

§ 1952.361

29 CFR Ch. XVII (7-1-12 Edition)

Protection Division, as the State agency designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in §1909.2(c)(1) of this chapter. The State has adopted the Federal Field Operations Manual and all the Federal standards except those found in 29 CFR parts 1915, 1916, 1917, and 1918 (ship repairing, shipbuilding, shipbreaking, and longshoring). In addition, the Occupational and Radiation Protection Division will be enforcing State standards under the Radiation Protection Act (chapter 284, Laws of 1971, 12-9-1 through 12-9-11, New Mexico Statutes Annotated). However, since this Act provides protection to the general public, in the event of conflict between Radiation Protection Act standards and occupational safety and health standards, employees will receive the protection provided under the more stringent regulation.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions; procedures for the development and promulgation of standards, including standards for the protection of employees against new and unforeseen hazards; and procedures for the prompt restraint of imminent danger situations.

(b)(1) The plan includes legislation enacted by the New Mexico Legislature during its 1975 legislative session amending chapter 63, Laws of 1972, 59-14-1 through 59-14-23 of the New Mexico Statutes Annotated to bring them into conformity with the requirements of part 1902 of this chapter. Under the legislation, the Environmental Improvement Agency will have full authority to enforce and administer laws respecting the safety and health of employees in all workplaces of the State.

(2) The legislation is intended, among other things, to assure inspections in response to employee complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notify employees of their protections and obligations; protect employees against discharge or discrimination in terms and conditions of employment; provide adequate safeguards to protect trade

secrets; impose sanctions against employers for violations of standards and orders; insure employer right of review to an Occupational Health and Safety Review Commission and then the courts, and employee participation in the review proceedings. The plan also proposes a program of voluntary compliance by employers and employees, including a provision for on-site consultation. The State's consultation program will not detract from its enforcement program and the State's consultation program will meet the conditions set forth in the Washington Decision (38 FR 2421, January 26, 1973).

(c) The New Mexico Plan includes the following documents as of the date of approval:

(1) The plan description documents, in one volume.

(2) A copy of the enabling legislation as amended by the State legislature in its 1975 session.

(3) A letter from Aaron Bond, Director of the New Mexico Environmental Improvement Agency, to Barry J. White, Associate Assistant Secretary for Regional Programs, dated November 4, 1975, submitting information, clarification, and revisions on several issues raised during the review process, including proposals to be submitted to the New Mexico Legislature prior to the close of its 1977 legislative session.

[40 FR 57456, Dec. 10, 1975, as amended at 59 FR 42496, Aug. 18, 1994]

§ 1952.361 Developmental schedule.

The New Mexico State Plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Development of a complete and operating management information and control system by January 1, 1976.

(b) Submission of the State's occupational safety and health poster for approval by January 31, 1976.

(c) Promulgation of Rules of Procedures for administrative review by the New Mexico Occupational Health and Safety Review Commission by January 31, 1976.

(d) Enforcement program to achieve operational status by December 1, 1976.

(e) Amendments to basic legislation to become effective by July 1, 1977.

(f) Public employee program to become operational by July 1, 1977.

[40 FR 57456, Dec. 10, 1975. Redesignated at 59 FR 42496, Aug. 18, 1994]

§ 1952.362 Completion of developmental steps and certification.

(a) In accordance with the requirements of §1952.10, the New Mexico State poster was approved by the Assistant Secretary on July 2, 1976. A revised State poster reflecting legislative amendments and procedural changes was submitted on May 10, 1983, and approved by the Assistant Secretary on October 30, 1984.

(b) In accordance with the intent of 29 CFR 1952.363(e), on December 20, 1977, and June 3, 1983, New Mexico submitted procedural guidelines for its two-tier contested case procedures in lieu of legislative amendments. The procedures establish maximum timeframes for completion of the first level, informal administrative review of contested cases, and immediate docketing of cases with the New Mexico Occupational Health and Safety Review Commission. A second 15 day contest period is provided for employer/employee appeal directly to the Review Commission. The New Mexico Occupational Health and Safety Act (section 50-9-1 et seq., NMSA 1978) was amended in 1978, 1983 and 1984. These amendments deal with the imposition of penalties for serious violations by governmental entities; the private questioning of employees and employers by the Environmental Improvement Division officials at the worksite; the jurisdiction of the Environmental Improvement Division over working conditions in copper smelters; the use of interview statements as evidence in a civil or enforcement action; and the State's adoption of emergency temporary standards. These clarifications and legislative amendments were approved by the Assistant Secretary on October 30, 1984.

(c) In accordance with 29 CFR 1952.363(a), New Mexico submitted documentation on establishment of its Management Information System on August 18, 1976, and June 3, 1983. The June 3, 1983, amendment specifies New Mexico's participation in OSHA's Unified Management Information System. These supplements were approved by

the Assistant Secretary on October 30, 1984.

(d) In accordance with 29 CFR 1952.363(c), New Mexico promulgated Review Commission Rules of Procedures on October 1, 1976. On January 11, 1984, New Mexico submitted revised Review Commission Rules of Procedures which parallel 29 CFR part 2200. The revised rules were approved by the Assistant Secretary on October 30, 1984.

(e) In accordance with 29 CFR 1952.363(d), New Mexico submitted documentation on December 20, 1977, showing that its enforcement program was operational effective June, 1976. The supplement was approved by the Assistant Secretary on October 30, 1984.

(f) In accordance with 29 CFR 1952.363(f), New Mexico by letter dated December 20, 1977, submitted a plan supplement regarding its development of an occupational health and safety program for public employees in June, 1976. A revision thereto was submitted on February 28, 1980. These supplements were approved by the Assistant Secretary on October 30, 1984.

(g) New Mexico regulations for recording and reporting occupational injuries and illnesses parallel to 29 CFR part 1904 which were originally promulgated on August 8, 1975, were revised on February 19, 1979, June 1, 1981, and October 26, 1983. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(h) New Mexico regulations for inspections, citations and proposed penalties parallel to 29 CFR part 1903 originally promulgated on August 8, 1975, were revised on April 14, 1981; May 10, 1981; May 27, 1981; June 1, 1981; April 6, 1982; May 11, 1983; June 8, 1983; June 14, 1983; and April 4, 1984. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(i) New Mexico rules of practice for variances, limitations, variations, tolerances and exemptions parallel to 29 CFR part 1905 which were originally promulgated on August 8, 1975, were revised on April 14, 1981. Subsequently, on June 18, 1981, and May 11, 1983, the State submitted amendments and assurances to its Field Operations Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.