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July 16, 2015

New Mexico Occupational Health and Safety Bureau (OHSB) Directive 15-08

Subject: Temporary Enforcement Policy for Reporting Occupational Injuries, Illnesses and Fatalities.

A. Purpose: This notice provides guidance for enforcement of the provisions of 11.5.1.16 NMAC and 29 CFR 1904.39, Reporting Occupational Injuries, Illnesses and Fatalities within OHSB jurisdiction.

B. Scope: This notice applies to the State of New Mexico OHSB.

C. References: The following documents are referenced in or applicable to this instruction:

1. New Mexico Field Operations Manual (FOM).
2. 11.5.1.16, Reporting Occupational Injuries, Illnesses and Fatalities.
3. 29 CFR 1904.39, Reporting fatalities, hospitalizations, amputations, and losses of an eye as a result of work-related incidents to OSHA.

D. Cancellation: This notice does not cancel any other notice.

E. Expiration: This notice expires on December 31, 2015.

F. Action: OHSB Compliance personnel will ensure that the procedures contained in this notice are followed when conducting enforcement activities.

G. Background: On September 18, 2014, OSHA published a final rule for 29 CFR 1904.39 which expanded the list of severe work-related injuries that all covered employers must report to OSHA. The revised rule retained the requirement to report all work-related fatalities within 8 hours and added the requirement to report all work-related in-patient hospitalizations, amputations and loss of an eye within 24 hours to OSHA. Establishments located in states under Federal OSHA jurisdiction were required to comply with the new requirements on January 1, 2015. OSHA encouraged the states to implement the new coverage provisions on January 1, 2015.

Upon review of the language in 11.5.1.16 NMAC that incorporates 29 CFR 1904.39, the New Mexico State Plan determined it would seek amendment of the

incorporating state rule prior to adopting the federal rule change to eliminate potential confusion regarding the exception language in Subsection B. OHSB notified OSHA of its intent to adopt the rule change through amendment of the state rule, with an anticipated effective date of January 1, 2016. The Environmental Improvement Board (EIB) heard the requested rule change on May 15, 2015 and approved the change with a publication in the New Mexico Register on June 16, 2015 and an effective date of July 16, 2015.

Based on the OHSB notification to OSHA of an anticipated adoption date of January 1, 2016, the Bureau has determined it will delay full enforcement of the additional requirements of 29 CFR 1904.39 contained in the amended rule as outlined in the enforcement procedures contained in this document.

H. Procedures:

Prior to January 1, 2016, OHSB Compliance personnel will adhere to the following procedures when determining an employer's compliance with 29 CFR 1904.39.

1. Employers must continue to comply with the requirement to notify OHSB of the work-related death of an employee within 8 hours, with the exception of transportation-related fatalities. Failure to notify OHSB within 8 hours will result in issuance of a citation in accordance with the FOM.
2. Employers must notify OHSB of workplace accidents resulting in the hospitalization of 3 or more employees within 24 hours, with the exception of transportation-related accidents. The reporting requirement prior to the state effective date of July 16, 2015, was 8 hours for multiple hospitalization events; the new reporting requirement, effective July 16, 2015, is 24 hours. OHSB is enforcing the new 24-hour requirement because the new requirement does not place additional burden on employers during the temporary period of this directive. Failure to notify OHSB within 24 hours will result in issuance of a citation in accordance with the FOM.
3. Prior to January 1, 2016, employers will not be cited for failing to notify OHSB of the hospitalization of 2 or fewer employees, or for accidents resulting in amputation or the loss of an eye.

Beginning January 1, 2016, employers must comply fully with the current requirements of 11.5.1.16 NMAC and the incorporated provisions of 29 CFR 1904.39.

By and Under the Authority of

Robert Genoway
Chief, Occupational Health and Safety Bureau