

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

**IN THE MATTER OF PROPOSED  
AMENDMENT OF 11.5.1.16 NMAC**

**No.**

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

*Petitioner.*

**PETITION TO AMEND 11.5.1.16 NMAC OF OCCUPATIONAL HEALTH  
AND SAFETY REGULATIONS AND REQUEST FOR HEARING**

The Environmental Protection Division (“Division”), Occupational Health and Safety Bureau (“Bureau”) of the New Mexico Environment Department (“Department”) petitions the Environmental Improvement Board (“EIB”) for a regulatory change amending 11.5.1.16 NMAC. As support for this Petition, the Division states as follows:

**STATEMENT OF REASONS FOR REGULATORY CHANGE**

1. The Novel Coronavirus Disease 2019 (“COVID-19”) is a communicable disease not previously circulated in humans but has adapted to humans such that it is contagious and easily spread from one person to another.
2. COVID-19 is a public health emergency which poses a threat to the health, safety, wellbeing and property of the residents of the State of New Mexico. *See* Exec. Order No. 2020-04, March 11, 2020, available online at: <https://cv.nmhealth.org/wp-content/uploads/2020/03/Executive-Order-2020-004-r.pdf>.
3. COVID-19 is “novel” because it has not been previously identified, is different from the commonly circulated viruses that cause mild illness, and because the general population lacks immunity more people are susceptible and the virus is more lethal. *See Frequently Asked Questions: What is a novel coronavirus?*, Center for Disease Control and Prevention, [www.cdc.gov/coronavirus/2019-ncov/faq.html](http://www.cdc.gov/coronavirus/2019-ncov/faq.html); *see also*, WHO Director-General's opening

remarks at the media briefing on COVID-19, March 3, 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---3-march-2020>. (“[... W]hile many people globally have built up immunity to seasonal flu strains, COVID-19 is a new virus to which no one has immunity [...] more people are susceptible to infection, and some will suffer severe disease.”)

4. COVID-19 presents a severe danger to the public health and workplace safety and there is an urgent need to adopt rules requiring employers to report an employee’s positive test result for the novel coronavirus.
5. Having immediate knowledge of an employee’s positive test for the novel coronavirus is useful to the Bureau in order to allocate resources, limit transmission, and otherwise respond effectively and efficiently to the novel coronavirus.
6. One of the purposes of the Occupational Health and Safety Act, NMSA Section 50-9-2 to -25 (1953, as amended through 2017) (OHSA) is “to assure every employee safe and healthful working conditions by providing for . . . appropriate job-related accident and illness reporting procedures that will help achieve the objectives of the [OHSA].” § 50-9-2 (1993).
7. OHSA requires every employer to “submit reports of occupational injuries and illnesses as prescribed by the Department.” § 50-9-19 (1993).
8. The Department has issued regulations regarding recording and reporting occupational injuries, illnesses, and fatalities, but has not issued regulations regarding reporting positive test results related to the novel coronavirus. 11.5.1.16 NMAC.
9. The EIB has the authority to Amend the Occupational Health and Safety Regulations under NMSA 1978, Section 59-9-12 (1993).
10. The current Emergency Amendment to 11.5.1.16 NMAC is due to expire on or about December 4, 2020.

11. It is necessary to amend 11.5.1.16 NMAC to include reporting an employee's positive test of the novel coronavirus to the Department.
12. The proposed amendment of 11.5.1.16 NMAC ("Proposed Amendment") is attached herein as Attachment A.

REQUEST FOR HEARING

At its regularly scheduled September 2020 public meeting, the Bureau requests the EIB order a public hearing to consider the proposed amendment of 11.5.1.16, appoint a hearing officer, and schedule the public hearing no later than December 31, 2020. The Bureau anticipates the public hearing will take approximately 6 hours. The Bureau reserves the right to supplement the Statement of Reasons and to change the language set forth in Attachment A.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT  
OFFICE OF GENERAL COUNSEL

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## Attachment A

### **11.5.1.16 RECORDKEEPING AND REPORTING OCCUPATIONAL INJURIES, ILLNESSES AND FATALITIES:**

**A. General:** Except as otherwise provided in Subsection B of this section, the provisions of 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses (internet: [www.osha.gov](http://www.osha.gov)), are hereby incorporated into this section.

**B. Exception:** Work-related injuries, illnesses and fatalities which are required to be reported by 29 CFR Part 1904.39 shall be reported, by email, telephone or facsimile machine, to the bureau in lieu of the location specified in 29 CFR Part 1904.39. The bureau's address, email, and telephone/facsimile numbers are: occupational health and safety bureau, New Mexico environment department, P.O. Box 5469, Santa Fe, NM 87502, email: [nmenv-osha@state.nm.us](mailto:nmenv-osha@state.nm.us), Tel: (505) 476-8700, Fax: (505) 476-8734.

**C. Reporting novel coronavirus:** Within four hours of notice that an employee tested positive for the novel coronavirus, each employer shall report the positive test to the bureau as specified in Subsection B of this section or as otherwise directed by the bureau.

[10/9/1975, 9/3/1978, 3/21/1979, 5/10/1981, 11/17/1983, 7/19/1994, 1/1/1996, 8/15/1998; 11.5.1.16 NMAC - Rn & A, 11 NMAC 5.1.16, 10/30/2008; A, 7/16/2015; A/E, 8/5/2020; A, XX/XX/2020]

[11.5.1.16 NMAC - N, 12/04/2020] [The department has provided the Rapid Response Submission portal that may be used to satisfy the reporting requirements of Subsection (C). The Rapid Response Submission portal is available on the bureau's website at <https://nmgov.force.com/rapidresponse/s/>.]