

This rule was filed as 11 NMAC 5.3.

**TITLE 11      LABOR AND WORKERS' COMPENSATION**  
**CHAPTER 5    OCCUPATIONAL HEALTH AND SAFETY**  
**PART 3        OCCUPATIONAL HEALTH AND SAFETY - CONSTRUCTION INDUSTRY**

**11.5.3.1        ISSUING AGENCY:** Environmental Improvement Board.  
 [5/1/95; Recompiled 11/30/01]

**11.5.3.2        SCOPE:** All employment and places of employment of every employee engaged in work for construction, alteration, and/or repair, including painting and decorating.  
 [5/1/95; Recompiled 11/30/01]

**11.5.3.3        STATUTORY AUTHORITY:** Sections 50-9-7, 50-9-13 and 74-1-8, NMSA 1978.  
 [5/1/95; Recompiled 11/30/01]

**11.5.3.4        DURATION:** Permanent  
 [5/1/95; Recompiled 11/30/01]

**11.5.3.5        EFFECTIVE DATE:** May 1, 1995, unless a later effective date is indicated in the history note at the end of a section or paragraph.  
 [5/1/95, 7/15/96, 3/16/97; Recompiled 11/30/01]  
 [Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**11.5.3.6        OBJECTIVE:** To establish standards related to employee occupational health and safety in construction industry.  
 [5/1/95; Recompiled 11/30/01]

**11.5.3.7        DEFINITIONS:** The provisions of 11 NMAC 5.1.12 [now 11.5.1.7 NMAC] are applicable to this part.  
 [5/1/95; Recompiled 11/30/01]

**11.5.3.8        AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS; REFERENCES IN OTHER REGULATIONS:**

**A.      Amendment and supersession:** This part shall be construed as amending and superseding EIB/OHSR 300, Construction Standards, filed December 17, 1992, as amended.

**B.      References in other regulations:** Any reference to EIB/OHSR 300 in any other rule shall be construed as a reference to this part.  
 [1/16/93; 7/28/93; 5/1/95; Recompiled 11/30/01]

**11.5.3.9        INCORPORATED FEDERAL STANDARDS:**

**A.      General.** Except as otherwise provided in Subsection C of this section, the provisions of 29 CFR Part 1926, Safety and Health Regulations for Construction (Internet: [www.osha.gov](http://www.osha.gov)), are hereby incorporated into this section.

**B.      Incorporation of applicable general standards:** Additionally, the provisions of 29 CFR Part 1910, Occupational Safety and Health Standards, identified by the United States department of labor as applicable to the construction industry and incorporated by 11 NMAC 5.2 [now 11.5.2 NMAC], Occupational Health and Safety-General Standards, are hereby made applicable to construction.

**C.      Modifications, exceptions, and amendments:** The following modifications, exceptions and amendments are made to 29 CFR 1926, incorporated by Subsection A of this Section:

- (1) omit 1926.1;
- (2) amend 1926.2(a) by adding "(a) for multi-state employers only...";
- (3) omit 1926.3;
- (4) omit 1926.4;

- (5) omit sub-part B General Interpretation (1926.10 through 1926.16); and
- (6) amend 1926.59, Hazard Communication, as follows:

(a) 1926.59(g)(9) is amended to read: Where employees must travel between work places during a workshift, i.e. their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency. This information shall be readily accessible by telephone, two-way communication, computer or actual copies of the material safety data sheets.

(b) The introductory Paragraph to 1926.59(h) is amended to read: Employee information and training: (1) Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not been trained about is introduced to their work area, with the exception that a new employee shall be deemed to have been trained provided the employer can demonstrate the employee has received training regarding the same hazards within the past twelve months. Information and training may be designed to cover categories of hazards (e.g. flammability, carcinogenicity or specific chemicals). Chemical-specific information must always be available through labels and material safety data sheets.

[3/21/79, 1/20/80, 5/21/88, 5/1/95, 7/15/96, 3/16/97, 9/15/97, 8/15/98; Recompiled 11/30/01]

#### **11.5.3.10 PROHIBITION AGAINST UNLAWFUL DRUG USE AND ALCOHOLIC BEVERAGE USE IN THE PLACE OF EMPLOYMENT**

**A.** Employers shall provide a place of employment that is free of unlawful drug use by employees and free of alcoholic beverage use by employees. To determine whether an employer has violated this subsection, the department shall consider whether the employer knew, or with the exercise of reasonable diligence could have known, of the presence of the prohibited unlawful drug or alcohol use.

**B.** Employers shall develop and implement a written policy prohibiting unlawful drug use and alcoholic beverage use by employees in the place of employment.

**C.** For purposes of this section, "place of employment" does not include a location where employees of an employer are present to participate in an event, the primary purpose of which is not work-related.

[xx/xx/09]

#### **HISTORY OF 11.5.3 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: OHSR 73-1, Occupational Health and Safety Regulations, filed 7/31/73.

OHSR 75-1, Occupational Health and Safety Regulations, No. 101 through 109, 200, 300 and 400 filed 9/9/75.

EIB/OHSR 300, Occupational Health and Safety Regulation 300, Construction Standards, filed 12/21/79.

EIB/OHSR 300, Occupational Health and Safety Regulation 300, Construction Standards, filed 4/21/88.

EIB/OHSR 300, Occupational Health and Safety Regulation 300, Construction Standards, filed 2/5/91.

EIB/OHSR 300, Occupational Health and Safety Regulation 300, Construction Standards, filed 12/17/92.

History of Repealed Material: [RESERVED]