

**Appendix B**  
**New Mexico State Plan**  
**FY 2010 Enhanced FAME Follow-up Report Prepared by Region VI**  
**Status of FY 2009 Findings, Recommendations, and Corrective Actions**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
<b>09-1</b>	Two of the 11 Compliance Officers interviewed were not aware of the NMFOM guidance on responding to complaints by inspection within 5 working days.	New Mexico OHSB should ensure that all compliance staff members are aware of the NM FOM timeframe goals for responding to complaints.	The OHSB Compliance Program Manager reviewed the 5-day goal with all compliance staff at the monthly compliance meeting which immediately followed the evaluation in February 2010. OHSB management will continue to review response goals during meetings, bureau training, and individual performance reviews.	As discussed in the FAME Report, New Mexico receives and processes very few complaints each year. As a result, each complaint receives direct attention by compliance program management to ensure rapid assignment and investigation. The Compliance Program Manager or his designee assigns the investigation to a Compliance Officer (CO) and provides direct instructions on investigation requirements, including the timeframe for completion. New Mexico has historically exceeded established goals for responding to complaints, as reflected in State Activity Mandated Measure 1 (SAMM1). The FY 2009 data show that the average number of days to initiate an inspection of a complaint was 3.6	Completed

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				<p>days and that all complainants were notified on time.</p> <p>The timeframes for investigating complaints has been contained in the written performance evaluation for each CO since 2005 and is reviewed with each CO at least twice a year.</p>	
09-2	<p>In the 12 fatality case files reviewed, we did not find documentation regarding contact with victims' family members. We understand that contact did take place in several cases, but this was not documented in the files.</p> <p>This issue was identified by OHSB in their FY 2009 State Internal Evaluation Program (SIEP) review, and a recommendation was made to ensure that the procedures in New Mexico Field Operations Manual, Chapter 11, Section II.G are followed.</p>	<p>New Mexico OHSB should ensure that family members are contacted early on and at appropriate times during fatality investigations, as provided in the New Mexico FOM, and that these contacts are documented in the case files.</p>	<p>OHSB implemented a policy change which included letters and phone contact with victims' family members during all fatality investigations as part of the NM FOM revisions in November 2009, after the period covered by this OSHA evaluation. The policy remains in effect. All documents received or created as part of a fatality investigation are included in case files.</p> <p>The State Internal Evaluation Program (SIEP) review for FY 2009 contained a recommendation that OHSB staff members follow the new</p>	<p>During the FY 2010 SIEP review, which included following up on recommendations from the FY 2009 report, the reviewer found that the State policies and procedures for contacting family members in fatality inspections had been documented in the FOM, and all Compliance Officers had been trained to refer this task to the Compliance Program Manager.</p>	<p>Continued - Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that the appropriate documentation is included in fatality investigation files initiated after November</p>

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			guidelines in the NMFOM, and that Compliance Officers receive instruction on the new guidelines.		2009.
<b>09-03</b>	Case files reviewed were not always fully and accurately documented.	<p>New Mexico OHSB should ensure that:</p> <ol style="list-style-type: none"> <li>1. Each case files contains a diary sheet that documents all actions taken, when they were taken, and by whom.</li> <li>2. Documentation of employee discussions relative to violations or complaint items is included in all case files.</li> <li>3. Employee exposure to hazards is documented.</li> <li>4. Employer knowledge is documented.</li> <li>5. The four elements for a general duty clause violation are documented on the OSHA-1B form: identify the hazard to which employees are exposed; state how the hazard is recognized (including industry</li> </ol>	<p>The need for better use of diary sheets was detected during the FY 2009 SIEP, and a recommendation was made regarding diary sheets. OHSB has since developed a tracking sheet for use by Compliance Officers during and following inspections. COs have been instructed in the use of the diary sheet and inclusion in all case files was implemented as of August 2010.</p> <p>2. The Compliance Program Manager will instruct all Compliance Officers to document employee discussions relative to violations and complaint items. File review will include review for adequate documentation of discussions.</p> <p>3. The need for more complete documentation of employee exposure was also noted during the execution of OHSB's FY 2010 State</p>	<ol style="list-style-type: none"> <li>1. Compliance Officers were instructed in the use of the diary sheet, and inclusion in all case files was implemented in August 2010.</li> <li>2. Training on documentation of employee statements was provided to compliance staff on August 9, 2010, and August 30, 2010.</li> <li>3. Training on employee exposure documentation was provided to compliance staff on August 9, 2010, and August 30, 2010.</li> <li>4. Training on employer knowledge was provided to compliance staff on August 9, 2010.</li> <li>5. Training on general duty clause descriptions was provided to</li> </ol>	<p>Continued Pending further Federal review and monitoring.</p> <p>The 2011 SIEP will include review of case files to ensure appropriate documentation is included in case files, and Federal OSHA will review case files as part of the next special evaluation for the FY 2011 FAME.</p>

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		<p>recognition); state how the hazard would cause death or serious physical harm; and identify the feasible abatement methods. OSHA-300 log data is documented and entered into the IMIS for all appropriate case files.</p>	<p>Internal Evaluation Program. The Compliance Program Manager responded to a similar recommendation from the SIEP by conducting training sessions that emphasized the requirement to fully document employee exposure and by ensuring that case file reviews include checking the adequacy of such documentation.</p> <p>4. During internal compliance officer training sessions, the Compliance Program Manager will continue to emphasize the need for proper documentation of employer knowledge. He will also ensure that case file reviews include checking the adequacy of such documentation.</p> <p>5. All Compliance Officers have been instructed to adequately address each of the four elements of general duty clause violations in the citations. Supervisors will continue to monitor each case where general duty violations are identified to ensure that all</p>	<p>compliance staff on May 10, 2010.</p> <p>6. Training has been completed for all on board Compliance Officers, and will be ongoing as new Compliance Officers are hired.</p>	

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			<p>necessary evidence is obtained and documented in the alleged violation description.</p> <p>6. All Compliance Officers have been instructed to obtain, document, and enter OSHA-300 log data when it is required.</p>		
<b>09-04</b>	<p>Union representation was not documented in one case file, and documentation of union participation in the inspection and subsequent actions was not always included in several case files.</p>	<p>New Mexico OHSB should ensure that union representation is identified in the case file and documented on the OSHA-1 form, and that union representatives are appropriately involved during inspections and any subsequent review actions.</p>	<p>OHSB will continue to stress to Compliance Officers the requirement to identify and document union representation and to appropriately involve union participation during inspections. We will continue to follow established policies for the posting of notices of meetings, and will continue to assure that the employer attests to posting of notices.</p>	<p>Compliance Officers have been reminded to identify and document union participation in inspection activities.</p>	<p>Continued Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that union participation in inspections and subsequent review actions is documented in case files.</p>
<b>09-05</b>	<p>Average health citation lapse time in New Mexico is significantly higher than the National average. This has</p>	<p>New Mexico OHSB should continue efforts to further reduce health citation lapse time.</p>	<p>OHSB will continue to utilize IMIS reports to identify open cases with prolonged lapse times in order to minimize</p>	<p>This has been a focus of State efforts for several years, and was identified in the 2008 State</p>	<p>Continued We will continue to discuss</p>

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	been a focus of State efforts for several years, and was identified in the 2008 State Internal Evaluation Program (SIEP) review. Steps were taken at that time and are continuing, in an effort to reduce the lapse time. We have seen reductions in both safety and health citation lapse times as a result.		<p>delays in citation issuance.</p> <p>We will continue to perform a monthly analysis of lapse times for individual Compliance Officers and will continue to use lapse times as a major factor during employee performance evaluations. We have instituted progressive administrative discipline for Compliance Officers whose performance in this area is substandard.</p> <p>In addition, we are investigating alternative sources for performing analyses of samples obtained during health inspections in an attempt to find a provider with quicker response times than the SLTC.</p>	<p>Internal Evaluation Program (SIEP) review. Steps were taken at that time and are continuing, in an effort to reduce the lapse time. We have seen reductions in both safety and health lapse times as a result.</p> <p>The 71.3 calendar day average health citation lapse time is a 38% reduction from the high of 116.5 calendar days in FY 2007 and a 14% reduction from the FY 2009 average of 83.7 calendar days. The State FY 2010 average of 71.3 calendar days is 15% higher than the Nationwide average of 61.9 calendar days.</p>	strategies to reduce health citation lapse times at quarterly meetings. The specific steps OHSB has taken over the years to address this issue are described in the documentation of each quarterly meeting. Federal OSHA will include this issue in the special evaluation case file reviews for the FY 2011 FAME report.
<b>09-06</b>	In a very small number of instances (4 of 225), violations were not properly classified in accordance with the severity of the potential	New Mexico OHSB should ensure that Compliance Officers appropriately record the severity of all injuries and illnesses	OHSB has conducted training for Compliance Officers to ensure that potential injuries and illnesses associated with identified hazards are	Training to ensure that potential injuries and illness associated with identified hazards are appropriately described	Continued Pending further Federal monitoring.

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	injuries/illnesses that could result. These included asphyxia, systemic poisoning, and electrical shock being noted as minimal severity.	identified as violations.	appropriately described.	to compliance staff on May 10, 2010, and August 9, 2010.	Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that violations are properly classified.
09-07	In a very small number of case files (6 of 84), our review identified hazards that were not addressed.	New Mexico OHSB should ensure that potential hazards are assessed through appropriate sampling, and that all hazards are addressed through either a citation or, if no standard exists and the elements of a general duty clause violation are not present, a hazard alert or 5(a)(1)/general duty clause letter is sent to the employer.	OHSB will continue to evaluate Compliance Officers' competency in hazard identification through individual case review and monthly analysis of citation rates. We will continue to evaluate the experience level and training histories of our Compliance Officers and attempt to enroll them in appropriate training courses to improve their ability to properly recognize and cite hazards. We will review sample hazard alert letters provided by the Region for possible use.	Sample hazard letters from the IMIS standard letters were provided to OHSB on December 21, 2010. The Compliance Program Manager responded that they will use the template in a Word document if/when the need arises.	Continued Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that hazard alert letters are contained in case files where appropriate.
09-08	Compliance Officers did not uniformly complete the violation calculation worksheet for assessing penalties. <b>(Deleted)</b>	New Mexico OHSB should ensure that Compliance Officers complete the "Violation Calculation" guide on the back of the			Deleted

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		OHSB Field Worksheet, to ensure uniformity in assessing severity and probability for penalty calculations. <b>(Deleted)</b>			
<b>09-09</b>	Nine of 57 (16%) of the case files we reviewed had at least one violation with abatement dates we considered longer than necessary. For example, guardrails on scaffolds should be assigned abatement dates of a few days, rather than several weeks; separation of oxygen and fuel gas cylinders was given a 2 week abatement period; and a 17 day abatement period was given for controlling carbon monoxide exposure.	New Mexico OHSB should ensure that, in accordance with NMFOM Chapter 5, Section II.C.2.k, “The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation.”	The Compliance Program Manager has emphasized to Compliance Officers the need to consider abatement period for violations based on the circumstances in each individual case in order to achieve optimum results in abatement time intervals.	Training on assessing the shortest timeframe within which the employer can reasonably be expected to correct the violation was conducted on May 10, 2010, for all compliance staff.	Continued Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that assigned violation abatement periods are for the shortest interval within which the employer can reasonably be expected to correct the violation
<b>09-10</b>	<b>The reasons why a violation was changed as the result of an informal administrative review were not always</b>	New Mexico OHSB should ensure that the reasons why violations and/or penalties are changed at the Informal	The Bureau will review the current NMFOM sections on settlements after Informal Administrative Review, and	OHSB questions the advisability of always documenting the reasons for changing violations	Continued Pending review of draft NMFOM

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	<b>documented in the case files.</b>	Administrative Review are documented in the case file.	will develop language to address this issue.	and/or penalties. The settlement process often involves compromises that are reached after consideration of a variety of factors, including a desire to ensure that workplace hazards are abated in a timely manner, acknowledgement of the fact that the existence of a particular violation is not always “cut and dried”, and an obligation to ensure that limited resources are utilized wisely. Requiring documentation of the specific factors considered as part of the settlement process will increase the likelihood that parties not directly involved will misunderstand how the process worked and will take elements of an agreement out of context, which could result in unintended consequences.	revisions and further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that the NMFOM provisions regarding settlements are being followed.

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<b>09-11</b>	Our review of nine currently-approved Voluntary Protection Program (VPP) files found that the annual reports were missing in most of the files. The Bureau Chief stated that the annual reports are maintained in Albuquerque, where the Compliance Assistance Specialists are physically located.	New Mexico OHSB should ensure that the Voluntary Protection Program (VPP) case files are complete, including annual reports, wherever they are maintained. One suggestion could be to create an electronic file that would be accessible to appropriate staff at any location at any time.	Any missing annual reports will be obtained and filed. We will institute a practice of creating and posting electronic copies of the annual reports on an internal drive available to OHSB staff.	The existing reports were added to the subject case files immediately after our onsite review in January 2010. All reports are now posed on an internal database accessible to all OHSB staff. At our last quarterly meeting in March 2011, we viewed the reports on the State internal drive. Corrective action on this recommendation is complete.	Complete This issue was reviewed and finished at the spring 2011 quarterly meeting.
<b>09-12</b>	There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations.	New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).	OHSB has requested legal assistance in drafting and presenting appropriate corrections of the regulations to the Environmental Improvement Board. The proposed regulatory changes will be presented to the Environmental Improvement Board for consideration in FY 2011.	OHSB has requested legal assistance in drafting and presenting appropriate corrections of the regulations to the Environmental Improvement Board.	Continued Subject to further Federal monitoring. This has been and will continue to be an issue addressed at each quarterly meeting. Our Department of Labor Regional Solicitor is

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					available to assist as requested.