



Soloria, Karla &lt;ksoloria@nmag.gov&gt;

---

**11.5.1.16 NMAC - EIB 20-55 Comment #6**

1 message

**Chris Mechels** [REDACTED]

Tue, Dec 15, 2020 at 7:06 PM

To: Public Facilitation &lt;Public.Facilitation@state.nm.us&gt;

Cc: KSoloria &lt;KSoloria@nmag.gov&gt;, Jennifer Hower &lt;Jennifer.Hower@state.nm.us&gt;

Subject: 11.5.1.16 NMAC - EIB 20-55 Comment #6

Dear Administrator,

This comment concerns the failure to provide the rationale for the proposed change, thus failing to comply with the Rules Act.

The 8/5/2020 Emergency Rule detailed at some length the reason for the rule. It seems that the Department of Health (DOH), the lead agency under the PHERA Act in the Covid response, was in disarray and could not timely report positive Covid tests to other agencies, including NMED. This compromised the Rapid Response effort, which dates back to 5/11/2020. A good amount of data was provided to indicate the DOH reporting failure, and its consequences. Failing, apparently, any prospect of timely solution to DOH problems, the NMED Emergency Rule set up an alternative reporting system, forcing the business owners to report, under threat of OSHA sanctions.

This seems very questionable legally, as OSHA is NOT about public health, it's about Worker Safety. By thus using OSHA to cover DOH failings, the whole purpose of OSHA is confused and compromised. At some point this needs to be challenged in our courts. Under the PHERA Act, three NM agencies are responsible: DOH, DPS, DHS. Note that NMED is NOT listed.

No explanation is provided for the current Public Hearing as to the status of DOH reporting. Have the difficulties been resolved?? Is NMED to permanently cover for DOH reporting failures?? A detailed report on these questions would be appropriate, but no mention is made of this. We are left to "assume" that the rationale for the 8/5/2020 Emergency Rulemaking still pertains. We must hope that the DOH has corrected its many problems since August.

I have acquired the Transmittal Form, which includes the purpose of the 12/3/2020 Emergency Rule, which is:

The purpose of the Emergency Rule is to prevent transmission of COVID-19 between employees in workplaces by requiring employers to timely report positive cases to NMED, which will allow NMED to rapidly respond to each positive case and ensure workers are protected. Currently, the New Mexico Department of Health ("NMDOH") notifies NMED of positive COVID-19 cases among employees based on case reporting from test providers statewide. NMDOH reported more than 750 COVID-19 positive workers to NMED through this process, which can take multiple days. In many cases, an employer was informed of the COVID-19 positive employee before NMDOH reported the case to NMED. If the emergency amendment is not adopted, there is a strong likelihood that COVID-19 cases could spread at a rapid pace if an employer fails to notify OHSB of COVID-19 positive employees in a timely manner. Without timely reporting requirements for COVID-19 positive employees, New Mexico employees will be exposed to grave danger due to the physical harms associated with COVID-19.

Now, compare this text to that provided for the 08/05/2020 Emergency Rule, which is:

The purpose of the Emergency Rule is to prevent transmission of COVID-19 between employees in workplaces by requiring employers to timely report positive cases to NMED, which will allow NMED to rapidly respond to each positive case and ensure workers are protected. Currently, the New Mexico Department of Health ("NMDOH") notifies NMED of positive COVID-19 cases among employees based on case reporting from test providers statewide. NMDOH reported more than 750 COVID-19 positive workers to NMED through this process, which can take multiple days. In many cases, an employer was informed of the COVID-19 positive employee before NMDOH reported the case to NMED. To date, there are more than 600 cases where the employer knew of a positive worker before NMED including more than 280 instances where the employer knew of the case at least three days before NMED. If the emergency amendment is not adopted, there is a strong likelihood that COVID-19 cases could spread at a rapid pace if an employer fails to notify OHSB of COVID-19 positive employees in a timely manner. Without timely reporting requirements for COVID-19 positive employees, New Mexico employees will be exposed to grave danger due to the physical harms associated with COVID-19.

NMED deleted one sentence from the earlier filing, and provide NO new information to support the 12/3/2020 filing. If the August rule change had NO effect, it was obviously a bad idea. If NMDOH solved their reporting problems, the NMED change is not necessary. NMED chose to bring the change with NO new information which is a disgrace, and very disrespectful of the EIB.

Again, it was folly to involve OSHA, with its focus on Worker Safety, in the PHERA response. NMDOH needed to address its problems. The only apparent reason for involving NMED and OSHA is that the OSHA penalties could be used to threaten businesses.

I hope the the EIB exercises their independence and demands explanations from the NMED.

Regards,

Chris Mechels

