

This is an amendment to 11.5.1 NMAC Section 7, effective 12/31/08.

11.5.1.7 DEFINITIONS:

A. General: Unless otherwise specified, the terms used in 11.5.1 NMAC through 11.5.4 NMAC and 11.5.6 NMAC shall be construed in accordance with definitions contained in the state act. In addition, the following terms have the indicated meanings.

(1) **“Bureau”** means the occupational health and safety bureau of the department, or any other bureau of the department to which responsibility for enforcement of the state act may be assigned.

(2) **“Chief”** means the chief of the bureau or his or her designee.

(3) **“Commission”** means the occupational health and safety review commission.

(4) **“Compliance officer”** means a department employee who is carrying out the provisions of the state act.

(5) **“Compliance program manager”** means the person in the bureau who is primarily responsible for managing the compliance program.

(6) **“Counsel”** means an attorney licensed to practice law.

(7) **“Department”** means the New Mexico environment department.

(8) **“Employee representative”** means a representative of the employee's recognized or certified bargaining agent.

(9) **“Imminent danger situations”** means those situations in a place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the enforcement provisions otherwise provided by the state act.

(10) **“Interviewee”** means the individual being questioned by the department's representative.

(11) **“On-site consultation”** means an inspection conducted by the bureau pursuant to Subsection B of 50-9-6 NMSA 1978.

(12) **“Personal counsel”** means counsel for an employee who requests representation for an employee interview, but does not want to use employer counsel. The employer may, if the employee requests such counsel prior to the interview, or the employer must, if employee uses company counsel during the interview and a conflict of interest arises during the interview in violation of the New Mexico rules of professional conduct, retain and pay for a counsel for the ~~employee~~ employee: (i) who is not currently representing the employer; (ii) does not have a retainer agreement with the employer; (iii) is not in-house counsel with the employer; (iv) will have a duty to represent employee in the context of the OSHA investigation; (v) will abide by the relevant New Mexico rules of professional conduct and (vi) and is a comparable attorney to the employer's counsel.

(13) **“Private”** means:

(a) for employee interviews, to the exclusion of an employer or employer representative, except if employee requests employee's representative, or requests employer counsel and both employer and employee consent in writing to the dual representation and the counsel abides by the relevant New Mexico rules of professional conduct; and

(b) for employer interviews, to the exclusion of an employee or employee representative.

(14) **“Secretary”** means the secretary of the environment department.

(15) **“State act”** means the Occupational Health and Safety Act, NMSA 1978, Sections 50-9-1 to 50-9-25, as it may be amended from time to time.

(16) **“Trade secret”** means the whole or any portion of a phase of any scientific or technical information, design, process, procedure, formula or improvement that is secret and of value. A trade secret shall be presumed to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(17) **“USDOL”** means the United States department of labor.

B. Terms in incorporated federal standards: Terms in the federal occupational safety and health standards incorporated by reference in 11.5.1 NMAC through 11.5.4 NMAC and 11.5.6 NMAC shall be construed to be references to the corresponding entities in the state occupational health and safety program.

(1) **“Act”** shall be construed to mean the corresponding section of the state act.

(2) **“Assistant secretary of labor”** shall be construed to mean the secretary.

(3) **“OSHA area director or area office”** shall be construed to mean the compliance program manager.

(4) **“OSHA area office”** shall be construed to mean the bureau.

[8/30/73, 9/3/78, 3/21/79, 5/10/81, 1/19/94, 5/1/95, 1/1/96; 11.5.1.7 NMAC - Rn & A, 11 NMAC 5.1.12, 10/30/08; A, 12/31/08]