PERSON IDENTIFIED IN PARAGRAPHS (e), (f), (g), and (h) OF NUMBER 3 ABOVE, THE FOLLOWING INFORMATION, IF PROVIDED TO THE AGENCY CONDUCTING THE HEARING:

June 3, 2021, Public Hearing	
1	<p>Name: John Wiles</p> <p>Telephone number: None received</p> <p>Business address: None received</p> <p>Business telephone number: None received</p> <p>Electronic mail address: None received</p> <p>Name or organization represented: Southern Nevada Chapter of the National Electrical Contractors Association</p> <p>Summary of comment: The regulation does not provide how regulation will be enforced. Regulation also does not state how it fits in with other very important regulations applicable to worksites, the record keeping. Also, the sources of this regulation are not identified.</p> <p>In regards to section 6, essentially it's an adoption provision and the question is how the Division came to use this particular source given its cost and limited usage of this particular standard.</p> <p>In regards to section 7, it adopts a neutral method of evaluation the response to heat stress that may be confusing. Asked the Division to consider an alternative approach, which would make it easier on employers in the field to make an evaluation based on temperatures and choose an appropriate response.</p> <p>Section 8 appears to be drawn from the California regulation. It should be looked at, and again it goes to enforcement.</p>

	<p>In section 10, the vast majority of the employers in the state, particularly those in construction, have addressed heat stress in their written workplace safety programs and have made programs to address that issue.</p>
2	<p>Name: Mandi Wilkins Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: Mechanical Contractors Association of Las Vegas and the Sheet Metal and Air Conditioning Contractors National Association of Southern Nevada Summary of comment: Objects to section 6 in its entirety for many of the reasons stated by Mr. Wiles. We do not feel that we should be drafting regulations based on documents that are not free to the public. Objects to section 7 in its entirety. The document referenced is not free to the public and is unconfirmed that it is a widely used document by anyone else in the country. The cost of the wet-bulb globe temperature is higher than listed and employers would have to have one of these instruments there to calculate what the instrument is saying to a document that they don't have access to without having to pay for it. Objects to section 9 in its entirety. There are a lot of other safety mechanisms in place that are customary and common place in the construction industry. Section 10 also talks about the employer's responsibility for training. Thinks that section 10 is good policy and procedure for employers to follow. However, has concerns with references made in section (1)(c), which refer to the other sections they objected to. Feels that section 11 is redundant.</p>
3	<p>Name: Tori Kolinski Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name or organization represented: National Electrical Contractors Association Summary of comment: Specifically objected to section 9(4)(a), as it is impossible for a temporary canopy, umbrella or other temporary structure or device not to allow an object to cast a shadow under the shade. Has concerns about section 11, number 2, regarding deep body temperature of 100.4 degrees. In strong support of section 12. Is not totally sure why this regulation is being brought forward at all. The impact on small businesses will be dramatic if additional cooling mechanisms and equipment are needed to comply with this regulation. This will have a great</p>

	impact on our members because of the training element. We are supportive of having policies, procedures, and training.
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October 14, 2021, Public Hearing

1	<p>Name: Dale Walsh, Industrial Hygienist Consultant Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name or organization represented: Self Summary of comment: He recommended not using the proposed ACGIH standard because it is complicated and difficult to implement. He offered examples of other methods to monitor heat stress, including a flag system, as well as an ingestible thermometer pill, which contains sensors and a temperature sensor. A recorder outside the body can read the signal and display core body temperature. With regards to section 6, the latest version of the publication proposed to be adopted is 2021, not 2020. Mr. Walsh indicated that it can be difficult to find old versions of the publication. He also stated that it is difficult to use the ACGIH standard and it is not a good idea to adopt it. With regards to Section 8, he stated that Southern Nevada has the driest climate of any major metropolitan area in the country. The standards proposed are based on more humid locations. He recommended that Nevada take a different approach. With regards to Section 11, he indicated that the method for taking temperature should be specified in the regulation. He indicated that the touchless thermometers typically being used are not accurate. Lastly, Mr. Walsh stated that a cost benefit analysis should be done for the regulation using Nevada data.</p>
2	<p>Name: Dan Oliver Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: Southern Nevada NECA Summary of comment: He expressed concern that there will be confusion between Nevada's proposed standard and the upcoming Federal standards. It will be unclear to employers as to what Nevada OSHA will be looking at.</p>
3	<p>Name: Dave Warnock Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received</p>

	<p>Name of entity or organization represented: Southern Nevada NECA</p> <p>Summary of comment: He asked if there could be more personal risk factors for heat illness than those listed in Section 5. With regard to Section 6, he stated that the publication proposed to be adopted costs more than \$41.21. With regard to Section 7, he asked if the 80-degree standard takes into account temperature and humidity or just temperature.</p>
4	<p>Name: John Wiles</p> <p>Telephone number: None received</p> <p>Business address: None received</p> <p>Business telephone number: None received</p> <p>Electronic mail address: None received</p> <p>Name of entity or organization represented: NECA</p> <p>Summary of comment: He expressed concern about Section 12 no longer being in the regulation unless a page got cut off. Additionally, he recommended that a working group be put together to work on the regulations. He said that recordable injuries in Nevada should be reviewed to see how they impact mod rates.</p>

March 30, 2022, Public Hearing	
1	<p>Name: Peter Krueger</p> <p>Telephone number: None received</p> <p>Business address: None received</p> <p>Business telephone number: None received</p> <p>Electronic mail address: None received</p> <p>Name or organization represented: Northern Nevada NECA</p> <p>Summary of comment: Mr. Krueger mentioned that the regulations do not discuss enforcement and penalties and questioned whether OSHA would use the regulations as a basis to issue citations. Mr. Krueger also questioned whether the regulation's requirements to have safety programs consider personal risk factors for heat illness, including age and health, would be contradictive of HIPAA. Mr. Krueger also questioned when enforcement of the requirement that employers be required to have written safety programs begin.</p>
2	<p>Name: Jesse Wadhams</p> <p>Telephone number: None received</p> <p>Business address: None received</p> <p>Business telephone number: None received</p> <p>Electronic mail address: None received</p> <p>Name of entity or organization represented: The Vegas Chamber</p> <p>Summary of comment: Mr. Wadhams commented on concerns on the heat illness program and the impact on indoor and outdoor workplaces. He questioned setting the temperature threshold at 90 degrees without a humidity factor. He also brought</p>

	up concern that Nevada was ahead of Federal OSHA in implementing the regulations and questioned whether to put this policy consideration to the Legislature. Mr. Wadhams also questioned whether the personal risk factors required an employer to screen employers based on the enumerated factors.
3	Name: Robert Ostrovsky Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: Nevada Resort Association Summary of comment: He asked if there is a definition of “exposure”, as well as questioned whether incidental exposure would be covered under the regulation.
4	Name: Alexandria Drazlich Telephone number: None received Business address: None received Business telephone number: None received Electronic mail address: None received Name of entity or organization represented: Nevada Restaurant Association Summary of comment: Ms. Drazlich echoed comments of other speakers. She stated that it would be hard for an employer to comply with arbitrary standards.

5. DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

Copies of the proposed regulation, notice of workshop, and notice of intent to act upon the regulation were sent by e-mail and U.S. Mail to persons who were known to have an interest as well as any persons who had specifically requested such notice. These documents were also made available at the Division’s website, <http://dir.nv.gov/Meetings/Meetings> and were also posted at the following locations:

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6. IF THE REGULATION WAS ADOPTED WITHOUT CHANGING ANY PART OF THE PROPOSED REGULATION, A SUMMARY OF THE REASONS FOR ADOPTING THE REGULATION WITHOUT CHANGE.

Comments received at the public workshop, public stakeholder meetings, and public hearings were considered and incorporated in the revised proposed regulation. The concerns from public comment were received in advance in writing, considered, and incorporated in the adopted version of the regulation.

For example, after the stakeholder meetings, the Division amended the previous draft of the regulation and eliminated use of the wet-bulb method. Additionally, the Division amended the language of the regulation requiring the provision of “cool” drinking water and replaced such language that an employer’s program discuss provision of potable water. Further, the Division amended the temperature threshold from 80 degrees to 90 degrees, among others.

7. THE ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC. THESE MUST BE STATED SEPARATELY, AND IN EACH CASE MUST INCLUDE:

A. ADVERSE AND BENEFICIAL EFFECTS

The Division anticipates that there may be a direct adverse financial effect on small businesses, which may include instances where employers of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit may expend time for developing and including a program for the management of heat illness in their written safety program as required by NRS 618.383. Other adverse effects, if any, are difficult to determine at this time but may include, as each respective employers’ written safety program may require, the costs of providing potable drinking water and, during daylight hours, shade or other cooling mechanisms at the workplace; and developing, implementing and training on heat illness and the employer’s heat stress management program in its written safety program.

The Division believes that there will be no direct beneficial effects on small businesses as the result of these regulations, but there may be indirect beneficial effects on reduced employee lost time from heat illness.

B. IMMEDIATE AND LONG-TERM EFFECTS

The Division anticipates that there may be a direct adverse financial effect on small businesses, which may include instances where employers of employees who are exposed to temperatures at or above a dry-bulb temperature of 90 degrees Fahrenheit may expend time for developing and including a program for the management of heat illness in their written safety program as required by NRS 618.383. The Division does not anticipate any other immediate economic effect on either the entities that will be subject to the regulation nor on the public, or that any such effects will be negligible. The adverse effects, if any, are difficult to determine at this time but may include the costs of providing potable drinking water and shade or other cooling mechanisms at the workplace; and developing, implementing and training on heat illness and the employer's heat stress management program in its written safety program. There will be no indirect costs to regulated businesses.

The Division does not anticipate any long-term adverse effects on regulated businesses as a result of these regulations, but there may be long-term beneficial effects on reduced employee lost time from heat illness. There will be no direct or indirect costs to regulated or small businesses.

8. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION

There will be no additional or special costs incurred by the Division for enforcement of this regulation.

9. DESCRIPTION OF ANY REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES WHICH THE PROPOSED REGULATIONS OVERLAPS OR DUPLICATES AND A STATEMENT EXPLAINING WHY THE DUPLICATION OR OVERLAPPING IS NECESSARY. IF THE REGULATION OVERLAPS OR DUPLICATES A FEDERAL REGULATION, THE NAME OF THE REGULATING FEDERAL AGENCY.

The Division is not aware of any similar regulations of other state or government agencies that which the proposed regulations overlap or duplicate.

10. IF THE REGULATION INCLUDES PROVISIONS WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISIONS.

The Division is not aware of any similar federal regulations of the same activity in which the adopted regulations are more stringent.

11. IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.

This regulation does not provide a new or increase in fees.

Dated this 30th day of March, 2022.

DIVISION OF INDUSTRIAL RELATIONS

By: Victoria Carreón

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Las Vegas, Nevada 89102