

**ENHANCED FEDERAL ANNUAL MONITORING  
EVALUATION (FAME) FOLLOW-UP REPORT  
FOR THE  
NORTH CAROLINA  
OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

**DESIGNATED STATE AGENCY:**

**NORTH CAROLINA DEPARTMENT OF LABOR  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**PERIOD COVERED BY THIS REPORT:**

**October 1, 2009 - September 30, 2010**

**NORTH CAROLINA STATE PLAN APPROVED:  
18(e) FINAL APPROVAL RECEIVED: December 10, 1996**

**REPORT PREPARED BY:**

**U.S. DEPARTMENT OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
REGION IV, ATLANTA**

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# **North Carolina**

## **FY 2010 EFAME Follow-up Report – a Follow-up to the FY 2009 EFAME**

### **1. Executive Summary**

This report assessed the North Carolina Department of Labor, Occupational Safety and Health Plan's (OSHNC) progress towards achieving the performance goals established in their Federal Fiscal (FY) Year 2010 Annual Performance Plan and the recommendations given in the FY 2009 Enhanced FAME during the period of October 1, 2009 to September 30, 2010.

#### **a. Introduction**

The North Carolina Occupational Safety and Health State Plan received final approval under Section 18(e) of the OSH Act on December 10, 1996. The official designated as responsible for administering the program under the Occupational Safety and Health Act of North Carolina is the Commissioner of Labor, who, as a constitutional officer, is an elected official. The Commissioner of Labor currently and during the period covered by this evaluation is Cherie K. Berry. Within the NC Department of Labor, the Occupational Safety and Health Division has responsibility for carrying out the requirements of the State Plan. Allen McNeely serves as Deputy Commissioner/Director of the Occupational Safety and Health Division and Kevin Beauregard served as Assistant Deputy Commissioner/Assistant Director of the OSH Division.

The Occupational Safety and Health Division is organized into the following operating units: East and West Compliance Bureaus; Bureau of Education, Training, and Technical Assistance; Bureau of Consultative Services; Bureau of Planning, Statistics and Information Management; and the Agricultural Safety and Health Bureau. The main office and a district office are located in Raleigh, with four additional offices located in Asheville, Charlotte, Winston-Salem, and Wilmington. There are a total of 205.2 positions funded under the FY2010 23(g) grant, with 98 of those positions being 100% state funded. The FY2010 grant allocated for 64 safety compliance officers and 50 health compliance officers assigned to district offices throughout the State. Additional safety and health professionals work in Education, Training, and Technical Assistance with responsibilities related to training, development of outreach materials and standards.

Employee protection from discrimination related to occupational safety and health is administered by the Employment Discrimination Bureau, which falls under the Deputy Commissioner for Standards and Inspections, in the North Carolina Department of Labor. This Bureau covers several types of employment-related discrimination in addition to discrimination that falls under jurisdiction of the State Plan.

Private sector onsite consultative services are provided through a 21(d) Grant with the North Carolina Department of Labor. There are 31 positions funded under the 21(d) grant, including consultants, administrative staff, and managerial employees. Three of the 21(d) personnel are 100% state funded. Public sector 23(g) grant consultative services, enforcement, and compliance assistance activities, are carried out by the same staff, following the same procedures, with very few exceptions, as the private sector. North Carolina's Carolina Star Program organizationally falls within the Bureau of Consultative Services. However, it falls under the 23(g) grant.

## **b. Summary of the Report**

The FY 2010 EFAME report is not a comprehensive FAME report. This report is focused on the State's progress in achieving their Corrective Action Plan (CAP) in response to the FY 2009 EFAME report. In addition, this report is also based on the results of quarterly onsite monitoring visit, OSHNC's State Office Annual Report (SOAR) for FY 2010, as well as the State Activity Mandated Measures (SAMM) Report and State Indicator Report (SIR) reports ending September 30, 2010.

The FY 2009 Enhanced FAME report contained nine findings and recommendations. Region IV and the OSHNC have reached agreement on corrective action for six of the recommendations. Three items were considered unresolved by the Region and remain open, pending additional monitoring by federal OSHA. These items are carry-over recommendations and will be examined in greater detail in the FY2011 EFAME report. Documentation has been provided to support the effective implementation for a majority of the recommendations however it has not been verified through case file and/or documentation reviews. Verification reviews will be conducted during FY 2011 to assure the actions documented in the Corrective Action Plans (CAPs) were effectively implemented. There are no new recommendations for fiscal year 2010.

A review of the SAMM and SIR for FY 2010 indicated OSHNC generally met or exceeded federal activity results. The reports show that hazards were identified during 62.6% of programmed safety inspections (Federal data 69.1%) and during 60.4% of programmed health inspections (Federal data 55.4%); Safety Compliance performed approximately 4.1 inspections per 100 hours (Federal data 5.5) and Health Compliance performed approximately 3.0 inspections per 100 hours (Federal data 1.9). North Carolina OSHA only vacated 2.3% of violations (Federal data 4.7) and reclassified 2.0 % (Federal data 4.0). Penalties were retained on 71.6% of violations issued (Federal data 63.0).

The program's effectiveness has largely been measured by evaluating their ability to achieve the goals contained in the plans. OSHNC has and continues to demonstrate a high degree of success accomplishing its targeted goals. North Carolina has continued to

remain in constant contact with the Area and Regional Offices regarding policy changes and progress toward recommendations.

### **c. Monitoring Methodology**

This report was prepared under the direction of Cindy A. Coe, Regional Administrator, Region IV, Atlanta, Georgia, and covers the period of October 1, 2009 through September 30, 2010. The North Carolina Department of Labor, Occupational Safety and Health Division (OSHNC), administers the program under the direction of Cherie K. Berry, Commissioner of Labor, and Allen McNeely, Director of the Occupational Safety and Health Division

## **2. Major New Issues**

The state did not experience any significant new issues during this fiscal year.

## **3. Assessment of State Actions and Performance Improvements in Response to Recommendations from the FY 2009 EFAME**

**Finding 09-1:** Supporting documentation is purged from (most) case files.

**Recommendation 09-1:** North Carolina should revise their records retention policy with respect to OSHNC inspection case file documentation.

Federal OSHA and the State were not able to reach a resolution regarding this matter. Photos are maintained for fatalities and other significant case files. Purging of photos saves costs, and does not adversely affect the program. They will work with Area Director when retention policy is reviewed in the future to consider a policy that meets competing needs.

This item is a carry-over recommendation and will be examined in greater detail in the FY2011 EFAME report.

**Finding 09-2:** For complaints handled by letter, insufficient information was provided to complainant due to a decision to no longer provide a copy of the employer's response.

**Recommendation 09-2:** North Carolina should assure that written responses to complainants following investigation of their complaints include clear and informative responses to their allegations. (The state has responded to this recommendation by submitting changes to their Field Operations Manual which satisfactorily address this issue.)

This recommendation was fully implemented. The state's position is that this finding pertained to one case. Their FOM has been revised so that employer's response is provided to the complainant. Revised complaint letters, and NC FOM were provided and reviewed prior to issuance of EFAME.

Case file reviews will be conducted during FY 2011 to verify that the complainants receive clear responses to their allegations.

**Finding 09-3:** Next of kin letter was somewhat confusing and lacked explanation of the cause of the accident. These letters were usually signed by the compliance officer.

**Recommendation 09- 3:** North Carolina should revise the letter sent to the next of kin at the close of their investigation to improve its clarity and include a description of the findings. (The state has submitted revised letters for the family of deceased workers which satisfactorily address this issue.)

This recommendation was fully implemented. NC revised the letter in question, and made other changes so they are consistent with federal OSHA letters. The final letters are signed by the District Supervisor, with a reference to the next-of-kin Ombudsman. The new form letters were provided.

Case file reviews will be conducted during FY 2011 to verify that the letters being sent to next of kin are clear and include a description of the investigation findings.

**Finding 09-4:** Case files contained insufficient information about the operations or potential hazards at the site, any safety or health programs in place, or what the inspection covered and some case files did not include injury or illness data from the 300 log.

**Recommendation 09-4:** North Carolina should assure that each case file includes documentation of the company's injury and illness experiences, safety and health programs, and a description of the processes inspected.

The state reviewed each file that was missing 300 data. Training has been conducted on improved case file documentation. Nothing additional was requested from NC. The results of their investigation into the deficiencies were received prior to the issuance of the EFAME along with a copy of the presentation used to train all compliance personnel.

Case file reviews will be conducted during FY 2011 to verify that case files contain sufficient information regarding the company's injury and illness experiences, safety and health programs, and a description of the processes inspected.

**Finding 09-5:** State-specific violation classification guidelines result in a lower percentage of serious violations. Several of the violations in the case files were not classified as serious or as severe as Federal OSHA would have classified them.

**Recommendation 09-5:** NC should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice.

Federal OSHA and the State were not able to reach a resolution regarding this matter. No changes are planned. NC requested an opportunity to review federal inspection files that are properly classified and to discuss specific cases where NC violations were not correctly classified. Completion of violation documentation training for all compliance personnel should increase consistency in assessing violation severity.

Specific instances of classifications which differed from Federal OSHA's were pointed out during on-site monitoring, and some violations were discussed with supervisors. In some cases, supervisors indicated the violation could have been given a higher severity, according to State procedures.

North Carolina completed a review of their serious violation guidelines (North Carolina Field Operations Manual Training) and comparison with federal guidelines and participated in discussion with federal OSHA on differences on 1/15/2011.

The State does not agree to make any changes. This item is a carry-over recommendation and will be examined in greater detail in the FY2011 EFAME report.

**Finding 09-6:** State penalty calculation and adjustment policies result in lower penalties for serious violations. Violations are misclassified and willful violations were not cited. More follow-up inspections should be conducted.

**Recommendation 09-6:** NC should monitor the results of its recently revised penalty calculation procedures and its penalty reduction policies to assure that penalties are appropriate for the violations cited. The State should also review its practices on the citing of willful violations and conducting follow-up inspections.

This recommendation was fully implemented. NC had made a change to its penalty calculation procedures prior to the EFAME review. As of the third quarter of FY 2010, NC's average serious penalty increased by 63%, to \$1,173. NC retains a higher percent of penalty than does federal OSHA. NC issued 20 willful violations in FY 2010. The low number of willful violations (one) in FY 2009 was due to normal fluctuations in discovering violations that meet the definition of willful. NC agrees that management review of follow-up inspection goals is needed, and a follow-up action plan was

developed and implemented. FY 2010 follow-ups were double when compared to FY 2009 (47 in FY 2009 and 100+ in FY 2010).

Case file reviews will be conducted during FY 2011 to evaluate penalties and reductions to assure they are appropriate. In addition, willful violations and follow-up inspections will be evaluated.

**Finding 09-7:** Untimely closing of inspections in IMIS.

**Recommendation 09-7:** North Carolina should review the status of all inspections on the IMIS Open Inspections Report and take any needed action to assure that activities related to the case have been taken and correctly entered into IMIS. In addition, procedures for routine review of data should be revised to take into account changes in staffing so that all IMIS data is subject to regular review. (The state has initiated a review of all open cases, and reports associated with previous supervisors have been assigned to current personnel for resolution.)

This recommendation was fully implemented. Open inspection reports for employees no longer with the program have been assigned to current employees. NC has taken action to reduce the number of open inspections (that should have been closed). Steps have been taken to monitor debt collection cases more closely, and to close files where penalties are deemed uncollectible according to State procedures. The state's actions were verified through discussions with and written explanations from NC Bureau Chiefs.

**Finding 09-8:** Many penalties remain uncollected. Due to internal procedures for debt collections, debt collection status is not entered into IMIS so standard IMIS debt collection reports cannot be used to regularly track overdue penalties.

**Recommendation 09-8:** NC should review and revise its debt collection procedures to assure appropriate collection actions, recording of information, and timely closing of cases.

This recommendation was fully implemented. A committee was formed to address this issue in February 2010. The debt collection procedures have been revised to streamline the process, as reflected in a flow chart provided to OSHA. Data on closed cases and penalties written off was provided to OSHA. The Division of OSH is currently working with another division in the NC Department of Labor that handles NC OSH collections, and that office is applying more resources to updating and following up on cases in debt collection.

Revised debt collection flow chart, and tables indicating cases that have been "written off" as uncollectible and can be closed, has been provided and discussed. The Debt Collection procedures along with IMIS reports will be reviewed during FY 2011 to

ensure appropriate collection actions are taken, recording of information in IMIS, and timely closing of cases is completed.

**Finding 09-9:** The report noted deficiencies in North Carolina's discrimination program, including the State policy that complaints must be received in writing, all interviews are conducted by phone, not in person, the lack of closing conference information in case files, and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual.

**Recommendation 09- 9A:** North Carolina should review their retaliatory discrimination laws and procedures and discontinue the practice of requiring that safety and health complaints be submitted in writing. Complaints should be docketed on the date that the complainant contacts the Employment Discrimination Bureau (EDB) and provides information establishing a prima facie case.

North Carolina's Retaliatory Employment Discrimination Act requires that complaints be in writing. This is consistent with statutory language of federal and state safety or health complaints. Complainants are provided with the forms needed to make their complaints in writing, and there has been no indication of hardship due to this requirement.

**Recommendation 09-9B:** North Carolina discrimination investigators should conduct interviews in person when possible to assure that the quality of Employment Discrimination Bureau (EDB) investigations is not negatively impacted by conducting interviews by telephone. (North Carolina OSH management stated that they were not made aware of budgetary reasons for this practice and they have not have been asked for additional travel funds. They have discussed this issue with the EDB Administrator and agreed that interviews will be conducted in person when it will promote the quality of the investigation).

The State responded that if shown conducting interviews by phone adversely affects the quality of investigations, the practice could be curtailed. State policies do not require that interviews be conducted in-person. Reducing travel time associated with in-person interviews allows investigations to be completed more timely.

**Recommendation 09-9C:** North Carolina should assure that safety and health discrimination files include details about the closing conference.

North Carolina will review discrimination closing conference procedures; details of the closing conference will be required to be included in files, if determined the information adds value to the investigation process.

**Recommendation 09-9D:** North Carolina should review its settlement policy for safety and health discrimination cases and consider adding criteria consistent with current federal OSHA guidelines.

Federal OSHA's settlement policies are being reviewed. When federal OSHA's revised Whistleblower Manual is issued, North Carolina will begin the review process and work with federal OSHA to improve investigative procedures where appropriate.

The recent federal interpretation that all whistleblower complaints may be filed telephonically, and then reduced to writing by the investigator, in order to meet the requirement that complaints be filed in writing was discussed with the state. The implementation of the recommendations is pending implementation of the new whistleblower investigation manual. The state will implement whistleblower procedures the same or similar to federal OSHA within 6-months following the issuance of new federal whistleblower investigation manual.

These items are carry-over recommendations and will be examined in greater detail in the FY2011 EFAME report.

#### **4. FY 2010 State Enforcement**

##### ***a. Complaints***

North Carolina's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of federal OSHA. These procedures are covered in Chapter IX of the state's Field Operations Manual. Inspection data indicates that North Carolina conducted 971 complaint inspections compared to 869 in 2009. According to the State Activity Mandated Measures (SAMM) report, North Carolina responds timely to complaints. Complaint investigations were initiated within an average of 4.87 days compared to 3.62 days in FY 2009. Complaint inspections were initiated within an average of 4.90 days compared to 4.5 days in 2009. A review of the IMIS reports showed that during 2010 approximately 43% of their complaint inspections were in-compliance.

##### ***b. Fatalities***

In fiscal year 2010, North Carolina investigated 43 workplace fatalities compared to 41 in 2009. The number of construction deaths increased from 10 in 2009 to 18 in 2010, while the number of fatalities in general industry decreased from 13 in 2009 to 6 in 2010. North Carolina's procedures for investigation of occupational fatalities are effectively the same as those of federal OSHA. Investigations are normally initiated within one day of notification of the fatality. Fatality investigations are required by Administrative Procedure Notice (APN) 16D to go through a review by a citation review committee, made up of senior management and legal staff prior to issuance of citations or

determination of in compliance. The determination must be signed off on by the OSH Director. Informal settlement agreements related to fatality cases also receive a higher level review.

### ***c. Targeting Inspections***

According to inspection statistics run for this report, North Carolina conducted 4,491 inspections in fiscal year 2010 compared to 5,117 in fiscal year 2009, 2,761 of which were programmed compared to 3,549 in 2009. Approximately 1,628 of the inspections were conducted in construction sector compared to 2,196 in 2009. According to the State Indicator Report, 62.6% of programmed safety inspections and 60.4% of programmed health inspections had violations compared to 64.8% (programmed safety) and 63.6% (programmed health) in 2009. Additional data indicates that an average of 3.5 violations were cited per inspection compared to 3.7 in 2009, and that 46% of the violations were classified as Serious, 1% Repeat, and 1% Willful (7 willful violation(s) were cited in 2010) compared to 38.3% classified as Serious, 1.8% Repeat, and 0% Willful (1 willful violation was cited in 2009) in 2009.

North Carolina has a variety of special emphasis programs, some of which are associated with their strategic goals, and some of which are National Emphasis Programs. The state also has safety and health general industry targeting procedures, and has adopted the federal Site-Specific Targeting (SST) procedures. The state's general industry programmed safety targeting procedure selects establishments based on the injury and illness rates and serious safety violations per inspection for the industry they are in. The general industry programmed health targeting procedure selects establishments based on the serious health violations per inspection for the industry they are in. These inspections have lower priority than SST inspections. Data indicates that 2,075 general industry programmed inspections were conducted in 2010 compared to 1,860 in 2009, resulting in an in compliance rate (the percentage of inspections where no violations were found) of about 27% compared to 20% in FY 2009, 3.6 violations per inspection compared to 5.2 in FY 2009, with 27% of violations classified as serious compared to 23.8% in FY 2009.

North Carolina also has a public sector inspection targeting procedure, based on injury and illness data that is collected from state and local agencies. According to the SAMM report, 3.03% of inspections were conducted in the public sector in compared to 2.68% in 2009.

### ***d. Citations and Penalties***

In fiscal year 2010, the 4,491 inspections conducted resulted in an average of 3.5 violations per inspection, with 50.8% of safety violations and 39.5% of health violations classified as Serious compared to 5,180 inspections resulting in an average of 3.7 violations per inspection with 44.9% of the safety and 29.6% of the health violations

classified as serious in FY 2009. The average initial penalty per serious violation for private sector inspections was \$1165 (\$627 in FY 2009), compared to an average of \$1,335 for national data. North Carolina routinely places an emphasis on keeping citation lapse times low. In 2009, the average lapse time from opening conference to citation issuance was 28.3 days for safety and 32.05 days for health compared to 25.8 days for safety and 29.7 days for health in 2009. This compares very favorably to the national rate of 47.3 days for safety and 61.9 days for health.

In October, 2009, North Carolina revised their penalty procedures so that they now have two levels of probability, greater and lesser, like federal OSHA. The purpose was to make the probability rating less complex and more consistently administered. The 2010 data shows that North Carolina classified a higher percentage of violations as Serious. The State Indicator Report (SIR) shows that 50.8% of the safety violations and 39.5% of the health violations were classified as serious compared to 44.9% for safety and 29.6% for health in 2009. The revisions to the penalty procedures have had a positive impact on penalties. However the percent serious violations are significantly lower than the national average of 81.0% for safety and 70.2% for health. The SIR also shows that the state reclassified 2.0% of their violations compared to 1.8% in 2009.

#### ***e. Review Procedures***

North Carolina has procedures in place for conducting informal conferences and proposing informal settlement agreements. According to the State Indicator Report, 2.3% of violations were vacated and 2.0% of violations were reclassified. The penalty retention rate was 71.6% compared to 71.3% in FY 2009. In FY 2010, 3.1% of inspections were contested.

#### ***f. BLS Rates***

Bureau of Labor Statistics (BLS) injury and illness rates for North Carolina have shown a steady decline. The 2009 total case rate for the private sector was 3.0, an 11.8% reduction over the 2008 rate and an 18.9 % reduction over the 2007 rate. The 2009 Days Away Restricted and Transferred (DART) rate was 1.6, an 5.9% reduction over the 2008 rate and an 15.8 % reduction over the 2007 rate. North Carolina uses injury and illness rates and fatality rates in their strategic planning process to decide where their resources should be focused. Where possible, reductions in rates are used to measure outcome results.

## 5. Other

### *a. Discrimination Program*

Employment Discrimination Bureau (“EDB”) of the North Carolina Department of Labor, is responsible for enforcing the North Carolina Retaliatory Employment Discrimination Act (“REDA”) (N.C.G.S. §95-240 through §95-245). REDA prohibits discrimination against employees who engage in protected activities as defined by North Carolina law, including the Occupational Safety and Health Act of North Carolina (§ 95-151, Chapter 95, Article 16 of the General Statutes). This is comparable to federal OSHA protection from discrimination under Section 11c of the OSHA Act.

According to the State Activity Mandated Measures (SAMM) report, which uses cases closed during the fiscal year, 11.82% of complaints were meritorious and 69.23% of the merit cases were settled compared to 15.85% (meritorious) and 69.23 (merit cases settled) in FY2009. According to the SAMM report, 54.55% of investigations were completed within 90 days compared to 54% in FY 2009.

The 2009 EFAME noted deficiencies in North Carolina’s discrimination program, including the State policy that complaints must be received in writing, most interviews are conducted by phone, not in person, the lack of closing conference information in case files, and guidance on settlement requirements that is not as detailed as OSHA’s Whistleblower Investigation Manual.

### *b. Standard Adoption and Federal Program Changes*

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within a 6-month time frame. States that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. States also have the option to promulgate standards covering hazards not addressed by federal standards. During the period addressed by this evaluation report OSHA initiated the following standards and federal directives, which required action by the State:

***Federal Standards***

<b>Standards Requiring Action</b>	<b>Federal Register Date</b>	<b>Adopted Identical</b>	<b>Date Promulgated</b>
Updated OSHA Standards Based on National Consensus Standard, Personal Protection Equipment	September 21, 2009	Yes	10/15/09
Acetylene – Direct Final Rule	November 9, 2009	Yes	11/12/09
Hexavalent Chromium - Direct Final Rule	May 14, 2010	Yes	06/30/10
Safety Standards for Steel Erection – Technical Amendment	May 17, 2010	Yes	08/19/10
Cranes and Derricks in Construction – Direct Final Rule	August 9, 2010	Yes	11/8/10

***Federal Program Changes (excluding Standards)***

<b>Federal Program Changes Requiring Action</b>	<b>Federal Directive Number</b>	<b>Date of Directive</b>	<b>Adopted Identical</b>	<b>Date Adopted</b>
Field Operations Manual	CPL 02-00-148 2009 332	03/26/2009	No	N/A
Site-Specific Targeting 2009 (SST-09)	CPL 02 (08-07) Update	07/20/2009	Yes	07/30/2009
NEP -- PSM Covered Chemical Facilities	TED 01-00-018	07/27/2009	No	N/A

State action regarding the new Field Operations Manual (FOM) was required during this period. The State elected not to adopt the directive. Therefore, a detailed side-by-side comparison between the federal and state operations manuals was developed. As a result, North Carolina made revisions in some areas of the State’s operations manual. North Carolina had not adopted the Field Inspection Reference Manual (FIRM) and had retained most procedures from the former federal FOM. However, during this period the state implemented revisions to 14 chapters in its Field Operations Manual, including a Penalty Chapter change relating to completion of a final probability assessment.

***c. Variances***

North Carolina currently has eleven permanent variances, six of which were multi-state variances approved by federal OSHA. There are no temporary variances. The state shares variance requests with federal monitors and requests input prior to approval. The

status of all variance requests are tracked by the state on the internet. No issues related to variances have been identified. The state has not issued any variances since 2007.

***d. Complaints About State Plan Administration (CASPA)***

During this period there was one CASPA filed with the OSHA Area Office in Raleigh, North Carolina. The CASPA #115 – FY10 involved an appeal of the employee’s discrimination complaint. An interim response was made to the State following a detailed review of their discrimination investigation case. The State Program provided a response within 30 days and the matter is currently under review by the Area Office.

<b>Complaint About State Plan Administration (CASPA) Number</b>	<b>Final Notification to Complainant</b>	<b>Interim Letter to State</b>	<b>State Response Letter</b>
CASPA 115 – FY10	No	Yes	Yes

***e. Cooperative Programs***

*Alliances*

ETTA is the bureau responsible for the Alliance programs in North Carolina. Administrative Procedure Notice (APN) 18D addressing Cooperative Programs is the document used to establish the procedures to be followed for Alliance agreements. With two exceptions, the document’s procedures are the same as federal OSHA procedures. Those exceptions are that generally, North Carolina will only renew an Alliance one time. This is due to limited resources and to afford opportunities for other groups to participate in Alliances. The other exception is that North Carolina has Alliances with certain safety and health groups within the state that have an indefinite time period set. During this period, three new alliances were signed with Sampson Community College, Public Safety Divers’ Association, and Carolinas AGC.

*Consultation*

The North Carolina Bureau of Consultative Services continued to undertake an active role in participating in the FY 2010 North Carolina OSHA Performance Plan. Consultative Services activities meet or exceeded all current goals while still focusing on the strategic initiatives outlined in the performance plan in an effort to drive down the overall fatality rate along with injury and illness rates in North Carolina. Consultative Services continues to contribute in all areas of the performance plan.

The Bureau of Consultative Services continued to provide services to the employers and employees in both the private and public sectors during FY 2010. The bureau conducted 1,213 total consultative visits:

- 797 (66 percent) safety visits; 415 (34 percent) health visits.
- 1046 (86 percent) initial visits; 80 (7 percent) training/assistance visits; 86 (7 percent) follow-up visits.
- 988 (81 percent) private sector visits; 225 (19 percent) public sector visits.
- 393 (32 percent) manufacturing visits; 254 (21 percent) construction visits; 341 (28 percent) other type visits; 225 (19 percent) public sector visits.
- Hazards identified and eliminated as a result of consultative visits totaled 6,895. Of these 5,394 were serious hazards and 1,501 were other-than-serious hazards.

In FY 2010 consultants also conducted 706 safety and health interventions, which included speeches, training programs, program assistance, interpretations, conference/seminars, outreach and other interventions.

The Safety Awards Program celebrated its 64<sup>th</sup> year with another successful season. The Gold Award was presented to employer sites with a total lost workday case rate (lost and restricted workdays included) at least 50 percent below the state average for its industry. The Silver Award went to employer sites with a lost workday rate at least 50 percent below the state average.

Thirty (30) safety award banquets were held—with a total of 3,200 in attendance. There were 2,267 Gold Awards, 325 Silver Awards, for a total of 2,592 annual safety awards and 95 Million-Hour Safety Awards distributed in FY 2010.

### *Partnerships*

ETTA is also the bureau responsible for Partnership agreements in North Carolina. Again, APN 18D establishes the procedures to be followed for these agreements. The only deviations from the federal OSHA Partnership requirements found during the audit are that North Carolina's current Partnerships include only the construction industry and a particular company is limited to two partnerships within a ten year period unless a third partnership is approved at the Director or Commissioner level. This limit is set to allow other companies the opportunity to participate in a Partnership and to allow North Carolina to have Partnerships with varying types of construction projects.

During this period, the NASCAR Partnership that included Turner Construction Company, BE&K Building Group and Walter B. Davis Company ended with a ceremony on March 31, 2010. The partnership goals were met on this high profile construction site. Additionally, new partnerships were initiated with Archer Western-Granite for the Western Wake Toll Road Project in Raleigh with D.H. Griffin Construction Co. and Balfour Beatty Construction Company for the completion of the Guilford County Detention Center in Greensboro.

#### *Voluntary Protection Programs (VPP)*

The Consultation Services Bureau is responsible for administering the VPP/Carolina STAR in North Carolina, which has been in existence since 1994 and has grown to over 100 companies, placing North Carolina behind only Texas for the most VPP sites. The North Carolina program requirements are more stringent than federal OSHA's in that Carolina Star sites must have injury and illness rates and lost time rates at least 50% below the national average for that industry. North Carolina was also the first to begin recognizing construction companies for VPP through their Building Star program and they were also the first to recognize public sector employers with their Public Star program. What federal OSHA calls a Merit site is known as a Rising Star in the Carolina Star program and companies are allowed to be a Rising Star for only one year before a reevaluation of the company is performed. Another difference in terminology is that North Carolina uses Provisional status for what federal OSHA calls a One-Year Conditional status. A company is placed on a one year conditional status in the federal VPP program for failing to maintain all VPP elements at the Star level. In the Carolina Star program, a company may be placed in provisional status for additional reasons, such as a rate increase or too much management involvement which would not trigger the one year conditional status in the federal program. The Carolina Star program also allows for the reevaluation to take place in less than one year.

During FY 2010, the State developed a Special STAR Team Member Program which is similar to Federal OSHA's Special Government Employee (SGE) program. A total of 27 safety and health professionals participated in the training. Each year the State plays an active role in developing, planning, and running the Carolina STAR Conference which was attended by 608 participants. Twenty-two new Carolina Star sites were recognized during FY 2010.

#### ***f. Program administration***

##### *Ability to Meet Compliance Staffing Benchmarks*

Because of funding uncertainty, the State operated with 22 vacancies as of October 1, 2010 including 20 compliance officers. Four noncompliance positions were cut from the program in FY 2009. From an activity level, reduced funding has an impact on activity

throughout the Division including number of inspections, and reaching training goals. However, the state has effectively maintained the staffing benchmark for the program.

#### *Impact of State funding and other fiscal Issues*

The recent budget crisis in North Carolina is in contrast with the additional state funding since 1991 that has allowed the State to reach its benchmark numbers for required safety and health compliance officers. The percent of federal funding has not increased proportionately during this same time frame and the original 50% federal participation is currently at approximately 30%. Since FY 1991, the state funding amount has increased from \$3,311,534 to \$12,354,071 while federal funding has only increased to \$5,180,700 from \$ 2,662,672 in FY 1991.

In accordance with U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA) Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreements, the USDOL/OSHA has conducted an on-site monitoring visit. The monitoring visit encompassed the financial and administrative aspects of the Fiscal Year 23(g) Grant with North Carolina Department of Labor. Contained herein are the results of the on-site monitoring visit.

Total 23(g) Grant authorized funding was \$14,459,265 (federal funds amounted to \$5,097,605 and non-federal funds equaled \$9,361,660). Actual federal expenditures recorded on the November 28, 2007, final Financial Status Report (SF-269), and amounts drawn down from the Health and Human Services Payment Management System (HHSPMS) equaled \$5,097,605. Our review of the 23(g) Grant revealed North Carolina expended 100% of authorized funds and submitted the final Financial Status Report (SF-269) to the Regional Office to close the agreement in a timely manner. No issues to report.

Per the U.S. Department of Labor, Occupational Safety and Health Administration Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreements, Appendix B “Financial Monitoring Guidelines – Grants and Cooperative Agreements,” we have reviewed the above awards and find no issues to report at this time.

#### *Furloughs, Office Closures or Other Changes in Services*

It is noted that going into the next fiscal year some vacancies may not be filled and this could have some impact on the State being able to achieve their goals. It is uncertain how many more positions may be cut from the program.

#### ***g. Training***

During this period, North Carolina hosted a 9-day Process Safety Management Course

for OSHNC personnel. Compliance staff personnel from Kentucky and South Carolina also participated in the training course.

## **6. Assessment of State Progress in Achieving Annual Performance Goals**

North Carolina had good results with previous strategic plans developed to meet their overall outcome goals of reducing fatalities, injuries and illnesses. Fiscal Year 2010 was the second year of North Carolina's new five-year strategic plan, as described in the specific goals below. The state closely tracks data related to each area of emphasis. Due to cutbacks in personnel and vacant positions, required because of budget cuts, the state experienced a reduction in training activity, as well as inspection totals in comparisons to previous years. In FY 2010, the state conducted 4,491 inspections compared to 5,180 inspections in FY 2009.

### **Goal 1.1: Reduce Construction Industry Fatality Rate Statewide by 5% by 2013.**

This strategic area is continued from North Carolina's previous strategic management plans. Processes to decrease fatalities in construction include establishing a Special Emphasis Program, Operational Procedures Notice 123J, for counties in the state that have higher fatality rates or high levels of construction activity. The emphasis program was implemented to enable the state to better focus their enforcement, consultative and training resources, and to have a means to track the numbers and results of these activities. During this period, the state experienced an upward trend in this area, 18 construction fatalities in 2010, compared to 10 in 2009. However, overall the construction fatalities rate for 2010 is .00720 and trending down compared to the baseline rate of .01020.

As previously indicated, outreach and training of Hispanic construction workers has been an essential component of North Carolina's strategy to meet this goal. The state has expended a great deal of resources in this area, including bringing construction safety seminars conducted in the Spanish language to construction sites, and making most publications readily available in Spanish. During this period, fatalities involving Hispanic worker continued to drop from 12 in 2002 to 6 in 2010.

### **Goal 1.2: Decrease fatality rate in logging and arborist activity by 5% by 2013.**

North Carolina has had an emphasis program aimed at reducing fatalities in this industry since 1994, and their established educational, outreach, and enforcement programs have been successful. North Carolina's historically close associations with industry groups were precursors to more recent alliances. In 2010, there were three fatalities in logging and arborists industries compared to the baseline of four.

**Goal 2.1: Reduce the injury and illness rate in sawmills, veneer, manufactured home and other wood products, furniture and related products manufacturing (NAICS 321) by 15% by 2013.**

North Carolina's strategy approach to effectively addressing this industry's high incident rate incorporates the use of enforcement, consultation, training, as well as cooperative programs. The 2009 days away restricted and transferred rate in this industry was 2.5 compared to a baseline rate of 3.3. In fiscal year 2010, the state conducted 49 inspections and 86 consultation visits in NAICS 321.

**Goal 2.2: Reduce the days away, restricted, or transferred (DART) rates in long-term care facilities by 15% by 2013.**

As previously stated, this is another goal that has been carried over from previous strategic plans, due to the continuing high DART rate in this industry. The state has procedures in their operations manual for addressing ergonomic hazards during inspections. They also place an emphasis on training, in order to reduce hazards to long-term care employees. However, during this period the state experienced an upward trend to a DART rate of 5.3 compared to a baseline rate of 4.8.

**Goal 2.3: Conduct emphasis inspections, training, and consultation activity in establishments where employees might be exposed to health hazards such as lead, silica, asbestos, hexavalent chromium and isocyanates.**

North Carolina established this goal in order to focus program resources on industrial hygiene activities, and to reduce employee exposure to known health hazards. Procedures for NC's Special Emphasis Program related to this goal are contained in North Carolina's Operational Procedures Notice 135C. In fiscal year 2010, the state conducted 151 inspections and 147 consultation visits related to this performance goal.

**Goal 2.4: Reduce the injury and illness rate (DART) in establishments in food manufacturing (NAICS 311) by 15% by 2013.**

As previously stated, this is a new goal developed with the new five-year strategic plan, in response to the relatively high DART rate in this industry. Fiscal year 2009 was a developmental year for this goal, and directed activities began in fiscal year 2010. During this period, the state conducted 72 inspections and 25 consultation visits related to this performance goal. A Special Emphasis Program, described in Operational Procedures Notice 140 was developed in 2009, and provides guidance to compliance officers for inspections in food manufacturing.

**Goal 2.5: Develop/sustain partnership and alliances supporting OSHNC mission.**

North Carolina continues to conduct partnerships and alliances, which are similar to those performed by federal OSHA. North Carolina uses these programs as tools to enhance efforts related to specific strategic goals and objectives. They limit the number of construction partnerships due to the program resources required to manage them. In fiscal year 2010, North Carolina had 4 partnerships and 12 alliances.

**Appendix A**  
**North Carolina State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV**  
**Summary of New and Continuing Findings and Recommendations**

10-1	Supporting documentation is purged from (most) case files.	North Carolina should revise their records retention policy with respect to OSHNC inspection case file documentation. *NOTE: Federal OSHA and the State were not able to reach a resolution regarding this matter. Photos are maintained for fatalities and other significant case files. Purging of photos saves costs, and does not adversely affect the program. They will work with Area Director when retention policy is reviewed in the future to consider a policy that meets competing needs. This issue will continue to be evaluated during monitoring activities in FY 2011.	09-01
10-2	State-specific violation classification guidelines result in a lower percentage of serious violations. Several of the violations in the case files were not classified as serious or as severe as Federal OSHA would have classified them.	NC should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice. * NOTE: NC has no current plans to revise the violation classification procedures or severity assessment procedures as they are similar to Federal OSHA's. NC requested opportunity to review federal inspection files that are properly classified and to discuss specific cases where NC violations were not correctly classified. Completion of violation documentation training for all compliance personnel should increase consistency in assessing violation severity. North Carolina has reviewed their serious violation guidelines and they are similar to Federal OSHA.	09-05
10-3	The report noted deficiencies in North Carolina's discrimination program, including State policy that complaints must be received in writing, all interviews are conducted by phone, not in person, the lack of closing information in case files, and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual.	This recommendation is from the FY 2009 EFAME and has not been completed. North Carolina has already begun a review of the Fed OSHA Whistleblower manual. The Bureau has assigned staff to specific issues. We recommend that the State and Fed OSHA continue to work toward the necessary modifications to their program to ensure procedures are at least as effective as the Federal procedures.	09-09A-D

**Appendix B**  
**North Carolina State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV**  
**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	Supporting documentation is purged from (most) case files.	North Carolina should revise their records retention policy with respect to OSHNC inspection case file documentation.	Federal OSHA and the State were not able to reach a resolution regarding this matter. Photos are maintained for fatalities and other significant case files. Purging of photos saves costs, and does not adversely affect the program. They will work with Area Director when retention policy is reviewed in the future to consider a policy that meets competing needs. This issue will continue to be evaluated during monitoring activities in FY 2011.	<p>Photos are maintained for fatalities and other significant case files. Purging of photos saves costs, and does not adversely affect the program. They will work with Area Director when retention policy is reviewed in the future to consider a policy that meets competing needs.</p> <p>Meeting on 11/22/2010: The State maintained the position that this policy has no adverse impact on the program and this practice is only done for budgetary reasons.</p> <p>Meeting on 3/10/2011: The State indicated that when the files are closed they purge the items in question before they are scanned to eliminate documents such as photos that require a large amount of storage space. This practice is done mainly due to the large amount of storage space needed and the cost to store the items in question. The State does not feel there is any value in keeping these items and there has never been an instance when this was a problem.</p>	<b>PENDING</b> further discussion and evaluation to ensure that NC's archival system is at least as effective as OSHA's.

**Appendix B**  
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**FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV**  
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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-2	For complaints handled by letter, insufficient information was provided to complainant due to a decision to no longer provide a copy of the employer's response.	NC should assure that written responses to complainants following investigation of complaints include clear and informative responses to their allegations.		Findings pertained to one case. Their FOM has been revised so that employer's response is provided to the complainant. This was received and reviewed prior to the issuance of the FAME.	COMPLETED Subject to further Federal review and monitoring.
09-3	Next of kin letter was somewhat confusing and lacked explanation of the cause of the accident. These letters were usually signed by the compliance officer.	NC should revise the letter sent to the next of kin at the close of their investigation to improve its clarity and include a description of the findings.		NC revised the letter in question, and made other changes so they are consistent with federal OSHA letters. The initial contact letters requesting any information that the next of kin might have related to the accident are signed by the Compliance Officer, with a reference to Steve Sykes, as the next-of-kin Ombudsman. The final letter with results is signed by the District Supervisor. New form letters were provided prior to the issuance of the EFAME.	COMPLETED Subject to further Federal monitoring.
09-4	Case files contained insufficient information about the operations or potential hazards at the site, any safety or health programs in place, or what the inspection covered and some case files did not include injury or illness data from the 300 log.	North Carolina should assure that each case file includes documentation of the company's injury and illness experiences, safety and health programs, and a description of the processes inspected.	Nothing is needed from NC. The State will address identified case file inclusions during its citation review process. Results of their investigation into the deficiencies were received prior to the issuance of the EFAME, with a copy of the presentation used to train all compliance personnel.	State reviewed each file that was missing 300 data. Training has been conducted on improved case file documentation. A copy of the training program was provided to OSHA.	COMPLETED Subject to further Federal monitoring.

**Appendix B**  
**North Carolina State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV**  
**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
<b>09-5</b>	State-specific violation classification guidelines result in a lower percentage of serious violations. Several of the violations in the case files were not classified as serious or as severe as Federal OSHA would have classified them.	NC should review and revise its internal violation classification guidance and assure that the resultant violation classifications are consistent with federal procedures and practice.		<p>This item was not included in the draft FAME prepared by the Area Office. NC has no current plans to revise the violation classification procedures or severity assessment procedures as they are similar to Federal OSHA's. NC requested opportunity to review federal inspection files that are properly classified and to discuss specific cases where NC violations were not correctly classified. Completion of violation documentation training for all compliance personnel should increase consistency in assessing violation severity.</p> <p>North Carolina has reviewed their serious violation guidelines and they are similar to Federal OSHA. The State will continue to discuss any differences of opinion concerning violation classification with Federal OSHA. Supervisors routinely review case files to assure proper classification of violations and the State conducts case file audits, and training is provided in violation classification. NC</p>	<b>PENDING</b> further discussion. Violation classification is an essential component of an effective program and should be relatively consistent nationwide. Although the State's procedures for determining the classification of violation are the same as those of Federal OSHA, NC classifies a lower percentage of violations as Serious.

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**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				feels certain that the vast majority of violations are classified properly. The State believes that violations are classified consistently with established procedures.	
09-6	State penalty calculation and adjustment policies result in lower penalties for serious violations. Violations are misclassified and willful violations were not cited. More follow-up inspections should be conducted.	NC should monitor the results of its recently revised penalty calculation procedures and its penalty reduction policies to assure that penalties are appropriate for the violations cited. The State should also review its practices on the citing of willful violations and conducting follow-up inspections.	Case file reviews will be conducted during FY 2011 to evaluate penalties and reductions to assure they are appropriate. In addition, willful violations and follow-up inspections will be evaluated.	This recommendation was fully implemented. NC had made a change to its penalty calculation procedures prior to the EFAME review. As of the third quarter of FY 2010, NC's average serious penalty increased by 63%, to \$1,173. NC retains a higher percent of penalty than does federal OSHA. NC issued 20 willful violations in FY 2010. The low number of willful violations (one) in FY 2009 was due to normal fluctuations in discovering violations that meet the definition of willful. NC agrees that management review of follow up inspection goals is needed, and a follow-up action plan was developed and implemented. FY 2010 follow-ups were double when compared to FY 2009 (47 in FY 2009 and 100+ in FY 2010).	COMPLETED Subject to further Federal monitoring. Pending issuance of Federal guidance on revised penalty policy implementation.

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**North Carolina State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV**  
**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-7	Untimely closing of inspections in IMIS.	NC should review the status of all inspections on the IMIS Open Inspections Report and take any needed action to assure that activities related to the case have been taken and correctly entered into IMIS. In addition, procedures should be revised to take into account changes in staffing so that all IMIS data is subject to regular review.		Open inspection reports for employees no longer with the program have been assigned to current employees. NC has taken action to reduce the number of open inspections (that should have been closed). Steps have been taken to monitor debt collection cases more closely, and to close files where penalties are deemed uncollectible according to State procedures. Verified through discussions with and written explanations from NC Bureau Chiefs.	COMPLETED Subject to further Federal monitoring.
09-8	Many penalties remain uncollected. Due to internal procedures for debt collections, debt collection status is not entered into IMIS so standard IMIS debt collection reports cannot be used to regularly track overdue penalties.	NC should review and revise its debt collection procedures to assure appropriate collection actions, recording of information, and timely closing of cases.	A committee was formed to address this issue in February 2010. The debt collection procedures have been revised to streamline the process, as reflected in a flow chart provided to OSHA. Data on closed cases and penalties written off was provided to OSHA. The Division of OSH is currently working with another division in the NC Department of Labor that handles NC OSH collections, and that office is applying more resources to updating and following up on cases in debt collection.	Revised debt collection flow chart, and tables indicating cases that have been "written off" as uncollectible and can be closed, has been provided and discussed. The Debt Collection procedures along with IMIS reports will be reviewed during FY 2011 to ensure appropriate collection actions are taken, recording of information in IMIS, and timely closing of cases is completed.	COMPLETED Subject to further Federal monitoring.
09-9A	The report noted deficiencies in North Carolina's discrimination program, including the State policy that complaints must be received in	North Carolina should review their retaliatory discrimination laws and procedures and discontinue the practice of	Meeting on 11/22/2010: Discussed the recent federal interpretation that all whistleblower complaints may be filed	North Carolina's Retaliatory Employment Discrimination Act requires that complaints be in writing. This is	<b>PENDING</b> further discussion. The draft revised

**Appendix B**  
**North Carolina State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV**  
**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	<p>writing, all interviews are conducted by phone, not in person, the lack of closing conference information in case files, and guidance on settlement requirements that is not as detailed as OSHA's Whistleblower Investigation Manual.</p>	<p>requiring that safety and health complaints be submitted in writing. Complaints should be docketed on the date that the complainant contacts the Employment Discrimination Bureau (EDB) and provides information establishing a prima facie case.</p>	<p>telephonically, and then reduced to writing by the investigator, in order to meet the requirement that complaints be filed in writing. North Carolina has already begun a review of the draft Federal OSHA Whistleblower's Manual and reviewed the procedures in question. EDB has assigned the identified issues to staff. 6-months following federal issuance of new whistleblower investigation manual</p>	<p>consistent with statutory language of federal and state safety or health complaints. Complainants are provided with the forms needed to make their complaints in writing, and there has been no indication of hardship due to this requirement.</p>	<p>Federal Whistleblower Manual has been made available to the States. State Plan discrimination investigation procedures are expected to be at least as effective as the Federal which includes docketing of oral complaints through written transcription, in person interviews, case file documentation of the details of closing conferences, and settlements based on established legal criteria. As these are not new policies, North Carolina is asked to begin the necessary</p>

**Appendix B**  
**North Carolina State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV**  
**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
					modifications to its programs as soon as possible independent of issuance of the revised Whistleblower manual.
09-9B		North Carolina discrimination investigators should conduct interviews in person when possible to assure that the quality of Employment Discrimination Bureau (EDB) investigations is not negatively impacted by conducting interviews by telephone. (North Carolina OSH management stated that they were not made aware of budgetary reasons for this practice and they have not have been asked for additional travel funds. They have discussed this issue with the EDB Administrator and agreed that interviews will be conducted in person when it will promote the quality of the investigation).	The State responded that if it can be proven that the practice of conducting interviews by phone adversely affects the quality of investigations, the practice could be curtailed. State policies do not require that all interviews be conducted by phone. Reducing travel time associated with in-person interviews allows investigations to be completed more timely.	See 09-9A	See 09-9A
09-9C		North Carolina should assure that safety and health discrimination files include details about the closing conference.	North Carolina will review discrimination closing conference procedures; details of the closing conference will be required to be included in files, if determined the information adds value to the investigation process.	See 09-9A	See 09-9A

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**North Carolina State Plan**  
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**Status of Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
<b>09-9D</b>		North Carolina should review its settlement policy for safety and health discrimination cases and consider adding criteria consistent with current federal OSHA guidelines.	Federal OSHA's settlement policies are being reviewed. When federal OSHA's revised Whistleblower Manual is issued, North Carolina will begin the review process and work with federal OSHA to improve investigative procedures where appropriate.	<b>See 09-9A</b>	<b>See 09-9A</b>

**Appendix C  
North Carolina State Plan  
FY 2010 Enforcement Activity**

	<b>NC</b>	<b>State Plan Total</b>	<b>Federal OSHA</b>
<b>Total Inspections</b>	<b>4,489</b>	<b>57,124</b>	<b>40,993</b>
Safety	2,795	45,023	34,337
% Safety	62%	79%	84%
Health	1,694	12,101	6,656
% Health	38%	21%	16%
Construction	1,551	22,993	24,430
% Construction	35%	40%	60%
Public Sector	136	8,031	N/A
% Public Sector	3%	14%	N/A
Programmed	2,764	35,085	24,759
% Programmed	62%	61%	60%
Complaint	966	8,986	8,027
% Complaint	22%	16%	20%
Accident	122	2,967	830
Insp w/ Viols Cited	2,868	34,109	29,136
% Insp w/ Viols Cited (NIC)	64%	60%	71%
% NIC w/ Serious Violations	67.3%	62.3%	88.2%
<b>Total Violations</b>	<b>10,403</b>	<b>120,417</b>	<b>96,742</b>
Serious	4,766	52,593	74,885
% Serious	46%	44%	77%
Willful	23	278	1,519
Repeat	190	2,054	2,758
Serious/Willful/Repeat	4,979	54,925	79,162
% S/W/R	48%	46%	82%
Failure to Abate	17	460	334
Other than Serious	5,407	65,031	17,244
% Other	52%	54%	18%
Avg # Violations/ Initial Inspection	3.5	3.4	3.2
<b>Total Penalties</b>	<b>\$ 5,985,791</b>	<b>\$72,233,480</b>	<b>\$183,594,060</b>
Avg Current Penalty / Serious Violation	\$ 893.40	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 889.50	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	41.6%	47.7%	40.9%
<b>% Insp w/ Contested Viols</b>	<b>4.6%</b>	<b>14.4%</b>	<b>8.0%</b>
Avg Case Hrs/Insp- Safety	19.7	16.2	18.6
Avg Case Hrs/Insp- Health	28.7	26.1	33
Lapse Days Insp to Citation Issued- Safety	21.1	33.6	37.9
Lapse Days Insp to Citation Issued- Health	23.8	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	124	1,715	2,510

*Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.9.2010.*

**Appendix D**  
**North Carolina State Plan**  
**FY 2010 State Activity Mandated Measures (SAMMs)**

U. S. D E P A R T M E N T O F L A B O R  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 12, 2010  
PAGE 1 OF 2

State: NORTH CAROLINA

RID: 0453700

MEASURE	From: 10/01/2009		CURRENT		REFERENCE/STANDARD
	To: 09/30/2010		FY-TO-DATE		
1. Average number of days to initiate Complaint Inspections	5044	4.90	230	3.53	Negotiated fixed number for each State
	1029		65		
2. Average number of days to initiate Complaint Investigations	4801	4.87	396	3.80	Negotiated fixed number for each State
	985		104		
3. Percent of Complaints where Complainants were notified on time	987	98.21	64	100.00	100%
	1005		64		
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	3	100.00	0		100%
	3		0		
5. Number of Denials where entry not obtained	1		0		0
6. Percent of S/W/R Violations verified					
Private	187	4.25	19	.45	100%
	4397		4228		
Public	0	.00	0	.00	100%
	39		39		
7. Average number of calendar days from Opening Conference to Citation Issue					
Safety	55570	28.43	5688	32.31	2624646 47.3 National Data (1 year)
	1954		176		55472
Health	34169	32.05	3425	36.82	750805 61.9 National Data (1 year)
	1066		93		12129

\*NC 11.12

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R  
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
 STATE ACTIVITY MANDATED MEASURES (SAMMs)  
 State: NORTH CAROLINA

NOV 12, 2010  
 PAGE 2 OF 2

RID: 0453700

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	1033	78	93201
Safety	55.06	50.32	58.4
	1876	155	159705
	414	28	10916
Health	42.51	38.89	50.9
	974	72	21459
9. Average Violations per Inspection with Vioations			
	5427	537	428293
S/W/R	1.79	1.95	2.1
	3018	274	201768
	5261	504	240266
Other	1.74	1.83	1.2
	3018	274	201768
10. Average Initial Penalty per Serious Violation (Private Sector Only)	6024219	614026	509912690
	1165.00	1263.42	1360.4
	5171	486	374823
11. Percent of Total Inspections in Public Sector	136	17	499
	3.03	5.56	3.4
	4491	306	14853
12. Average lapse time from receipt of Contest to first level decision	29831	1481	3826802
	331.45	296.20	217.8
	90	5	17571
13. Percent of 11c Investigations Completed within 90 days	60	0	100%
	54.55	0	
	110	0	
14. Percent of 11c Complaints that are Meritorious	13	0	1461
	11.82		21.2
	110	0	6902
15. Percent of Meritorious 11c Complaints that are Settled	9	0	1256
	69.23		86.0
	13	0	1461

\*NC 11.12

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

## Appendix E North Carolina State Plan FY10 State Indicator Report (SIR)

Q4 SIR 37 101007 093303 PROBLEMS - CALL Yvonne Goodhall 202 693-1734

1101007

U. S. D E P A R T M E N T O F L A B O R  
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N  
I N T E R I M S T A T E I N D I C A T O R R E P O R T ( S I R )

PAGE 1

CURRENT MONTH = SEPTEMBER 2010

STATE = NORTH CAROLINA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	5298	358	11403	821	21912	1697	43788	4109
	62.4	65.7	63.8	66.5	65.1	64.8	65.9	69.8
	8493	545	17860	1235	33647	2618	66434	5887
B. HEALTH	488	216	1094	445	2232	919	4202	1980
	30.6	59.0	33.7	58.8	35.0	57.9	35.1	59.3
	1597	366	3249	757	6378	1587	11960	3341
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4663	321	9421	681	17649	1325	34350	3141
	72.7	66.2	71.2	64.5	69.1	62.6	67.1	63.8
	6413	485	13232	1055	25525	2117	51214	4927
B. HEALTH	451	186	880	360	1756	680	3238	1530
	57.8	66.2	53.9	62.3	55.4	60.4	53.4	62.1
	780	281	1632	578	3168	1125	6066	2464
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	17341	787	33678	1607	62211	3212	117447	6583
	81.6	52.1	81.5	52.7	81.0	50.8	80.1	47.4
	21261	1510	41304	3048	76839	6319	146593	13898
B. HEALTH	3233	395	6183	781	11743	1570	21554	3254
	69.6	38.1	70.5	39.1	70.2	39.5	69.6	33.5
	4645	1036	8776	1995	16725	3977	30947	9722
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	3054	92	6515	141	12732	245	25040	563
	15.0	9.4	16.3	7.0	17.2	6.0	17.7	6.0
	20398	981	39855	2002	74010	4063	141219	9391
B. HEALTH PERCENT >60 DAYS	255	14	633	22	1406	52	2977	139
	5.6	2.5	7.3	2.0	8.5	2.4	9.6	2.9
	4548	571	8681	1080	16580	2153	30862	4868

U. S. D E P A R T M E N T O F L A B O R  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
INTERIM STATE INDICATOR REPORT (SIR)

CURRENT MONTH = SEPTEMBER 2010

STATE = NORTH CAROLINA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	587112	38225	1106734	67613	2038916	144238	3500911	179773
OTHER-THAN-SERIOUS	837.5	523.6	803.1	497.2	894.3	552.6	967.6	554.9
	701	73	1378	136	2280	261	3618	324
B. HEALTH								
	249175	21475	434447	53860	732953	88290	1039303	102805
OTHER-THAN-SERIOUS	817.0	447.4	801.6	489.6	835.8	445.9	842.2	430.1
	305	48	542	110	877	198	1234	239
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	9778	655	20529	1461	38849	3072	76136	6832
	5.8	3.8	5.7	4.1	5.5	4.1	5.5	4.5
	1679	171	3593	358	7112	745	13925	1533
B. HEALTH								
	1864	410	3844	850	7547	1825	14276	3917
	2.1	3.2	2.0	3.0	1.9	3.0	1.8	3.0
	908	128	1940	283	3898	599	8070	1297
7. VIOLATIONS VACATED %								
	1123	36	2474	131	5103	268	10425	666
	3.7	1.2	4.3	2.3	4.7	2.3	5.0	2.3
	29962	2941	57441	5768	108213	11665	207527	28591
8. VIOLATIONS RECLASSIFIED %								
	844	41	1978	100	4276	232	9196	541
	2.8	1.4	3.4	1.7	4.0	2.0	4.4	1.9
	29962	2941	57441	5768	108213	11665	207527	28591
9. PENALTY RETENTION %								
	15767907	968393	30073309	1615718	57457651	3009316	111052615	5242066
	64.5	72.8	63.9	71.0	63.0	71.6	62.8	71.3
	24439885	1330839	47032897	2276199	91194322	4204470	176868726	7354994

U. S. D E P A R T M E N T O F L A B O R  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT

STATE = NORTH CAROLINA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	358	14	821	26	1697	37	4109	71
	65.7	58.3	66.5	57.8	64.8	59.7	69.8	58.2
	545	24	1235	45	2618	62	5887	122
B. HEALTH	216	5	445	5	919	13	1980	23
	59.0	29.4	58.8	20.8	57.9	23.6	59.3	17.3
	366	17	757	24	1587	55	3341	133
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	787	10	1607	21	3212	25	6583	93
	52.1	40.0	52.7	35.6	50.8	38.5	47.4	47.4
	1510	25	3048	59	6319	65	13898	196
B. HEALTH	395	0	781	1	1570	8	3254	47
	38.1	.0	39.1	10.0	39.5	22.9	33.5	35.1
	1036	7	1995	10	3977	35	9722	134

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U. S. D E P A R T M E N T O F L A B O R  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
COMPUTERIZED STATE PLAN ACTIVITY MEASURES

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CURRENT MONTH = SEPTEMBER 2010

STATE = NORTH CAROLINA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
	610	57	1134	120	2052	184	3827	303
1. VIOLATIONS VACATED %	22.5	31.8	23.2	32.3	21.9	32.7	23.0	33.1
	2709	179	4888	372	9366	563	16668	915
	306	18	585	25	1100	38	2217	70
2. VIOLATIONS RECLASSIFIED %	11.3	10.1	12.0	6.7	11.7	6.7	13.3	7.7
	2709	179	4888	372	9366	563	16668	915
	4940512	63392	7526155	353103	12856359	436977	23378285	522555
3. PENALTY RETENTION %	65.3	79.8	62.3	68.2	58.1	71.7	58.4	67.4
	7563023	79441	12074308	517506	22143463	609772	40052611	775586

**Appendix F**  
**North Carolina State Plan**  
**FY 2010 State OSHA Annual Report (SOAR)**

**SOAR Available Separately**