

This rule was filed as 11 NMAC 5.4.

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 5 OCCUPATIONAL HEALTH AND SAFETY
PART 4 OCCUPATIONAL HEALTH AND SAFETY - AGRICULTURE

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

11.5.4.2 SCOPE: All employment and places of employment in agriculture subject to the provisions of the Occupational Health and Safety Act.
[5/1/95; Recompiled 11/30/01]

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

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

11.5.4.5 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, 8/15/98; 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[Compiler's note: The words *or paragraph*, above, are no longer applicable.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.]

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

11.5.4.7 DEFINITIONS:

A. General: The provisions of 11 NMAC 5.1.12 [now 11.5.1.7 NMAC] are applicable to this part.

B. Additional definitions: The following definitions, in addition to those contained in 11 NMAC 5.1.12 [now 11.5.1.12 NMAC] and the State Act, are applicable to this part.

(1) "Agricultural employer" means any person who owns or operates an agricultural establishment or on whose premises or in whose interest an agricultural establishment is operated and any person who is responsible for the management and condition of an agricultural establishment or who acts directly or indirectly in the interest of an employer in relation to any employee.

(2) "Agricultural establishment" means a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

(3) "Hand-labor operations" means agricultural activities or operations performed by hand or with hand tools, including but not limited to the hand harvest of vegetables, nuts, and fruit, hand weeding of crops and hand planting of seedlings, but not including such activities as logging operations, the care or feeding of livestock, or hand-labor operations in permanent structures such as canning facilities or packing houses.

(4) "Handwashing facility" means a facility providing a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels.

(5) "Potable water" means:

(a) water that meets the standards for drinking purposes by the state or local authority having jurisdiction; or

(b) water that meets the quality standards prescribed by the United States environmental protection agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141; and

(6) "Toilet facility" means a fixed or portable facility designed for defecation and urination, including a biological or chemical toilet, a combustion toilet, or a sanitary privy, which is supplied with toilet paper adequate to employee needs.

[7/23/86, 5/1/95; Recompiled 11/30/01]

11.5.4.8 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS; REFERENCES IN OTHER REGULATIONS:

- A. Amendment and supersession:** This part shall be construed as amending and superseding:
- (1) EIB/OHSR 400, Agricultural Standards, filed January 20, 1994, as amended;
 - (2) EIB/OHSR 401, Tools for Weeding and Thinning Crops, filed June 23, 1986; and
 - (3) EIB/OHSR 402, Field Sanitation, filed June 23, 1986.
- B. References in other regulations:** Any reference to EIB/OHSR 400, EIB/OHSR 401, or EIB/OHSR 402 in any other rule shall be construed as a reference to the corresponding Section [of] this Part. [1/20/94, 5/1/95; Recompiled 11/30/01]

11.5.4.9 INCORPORATED FEDERAL STANDARDS:

- A. General:** Except as otherwise provided, the provisions of 29 CFR Part 1928, Safety and Health Standards for Agriculture (Internet: www.osha.gov), are hereby incorporated into this Section.
- B. Amendments:** Amend 1928.21(a)(5), Hazard Communication 1910.1200, as follows:
- (1) 1910.1200(g)(9) is amended to read: Where employees must travel between workplaces 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. The information shall be readily accessible by telephone, two-way communication, computer or actual copies of the material safety data sheets.
 - (2) The introductory Paragraph to 1910.1200(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 employee 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 chemical). Chemical-specific information must always be available through labels and material safety data sheets. [3/21/79, 1/27/80, 1/20/94, 7/14/94, 5/1/95, 8/15/98; Recompiled 11/30/01]

11.5.4.10 TOOLS FOR WEEDING AND THINNING CROPS:

- A. Scope:** This Section applies to any agricultural establishment where employees are engaged on any given day in hand-labor operations in the field.
- B. Requirements:** The use of a hoe, knife, or fork less than four (4) feet in length for weeding and thinning crops is prohibited. [7/23/86, 5/1/95; Recompiled 11/30/01]

11.5.4.11 FIELD SANITATION:

- A. Scope:** This section applies to any agricultural establishment where eleven (11) or more employees are engaged on any given day in hand-labor operations in the field.
- B. Requirements:** Agricultural employers shall provide the following for employees engaged in hand-labor operations in the field, without cost to the employee:
- (1) **Potable drinking water:**
 - (a) Potable water shall be provided and shall be placed in locations readily accessible to all employees.
 - (b) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed to meet employees' needs.
 - (c) The water shall be dispensed in single use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.
 - (2) **Toilet and handwashing facilities:**
 - (a) One toilet facility and one handwashing facility shall be provided for each twenty (20) employees or fraction thereof, except as stated in Section 11.B.2.d [now Subparagraph (d) of Paragraph 2 of Subsection B of 11.5.4.11 NMAC].

(b) Toilet facilities shall have doors that can be closed and latched from the inside and shall be constructed to insure privacy.

(c) Toilet and handwashing facilities shall be accessibly located, in close proximity to each other, and within one quarter (1/4) mile (0.4 kilometers) of each employee's place of work in the field. Where it is not feasible to locate facilities accessibly and within the required distance due to the terrain, they shall be located at the point of closest vehicular access.

(d) Toilet and handwashing facilities are not required for employees who perform field work for a period of three (3) hours or less (including transportation time to and from the field) during the day.

(3) **Maintenance:** Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

(a) Drinking water containers shall be covered, cleaned and refilled daily.

(b) Toilet facilities shall be operational and maintained in clean and sanitary condition.

(c) Handwashing facilities shall be maintained in clean and sanitary condition.

(d) Disposal of wastes from facilities shall not cause unsanitary conditions.

(4) Reasonable use. Employees shall be allowed reasonable opportunities during the workday to use the toilet facilities.

[7/23/86, 5/1/95; Recompiled 11/30/01]

11.5.4.12 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 except as provided for in Subsection B of 15.10.51.11 NMAC. 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 11.5.4 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 400, Occupational Health and Safety Regulation 400, Agricultural Standards, filed 12/28/79.

EIB/OHSR 400, Occupational Health and Safety Regulation 400, Agricultural Standards, filed 12/10/87.

EIB/OHSR 400, Occupational Health and Safety Regulation 400, Agricultural Standards, filed 1/20/94.

History of Repealed Material: [RESERVED]