

FY 2010 EFAME FOLLOW-UP REPORT
ON THE
STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT
OCCUPATIONAL HEALTH AND SAFETY BUREAU

Covering the period
October 1, 2009 - September 30, 2010

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Prepared by
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I Executive Summary

A Introduction

This is an annual evaluation of the operation of the State of New Mexico Occupational Health and Safety Plan under the 23(g) State Plan grant. This report was prepared under the direction of William A. Burke, Acting Regional Administrator, Region VI, Occupational Safety and Health Administration, U.S. Department of Labor, and covers the period from October 1, 2009, to September 30, 2010. The New Mexico Occupational Health and Safety Program is administered by the Occupational Health and Safety Bureau (OHSB), which is part of the Environmental Protection Division of the New Mexico Environment Department. The State Designee at the time covered by this report was Ron Curry; the current State Designee is F. David Martin, and the Occupational Health and Safety (OHS) Bureau Chief is Butch Tongate.

The New Mexico program covers all private sector industries within the State, except maritime (longshoring, ship building, and ship breaking) employees and Federal civilian employees, who are under Federal OSHA jurisdiction for enforcement. State and local government employees are also covered. The New Mexico FY 2010 Annual Performance Plan notes that New Mexico has a total work force of 638,028 private sector and 187,754 public sector employees working for 54,408 businesses and public agencies throughout the State. Approximately 85% of the businesses within the State employ 15 or fewer employees.

The Federal share of the initial FY 2010 23(g) grant was \$1,012,300, and the State share was \$1,012,300, for a total program of \$2,024,600. Private sector consultation is provided by the Bureau under a 21(d) Cooperative Agreement, while public sector consultation is provided under the 23(g) grant.

The OHSB staff consists of the Bureau Chief; 3 Program Managers for Compliance, Consultation, and Administration; 7.5 Safety Compliance Officers; 3 Health Compliance Officers; 3 Safety Consultants; 2 Health Consultants; 2.5 Compliance Assistance Specialists; and 7 administrative staff members. Most of the staff members work out of the Santa Fe or Albuquerque offices, with one Compliance Officer stationed in Las Cruces and one currently vacant Compliance Officer position assigned to Ruidoso. This has allowed the Bureau to provide more rapid response to reports of hazards, including imminent danger situations and accidents, as detailed in this report.

B Summary of the Report

All of the recommendations resulting from the onsite review conducted in FY 2010 and review of other program areas are addressed throughout the report, and are listed in Section III below. The major recommendations include ensuring that

family members are contacted early on and at appropriate times during fatality investigations; case file documentation issues, including assessing severity of injury or illness that could result from identified hazards, documenting employee exposure and employer knowledge, and including employee interview statements in all case files; ensuring that union representatives are appropriately involved during inspections and any subsequent review actions; continuing efforts to reduce health citation lapse time; and clarifying through rulemaking the regulations on private interviewing.

New Mexico made progress on all of the FY 2010 annual performance plan goals, and the program continues to meet all of its State Plan requirements, as detailed in Sections IV, V, and VI of this report. The Compliance Section conducted 692 inspections; a 22% increase over the 565 inspections conducted in FY 2009, and issued 647 total violations. The State met all but one of the Local Emphasis Program (LEP) goals for inspections in targeted industries, and responded timely to all unprogrammed activity.

Our review of performance data found many areas where State performance met established internal or Federal goals, among them responding to complaints in a timely manner, initiating fatality investigations in a timely manner, average number of serious violations per inspection, violation and penalty retention prior to and subsequent to contest, and timely first level decisions subsequent to contest. There are other areas where improvement is needed, such as health citation lapse time and case file documentation.

As detailed in Section III, there were a total of 12 recommendations in the FY 2009 EFAME Report. Corrective action has been completed on two of the recommendations, and one was deleted. For the remaining nine recommendations, New Mexico began addressing them as soon as the Region 6 monitoring team completed their closeout meeting with State managers.

Training sessions for Compliance Officers were conducted on several different occasions to address recommendations on case file documentation (Recommendations 2, 3, 4, 6, and 9). The Bureau is continuing to explore methods to further reduce citation lapse time (Recommendation 5), and they have requested legal assistance in drafting and presenting corrections to the private interviewing regulations (Recommendation 12). The reasons for changes made at informal conferences are being documented in case files (Recommendation 9).

New Mexico is including all of these issues in their FY 2011 State Internal Evaluation Program (SIEP); we are addressing them on a continuing basis during our quarterly meetings; and we will follow up on each issue during the FY 2011 onsite monitoring review.

The many different New Mexico partnerships and alliances are highlighted in the New Mexico Compliance and Cooperative Programs Combined Annual Report

for Fiscal Year 2010 (State OSHA Annual Report (SOAR)), included in this report as Appendix F. The construction partnerships, along with the consultation visits to construction employers, have had a significant impact on both the reduction in the TRC rate for construction and the in-compliance rate for construction programmed safety inspections.

C Monitoring Methodology

This report is based on several data sources, including State Plan Activity Measures (SAMM) Reports; State Indicator Reports (SIR); specific case file reviews based on questions that arose during review of the SAMM and SIR reports; Occupational Health and Safety Review Commission (OHSRC) decisions; the Automated Tracking System (ATS) Logs; review of State-transmitted documentation in response to Federal Program Changes, Federally-initiated standards, and State-initiated Plan Changes; and ongoing communication regarding legislative, regulatory, and other issues.

II Major New Issues

On March 2, 2010, a fire and explosion occurred during a welding operation on a tank at the Navajo Refinery site in Artesia, New Mexico. Two employees of Northwest Insulation were killed and two were seriously injured. New Mexico OHSB Compliance Officers fully trained on PSM conducted the accident investigation.

As a result of the investigation, citations were issued to Navajo Refinery in the amount of \$707,000.00 and to Northwest Insulation in the amount of \$39,200. The penalty assessed for the Navajo Refinery inspection is the largest in the State's history.

III Assessment of State Actions and Performance Improvements in Response to Recommendations from the FY 2009 EFAME

The New Mexico FY 2009 EFAME contained 12 recommendations as the result of the January 2010 special evaluation which included case files reviews, and our regular, ongoing monitoring. Following is a summary of each of the findings and recommendations, and the actions the State has taken to respond to each of the recommendations.

Finding 09-1: Two of the Compliance Officers interviewed were not aware of the NMFOM guidance on responding to complaints by inspection within 5 working days.

Recommendation 09-1: New Mexico OHSB should ensure that all compliance staff members are aware of the NM FOM timeframe goals for responding to complaints.

Corrective Action Plan: 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.

Current Status: The FY 2009 State Activities Mandated Measurement (SAMM) Report, Measure 1, shows that OHSB responded to complaints within an average of 3.6 days, and the FY 2010 SAMM Report shows the average was 3.0 days. Corrective action on this recommendation is complete.

Finding 09-2: 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.

Recommendation 09-2 (Recommendation 10-1): 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.

Corrective Action Plan: 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 Federal OSHA's special evaluation of FY 2009 data.

The State Internal Evaluation Program (SIEP) review for FY 2009 contained a recommendation that OHSB staff members follow the new guidelines in the NMFOM, and that Compliance Officers receive instruction on the new guidelines.

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.

Current Status: 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. The documentation of the State's policy (revised NM FOM) was transmitted to the Region in November 2009 and is under review. The Compliance Program Manager will be contacting family members during all fatality investigations.

To follow up on implementation of the policy, OHSB will include this issue in the 2011 SIEP, and Federal OSHA will review this documentation in fatality cases as part of the next special evaluation for the FY 2011 FAME report.

Finding 09-3: Case files reviewed were not always fully and accurately documented.

Recommendation 09-3 (Recommendation 10-2): New Mexico OHSB should ensure that:

1. Each case file contains a diary sheet that documents all actions taken, when they were taken, and by whom.
2. Documentation of employee discussions relative to violations or complaint items is included in all case files.
3. Employee exposure to hazards is documented.
4. Employer knowledge is documented.
5. The four elements for a general duty clause violation are documented on the OSHA 1-B form: identify the hazard to which employees are exposed; state how the hazard is recognized (including industry recognition); state how the hazard would cause death or serious physical harm; and identify the feasible abatement methods.
6. OSHA-300 log data is documented and entered into the IMIS for all appropriate case files.

Corrective Action Plan:

1. 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.
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.
3. The need for more complete documentation of employee exposure was also noted during the execution of OHSB's FY 2010 State Internal Evaluation Program (SIEP). 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 supervisory case file reviews include checking the adequacy of such documentation.
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.
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 necessary evidence is obtained and documented in the alleged violation description.
6. All Compliance Officers have been instructed to obtain, document, and enter OSHA-300 log data when it is required.

Current Status:

1. Compliance Officers were instructed in the use of the diary sheet, and inclusion in all case files was implemented in August 2010.
2. Training on documentation of employee statements was provided to compliance staff on August 9, 2010, and August 30, 2010.
3. Training on employee exposure documentation was provided to compliance staff on August 9, 2010, and August 30, 2010.
4. Training on employer knowledge was provided to compliance staff on August 9, 2010.
5. Training on general duty clause descriptions was provided to compliance staff on May 10, 2010.
6. Training has been completed for all on board Compliance Officers, and will be ongoing as new Compliance Officers are hired.

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.

Finding 09-4: Union representation was not documented in one case file, and documentation of union participation in the inspection and subsequent actions was not included in several case files.

Recommendation 09-4 (Recommendation 10-3): 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.

Corrective Action Plan: OHSB will continue to stress to Compliance Officers the requirement to identify and document union representation and to appropriately involve union participation during inspections. They 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.

Current Status: Compliance Officers have been reminded to identify and document union participation in inspection activities. The issue will be reviewed in the 2011 SIEP and will be included in the special evaluation case file reviews for the FY 2011 FAME.

Finding 09-5: Average health citation lapse time in New Mexico is significantly higher than the National average.

Recommendation 09-5 (Recommendation 10-4): New Mexico OHSB should continue efforts to further reduce health citation lapse time.

Corrective Action Plan: OHSB will continue to utilize IMIS reports to identify open cases with prolonged lapse times, in order to minimize delays in citation issuance. They 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. They have instituted progressive administrative discipline for Compliance Officers whose performance in this area is substandard. In addition, they 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 Salt Lake Technical Center (SLTC).

Current Status: This has 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 lapse times as a result.

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.

We will continue to discuss 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.

Finding 09-6: In a very small number of instances (4 of 225), violations were not properly classified in accordance with the severity of the potential injuries/illnesses that could result. These included asphyxia, systemic poisoning, and electrical shock being noted as minimal severity.

Recommendation 09-6 (Recommendation 10-5): New Mexico OHSB should ensure that Compliance Officers appropriately record the severity of all injuries and illnesses identified as violations.

Corrective Action Plan: OHSB has conducted training for Compliance Officers to ensure that potential injuries and illnesses associated with identified hazards are appropriately described.

Current Status: Training to ensure that potential injuries and illnesses associated with identified hazards are appropriately described was provided to compliance staff on May 10, 2010, and August 9, 2010.

Violation description/classification was a question in only four (1.7%) of the 225 violations we reviewed for the FY 2009 FAME report. OHSB believes that the errors were in the description of the violations rather than their classification. This is supported by the data in State Indicator Report (SIR) measures C.8 and E.2, as detailed below, which shows a lower percentage of violations reclassified both prior to and post-contest in FY 2009 and FY 2010.

	SIR Measure C.8 (violations	SIR Measure E.2 (violations
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	reclassified prior to contest)		reclassified post-contest))	
	NM OHSB	Federal OSHA	NM OHSB	Federal OSHA
FY 2009	1.1%	4.8%	9.4%	15.1%
FY 2010	0.0%	4.0%	8.1%	11.7%

Federal OSHA will follow up on this issue in the next special evaluation case file reviews for the FY 2011 FAME.

Finding 09-7: In a very small number of case files (6 of 84), our review identified hazards that were not addressed.

Recommendation 09-7 (Recommendation 10-6): 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.

Corrective Action Plan: OHSB will continue to evaluate Compliance Officers' competency in hazard identification through individual case review and monthly analysis of citation rates. They will continue to evaluate the experience level and training histories of Compliance Officers and attempt to enroll them in appropriate training courses to improve their ability to properly recognize and cite hazards. They will review sample hazard alert letters provided by the Region for possible use.

Current Status: Sample hazard alert 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. Federal OSHA will include this in the issues to follow up on in the special evaluation case file reviews for the FY 2011 FAME.

Finding 09-8: Compliance Officers did not uniformly complete the violation calculation worksheet for assessing penalties. (DELETED)

Recommendation 09-8: New Mexico OHSB should ensure that Compliance Officers complete the "Violation Calculation" guide on the back of the OHSB Field Worksheet, to ensure uniformity assessing severity and probability for penalty calculations. **(DELETED)**

Current Status: This finding and the recommendation were deleted. New Mexico Compliance Officers use a State-developed violation calculation worksheet for assessing severity and probability of violations, in conjunction with the guidance in the New Mexico FOM for considering these factors to calculate penalties.

Finding 09-9: 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.

Recommendation 09-9 (Recommendation 10-7): 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.”

Corrective Action Plan: The Compliance Program Manager has emphasized to Compliance Officers the need to consider the abatement period for violations based on the circumstances in each individual case in order to achieve optimum results in abatement time intervals.

Current Status: 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.

We reviewed the State Indicator Report (SIR) Measure C.4, which shows the following regarding assigned abatement periods.

State Indicator Report (SIR) Measure C.4				
	Safety violations with assigned abatements greater than 30 days		Health violations with assigned abatements greater than 60 days	
	New Mexico OHSB	Federal OSHA	New Mexico OHSB	Federal OSHA
FY 2009	3.3%	17.6%	1.0%	10.0%
FY 2010	6.4%	17.7%	6.2%	8.5%

The issue will be reviewed in the 2011 SIEP and will be included in the special evaluation case file reviews for the FY 2011 FAME.

Finding 09-10: The reasons why a violation was changed as the result of an informal administrative review were not always documented in the case files.

Recommendation 09-10 (Recommendation 10-8): New Mexico OHSB should ensure that the reasons why violations and/or penalties are changed at the Informal Administrative Review are documented in the case file.

Corrective Action Plan: The OHSB will review the current NM FOM sections on settlements after Informal Administrative Review, and will develop language to address this issue.

Current Status: As we discussed this recommendation further at our quarterly meetings and conference calls in FY 2011, we decided to divide the recommendation into two parts: pre-contest (Informal Conference) and post-contest (Informal Administrative

Review). We reviewed the Federal and State Field Operations Manuals and other guidance to determine the specific requirements in each case.

New Mexico’s review process is slightly different than the Federal process. The following chart explains the differences in terminology.

Federal OSHA	New Mexico OHSB	Difference
Amendments to Citations	Amendments to Citations	Federal OSHA and New Mexico OHSB may amend citations prior to contest to correct errors in the citation process.
Informal Conference	Informal Conference	Federal OSHA and New Mexico OHSB may enter into a settlement agreement at the Informal Conference level. Actions at this level are governed by the Field Operations Manual (FOM).
Formal Settlement	Informal Administrative Review (IAR)	<p>Once a citation is contested, both Federal OSHA and New Mexico OHSB are required to forward the contest to the Review Commission. Both Federal OSHA and New Mexico OHSB may enter into a settlement agreement at this level. The Review Commission Rules of Procedure govern this process, rather than the Field Operations Manual.</p> <p>In New Mexico, the IAR is conducted by the Bureau Chief or his/her designee, and the Office of General Counsel (OGC) may be consulted. In Federal OSHA, Department of Labor Attorneys; i.e., Solicitors, negotiate formal settlement agreements. There may be no contact between Federal OSHA and the employer without prior agreement from the Office of the Solicitor.</p>

The New Mexico FOM, Chapters 5, 7, and 8, discuss settlement at the Informal Conference level.

Chapter 5, Section X.D.1 states, “Withdrawal of, or modifications to, the citation and notification of penalty shall normally be accomplished by means of an informal or formal settlement agreement.”

Chapter 8, Section I.A.5 regarding informal settlement states, “The Compliance Program Manager will document and maintain records reflecting the basis for any decisions resulting from the informal conference.”

The New Mexico FOM, Chapter 15, Section IV, addresses the contest process, as does Chapter 15 of the Federal OFOM. Neither manual contains a requirement to document the decisions resulting from formal settlement negotiations following a contest, and

neither the Federal nor the New Mexico Review Commission Rules of Procedure contain this requirement.

We have changed the wording of the recommendation for FY 2010 to address only informal settlement agreements, and we will include this issue when we review case files for the FY 2011 FAME Report.

Finding 09-11: 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.

Recommendation 09-11: 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.

Corrective Action Plan: Any missing annual reports will be obtained and filed. OHSB will institute a practice of creating and posting electronic copies of the annual reports on an internal drive available to OHSB staff.

Current Status: The existing reports were added to the subject case files immediately after our onsite review in January 2010. All reports are now posted 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.

Finding 09-12: There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations.

Recommendation 09-12 (Recommendation 10-9): New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).

Corrective Action Plan: 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.

Current Status: This has been and will continue to be an issue addressed at each quarterly meeting. Our Department of Labor Regional Solicitor is available to assist as requested.

IV FY 2010 State Enforcement

Appendix C is a summary of enforcement indicators, showing New Mexico

performance compared to nationwide Federal performance. Most of the issues in the chart are also addressed through measures in the State Activity Mandated Measures (SAMM) Report and/or the State Indicator Report (SIR). New Mexico performance as indicated in Appendix C, contained in the SAMM report, contained in the SIR report, addressed in the State Internal Evaluation Report for 2010, and as discussed during quarterly meetings and ongoing communication, is addressed under each topic below.

New Mexico conducted a total of 692 enforcement inspections in FY 2010: 542 (78%) safety and 150 (22%) health, and 417 (60%) were in construction, which is identical to the Federal OSHA rate for construction.

In response to OSHA's revised Field Operations Manual, New Mexico transmitted a revised NMFOM and comparison document in November 2009. Unless noted below, New Mexico's enforcement policies and procedures are identical to Federal OSHA's.

A Complaints and Referrals

New Mexico has interpreted the State OHS Act to define complaints only as those signed notices of alleged hazards filed by current employees or their representatives. All other notices of alleged hazards, including those from former employees and unsigned notices from current employees or employee representatives, are classified as referrals. All complaints are responded to by inspection, in accordance with the New Mexico OHS Act and regulations. Appendix C shows that there were 15 complaint inspections conducted in New Mexico in FY 2010, accounting for 2% of inspection activity, and 241 referral inspections, accounting for 34% of inspection activity.

The revised New Mexico FOM time frame for response by inspection to complaints of serious and/or other-than-serious hazards is five working days. The goal for responding to imminent danger complaints and referrals is one working day.

State Activity Mandated Measure (SAMM) 4 shows that all nine (100%) of the imminent danger complaints and referrals responded to during the period were inspected within one working day. SAMM measure 1 shows that New Mexico averaged 3.0 working days to respond to all other complaints by inspection; the State goal is no more than 5 working days.

Because the New Mexico Act so narrowly defines complaints, we have historically also reviewed at our quarterly meetings the State's response to referrals alleging serious hazards. The Bureau also addressed the issue by establishing a goal in the strategic and annual performance plans to respond to 95% of referrals alleging serious hazards within 10 working days. As Appendix F shows, New Mexico responded to 89.7% of referrals alleging serious hazards within 10 working days.

The goal for notifying complainants of inspection results is within 20 working days of citation issuance or 30 working days of the closing conference for cases without citations. There were 13 complaint inspections where complainants were notified of inspection results during the period; 11 of the 13 (84.6%) had timely notification. In the remaining two cases, the complainant did not provide contact information, so no response could be sent.

For complaints where complainants did provide contact information, the timely response rate was 100%.

B Fatalities

The micro-to-host All Fatalities Received Report for New Mexico shows that 21 fatalities were reported to the Occupational Health and Safety Bureau (OHSB) in FY 2010. Three were heart attacks; two were auto accidents; two were workplace violence; and one was natural causes. There were two instances of multiple fatalities; this resulted in 13 deaths in 12 incidents under the jurisdiction of OHSB.

Of the 12 fatal incidents that were inspected, the investigation began within one day in 10 of 12 (83.3%) cases. In one case, the person who died was the owner. In the other case, the fatality was not reported until two weeks after the event, and determining whether it occurred on an Indian reservation and was Federal OSHA jurisdiction, or whether it was off the reservation and was State jurisdiction, took some time. Nine of the 13 deaths were in the construction industry; 1 was oil/gas well drilling and servicing; and 3 were in other industries.

C Targeting/Inspections

New Mexico uses the high hazard industry list based on Dun and Bradstreet listings, which is provided by OSHA's Directorate of Evaluation and Analysis, to target high hazard manufacturing and general industry sites. They use Dodge reports to target programmed construction inspections. In FY 2010, nine Local Emphasis Programs (LEPs) were developed in conjunction with the strategic and annual performance plans, to address the industries in New Mexico that experience the highest injury and illness rates and/or fatalities. These nine LEPs are All Construction; Fabricated Metal Products; Oil and Gas Well Drilling and Servicing; Stone, Clay, and Glass Products; Refineries; Hand Labor Agricultural Operations; Silica; Waste Management; and American Recovery and Reinvestment Act (ARRA) Operations.

OHSB adopted the provisions of the National Emphasis Program (NEP) on Refineries in their LEP, and is using its procedures for conducting programmed refinery inspections.

The FY 2010 State Plan Enforcement Activity Report shows that 59% (406/692) of New Mexico's inspections were programmed; the Federal OSHA rate was 60%.

State Indicator Report (SIR) measures C.1 and D.1 show that New Mexico's programmed inspections were 64.6% (307/475) of their private sector safety inspections; 38.5% (47/122) of their private sector health inspections; 73.2% (30/41) of their public sector safety inspections; and 12.0% (3/25) of their public sector health inspections. New Mexico inspects a large percentage of referrals with alleged serious or imminent danger hazards. Many of these are in industries that are included in the high hazard listing, an LEP, or an NEP.

State Activity Mandated Measures (SAMM) measure 8, which includes both private and public sector data for the State, shows Compliance Officers identified hazards in 27.0% of programmed safety and 24.4% of programmed health inspections. The Federal rates are 58.4% for safety and 50.9% for health.

Many companies in industries covered by Local Emphasis Programs have requested and received consultation services prior to programmed inspections being scheduled and conducted. We expect Compliance Officers to find few, if any, violations at these sites.

Most of the in-compliance safety inspections are in construction. One factor is the fact that OHSB did not adopt Federal OSHA's focused construction inspection policy. New Mexico Compliance Officers complete an OSHA-1 Inspection form for every contractor inspected at a construction site, and many of these are in-compliance. Federal OSHA Compliance Officers do not complete an inspection form for in-compliance contractors when a focused inspection is conducted. A second factor is that New Mexico conducted inspections under an American Recovery and Reinvestment Act (ARRA) grant during FY 2010. Most of these inspections did not result in citations for several reasons, including problems identifying current construction sites; the stage of construction at the time of the inspection; and problems with the Department of Transportation (DOT) site listing. For example, the DOT listing did not identify the type of road improvement project, and several of these were for landscaping projects.

The construction partnerships and alliances that have existed in New Mexico for several years also affect the construction in-compliance rate. The Total Recordable Case (TRC) rate of 3.4 and Days Away from Work, Restricted, or Transferred (DART) rate of 1.7 for construction, reflect the Bureau's efforts in this area. However, 9 of the 13 fatalities inspected in FY 2010 occurred in the construction industry, which indicates the need to continue the All Construction Local Emphasis Program.

We discussed the higher health in-compliance rate at our quarterly meetings in FY 2010. One factor affecting this is that Health Compliance Officers focus on

health issues and make referrals to safety for possible safety violations. Federal OSHA Health Compliance Officers often cite safety hazards on health inspections. The Compliance Manager noted that over-exposure is confirmed in approximately 20-30% of analyzed samples.

The State obtains inspection orders (warrants) through the State District Court in cases where the employer denies entry. There were no denials of entry during the period.

D Employee and Union Involvement

The New Mexico Field Operations Manual (NMFOM), pages 3-7, Section D and 7-2, Sections C.1 and C.2 afford employees and/or employee representatives the opportunity to participate in every phase of the inspection process. IMIS Inspection (INSP) reports show that approximately 9% (65/692) of New Mexico inspections conducted in FY 2010 were at union sites.

E Citations and Penalties

The New Mexico Occupational Health and Safety Bureau Compliance Section cited a total of 647 violations in FY 2010.

The Enforcement Statistics micro-to-host report run for FY 2010 shows the following working day lapse times from opening conference to citation issuance.

	New Mexico	Federal OSHA
Safety	45.7	37.9
Health	57.2	50.9

- Reducing citation lapse time has been a focus of State efforts for several years. Analysis determined that the delays are occurring between the inspection opening conference date and the time paperwork is completed and draft citations are entered into the IMIS. The State is taking administrative action to ensure more timely processing of citations.

This issue was the subject of a recommendation in the FY 2009 EFAME report, and we will continue to follow up on it each quarter.

State Activity Mandated Measure (SAMM) measure 9 shows that the average number of violations per inspection with violations was 2.9 in New Mexico and 3.1 nationwide. New Mexico identified 2.1 serious violations per inspection with violations; the National (Federal OSHA and all State Plans) average was 2.0.

Appendix C shows that New Mexico Compliance Officers identified a total of 647 violations during FY 2010 - 443 (68%) serious, 10 willful, 4 repeat, and 190 (29%) other-than-serious. The Federal OSHA percentages were 77% serious and 18% other-than-serious.

State Activity Mandated Measure (SAMM) measure 10 shows the average **initial** penalty per private sector serious violation was \$1069.91; the National average (Federal OSHA and all State Plans) was \$1360.40. The average **current** penalty per private sector serious violation in New Mexico was \$1,087.60; the Federal OSHA average was \$1,068.80. The SAMM report and Appendix C use different timeframes and different selection criteria, which explains the current average penalty slightly higher than the initial average penalty in New Mexico.

F Abatement

State Activity Mandated Measure (SAMM) 6 shows that New Mexico verified abatement of 100% (199/199) of the private sector and 100% (75/75) of the public sector serious, willful, and repeat violations within 30 days of the final abatement date.

State Indicator Report (SIR) measure C.4 shows that New Mexico assigned abatement dates longer than 30 days for 6.4% of safety violations, while Federal OSHA did so for 17.2% of safety violations. New Mexico assigned abatement dates longer than 60 days in 6.2% of health violations, while Federal OSHA did so for 8.5% of health violations. The IMIS Enforcement Statistics Report used to compile the data for Appendix C, shows that New Mexico had 9 open, non-contested cases with incomplete abatement greater than 60 days past due. This does not agree with SAMM 6 data showing 100% of all violations verified abated with 30 days of the final abatement date. We will follow up on this discrepancy during FY 2011.

G Review Procedures

1 Informal Conferences

The informal conference process in New Mexico allows for amendments to citations or entering into Informal Settlement Agreements. The Bureau documents these changes in the OSHA Integrated Management Information System (IMIS) with the codes AMEND or ISA. State Indicator Report (SIR) measures C.7 and C.8 provide State and Federal data on violations vacated and reclassified prior to contest. These measures show that 4.1% of New Mexico violations and 4.7% of Federal violations were vacated, and 0% of New Mexico violations and 4.0% of Federal violations were reclassified prior to contest. SIR measure C.9 shows that 89.0% of New Mexico penalties and 63.0% of Federal penalties were retained prior to contest.

One Complaint About State Program Administration (CASPA) was filed during the period regarding a specific provision in an informal settlement agreement. The signed agreement required a review of a State agency's training program, but did not specify that the review be independent. The employee representative filed an objection with the OHS Review Commission, and the Review Commission decision stated that "The Commission's disapproval of the proposed informal settlement agreement is based on the Respondent's failure to perform an independent audit, pursuant to the terms of the settlement agreement..." [Emphasis added.]

The settlement agreement was amended to include this requirement, and it was signed by the union representative, employer, and OHSB. Federal OSHA made one recommendation to the State regarding this CASPA that "In future settlement agreements that incorporate a requirement for a review/audit of any program, process, etc., NMOHSB should clearly specify in the terms of the settlement that such review/audit must be conducted by an 'independent' outside authority." The State responded that they will ensure that future settlement agreements comply with this recommendation.

2 Formal Review of Citations

Once a citation has been contested by an employer, employee, or employee representative, a settlement can be considered at the Informal Administrative Review level. In accordance with OHS Regulation 11.5.5.306.D(1)(a), the Bureau has 90 days within which to enter into a formal settlement agreement or file an administrative complaint with the New Mexico Occupational Health and Safety Review Commission. The Bureau Chief or his designee may conduct the Informal Administrative Review.

State Indicator Report (SIR) measures E.1, E.2, and E.3 address changes to citations and penalties subsequent to contest. These include changes made through formal settlement, OHS Review Commission decisions, and court decisions. SIR measures E.1 and E.2 show that 13.3% of New Mexico violations and 21.9% of Federal violations were vacated, and 8.1% of New Mexico and 11.7% of Federal violations were reclassified subsequent to contest. SIR measure E.3 shows that 58.8% of New Mexico penalties and 58.1% of Federal penalties were retained subsequent to contest.

State Activity Mandated Measures (SAMM) measure 12 is the average lapse time from receipt of contest to first level decision. The New Mexico average was 104.4 days; the National (Federal OSHA and all State Plans) average was 217.8 days. Almost all cases result in formal settlement

agreements in New Mexico; only a few each year are sent to the Review Commission.

The New Mexico Occupational Health and Safety Review Commission (NMOHSRC) is made up of three members appointed by the Governor for terms of six years. There is also a Commission Secretary who handles all administrative matters such as correspondence and scheduling. The NMOHSRC meets on an as-needed basis. All settlement agreements subsequent to contest are sent to the NMOHSRC for approval. All such settlements during the period were approved.

Review Commission decisions are not available on either the OHS Review Commission or the OHS Bureau website. They are available upon request to the Review Commission.

H Public Employee Program

The New Mexico State Plan FY 2010 Enforcement Activity table (Appendix C) shows that 10% (67/692) of the total inspections New Mexico conducted in FY 2010 were in the public sector. The State's goal is approximately 10%, based on the percentage of public sector employers who are considered high hazard.

Penalties are assessed for violations in the public sector, but penalties for serious violations are deemed "paid" (waived) if abatement is verified by the established abatement date.

V Other

A Information Management

New Mexico uses all of the micro management reports appropriate to the program, to manage enforcement activities. The reports are set to run automatically overnight every Friday, and are printed on Mondays. The State Compliance Program Manager is appropriately using the reports to manage the enforcement program.

New Mexico Compliance Officers and IMIS staff members enter data in a timely and accurate manner, with few exceptions. The Compliance Program Manager is addressing the problem of delayed data entry in a few cases, with individual Compliance Officers.

The micro Debt Collection Tracking reports are designed for Federal OSHA and do not facilitate the State's debt collection process. The IMIS System Administrator uses the Open Inspections Report to track cases, ensure the NM

FOM procedures are followed, and collect penalties. The State is currently considering possible inclusion of a debt collection service in the process.

The State uses the standard IMIS form letters, modified for State use, for addressing some referrals that are not inspected, communicating inspection results to complainants, etc.

B BLS Rates and OSHA Data Initiative (ODI)

New Mexico experienced an increase in the fatality rate per 100,000 workers, from 3.8 in 2008 to 5.3 in 2009. The increase is attributed to increases in transportation incidents (20) and assaults or other violent acts (7).

Total Recordable Case (TRC) rates also rose slightly in New Mexico. Between 2008 and 2009, TRC rates for all industries, including State and local governments, rose from 4.4 cases per 100 employees to 4.8. The private sector only rate rose from 3.8 to 4.1. In construction, the rate dropped from 4.3 to 3.4.

The following table shows the two year trend for these rates.

	New Mexico 2007 Total Case Rate (TRC)	New Mexico 2009 Total Case Rate (TRC)	% change from 2007 to 2009	National Total Case Rate (TRC)
Public Sector	6.9	6.2	-10.1%	5.8
Private Sector	4.6	4.1	-10.1%	3.6
	New Mexico 2007 DART rate	New Mexico 2009 DART rate	% change from 2007 to 2009	National DART rate
Public Sector	2.9	3.1	+6.9%	2.5
Private Sector	2.3	1.8	-21.7%	1.8

C Standards Adoption

New Mexico’s regulations provide that amendments to OSHA standards that have been adopted by the New Mexico Environmental Improvement Board (EIB) are considered “adopted by reference” without conducting a hearing. Any new Federal OSHA standards or State-initiated standards proposed for adoption require a public hearing.

New Mexico was current on timely adoption of standards at the start of FY 2010. Two Federal standards or amendments to standards were published in FY 2009

and 2010 which required State response and/or adoption in FY 2010. As detailed in Appendix J, the State adopted identical general industry standards amendments by reference. New Mexico does not cover maritime industries. The amended standards became effective in New Mexico on the date they were published in the Federal Register.

No State-initiated standards were adopted in FY 2010.

D Federal Program Changes

There were 11 Federal program changes for which a response and/or plan supplement was due in FY 2010. Appendix H includes the details of the State responses. All 11 responses due in FY 2010 were transmitted prior to the due date.

E State-Initiated Changes

New Mexico transmitted 10 State-initiated plan changes during FY 2010, as detailed in Appendix I. Nine of the 10 are Local Emphasis Programs and one is a change to the OHSB organizational chart. All 10 State-initiated changes have been approved

F Variances

New Mexico did not issue any permanent or temporary variances in FY 2010. In fact, New Mexico has only issued one temporary variance in its 35 year history. The Bureau honors all multi-state variances that have been issued by Federal OSHA.

G Consultation Activities

Private sector consultation services are provided in New Mexico under a 21(d) Cooperative Agreement, and public sector consultation services are provided under the 23(g) State Plan grant.

Appendix G is the Mandated Activities Report for Consultation (MARC) for the public sector in New Mexico.

New Mexico conducted 14 public sector consultation visits (11 initial, 2 follow-up, and 1 training and assistance). The MARC contains five performance measures, but MARCs 1 and 2 do not apply to the public sector.

MARC 3 shows that New Mexico consulted with employees in 100% (13/13) of the public sector visits which required it.

MARC 4 shows that 100% (148/148) of identified serious hazards were verified corrected in a timely manner (within 14 days of the latest correction due date), and MARC 5 shows that there were no serious hazards with correction more than 90 days past due.

H Discrimination Program

New Mexico's policies and procedures for discrimination complaints under the OHS Act are identical to Federal OSHA's with one exception. The New Mexico Act provides that discrimination complaints must be filed in writing. If a complainant contacts the Bureau by phone within 30 days of the discriminatory activity and follows up in writing after the 30-day period has expired, the complaint is deemed to have been filed within that 30-day timeframe. New Mexico follows the Whistleblower Investigator Manual provisions for Section 50-9-25 NMSA (11(c)) discrimination complaint investigations.

State Activity Mandated Measures (SAMM) measure 14, shows a 23.1% (3/13) meritorious rate for cases investigated during the period; the nationwide rate was 21.2%.

SAMM measure 15 shows that New Mexico had a 66.7% (2/3) settlement rate for meritorious discrimination complaints; the nationwide rate was 86.0%. New Mexico's State Operations Annual Report (SOAR) states that 100% (3/3) of the meritorious complaints were settled. At the time the SAMM report was run, a final determination had not been made in the third case; it was settled two weeks after the SAMM report was run.

SAMM measure 13 shows that 92.3% (12/13) of New Mexico's discrimination investigations during the period were completed within 90 days.

I Complaints About State Program Administration (CASPA's)

Two Complaints About State Program Administration (CASPA's) were received by Federal OSHA regarding New Mexico in FY 2010, and none were open from previous years. One CASPA was filed on March 5, 2010. It involves sixteen various and complex issues, and is still under investigation in the Dallas Regional Office. The second CASPA was filed on May 10, 2010, regarding the provisions of an informal settlement agreement. The details of this CASPA are discussed in section IV.G.1 of this report.

J Voluntary Compliance Programs

New Mexico adopted the Federal policy and procedures manuals for Partnerships, Alliances, and the Voluntary Protection Program (VPP). The State has many partnerships and alliances, as detailed in Appendix F.

New Mexico currently has 11 cooperative programs: the Zia Star Voluntary Protection Program, 5 partnerships, and 5 alliances. Descriptions of each program and member companies are included in Appendix F. These programs and their membership listings are also available on the New Mexico OHSB website at www.nmenv.state.us/Ohsb_Website/ComplianceAssistance.

One new alliance with the Associated Energy Servicing Companies of the Permian Basin was initiated in FY 2010 to provide health and safety training to Spanish-speaking workers in the well servicing industry in southeastern New Mexico.

All partnership and alliance agreements are available on the OHSB website. Through a reciprocity agreement signed on April 7, 2003, Federal OSHA will honor partnership provisions if/when inspecting Associated General Contractors (AGC) or Associated Builders and Contractors (ABC) partnership member companies on New Mexico worksites under Federal OSHA jurisdiction; i.e., military bases, Indian reservations, and areas of exclusive Federal jurisdiction.

K Program Administration

1 23(g) State Plan Grant

An onsite financial review of New Mexico's 23(g) grant financial issues was conducted in May 2010, and there were no significant findings. In addition to the 23(g) grant, New Mexico accepted and matched a 50/50 American Recovery and Reinvestment Act (ARRA) grant in FY 2009/2010. Two financial reviews of that grant were conducted in November 2009 and May 2010, with no significant findings.

In FY 2010, the Federal share of the New Mexico 23(g) grant was \$1,012,300 and the State share was \$1,012,300, for a total grant amount of \$2,024,600.

In response to statewide budget issues, all New Mexico State employees were furloughed for five days in 2010. These days were spread throughout the second half of the State's fiscal year. Offices were closed, but callers were referred to a central answering service and forwarded to the Bureau Chief at home for appropriate response. There was no significant negative impact on services. An incident which involved two fatalities and two critical injuries occurred three days before a scheduled furlough day, but the Department obtained approval from the Governor's Office for three Compliance Officers to continue working on the furlough day.

New Mexico abides by the exemptions and limitation on Federal OSHA appropriations, so no inspections are conducted outside of those guidelines with 100% State funding.

As of April 29, 2011, the Bureau has three vacancies – one Safety Compliance Officer, one Health Consultant, and the Consultation Program Manager. The Safety Compliance Officer's salary, 10% of the Health Consultant's salary, and 20% of the Consultation Program Manager's salary are included in the 23(g) grant. The State is currently under a general hiring freeze, but the Bureau has submitted a request for authorization to fill the Consultation Program Manager position.

2 Benchmarks

The Compliance Officer benchmarks for a fully effective program in New Mexico are 7 Safety and 3 Health Compliance Officers. There are currently 7.5 allocated Safety Compliance Officer and 3 allocated Health Compliance Officer positions in the Bureau.

3 Internal Training

New Mexico transmitted their plan supplement in response to OSHA Instruction TED 01-00-018, Initial Training Program for Compliance Officers, on November 3, 2008. It contains some slight differences, which were detailed in the State's transmittal letter, but it is substantially identical in content.

At each quarterly meeting and at the end of each fiscal year, the Bureau Chief provides updates on training received by all staff during the period. A summary of training received in FY 2010 is included as Appendix K.

4 18(e) Determination Status

The New Mexico Environment Department first indicated interest in seeking final State Plan approval (18(e) determination) in 1999.

We started with a review of the 29 CFR 1902 regulations criteria and indices of effectiveness, and began compiling the 18(e) determination outline. The 18(e) outline was provided to the State for input, and the former Bureau Chief began working on the State response.

Much progress has been made, but the issue of private interviewing is still problematic. There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations themselves. The issue was addressed through proposed changes to the State regulations. The New Mexico Environmental Improvement Board

(EIB) did not adopt the changes as proposed. The Department then drafted legislation to change the OHS Act to ensure private interviewing. The legislation was introduced in the 2009 legislative session, but did not pass. The Bureau is now working with the Department's legal staff to determine the appropriate next steps. This was the subject of a recommendation in the FY 2009 EFAME report, and we will follow its progress each quarter. We will continue to work together toward achieving the goal of 18(e) final determination.

5 State Internal Evaluation Program (SIEP)

New Mexico developed and implemented a comprehensive State Internal Evaluation Program (SIEP) in FY 2008. All issues in the evaluation program are reviewed at least once every five years. The results of the 2010 internal evaluation were finalized on September 22, 2010, and provided to the region at our fourth FY 2010 quarterly meeting. Findings and recommendations have been incorporated in this report under the appropriate subject.

The FY 2010 SIEP focused on the following issues: complaints, case file documentation, case control, staff training, laboratory, and grants.

VI Assessment of State Progress in Achieving Annual Performance Goals

New Mexico made progress on all of their FY 2010 annual performance plan goals, as detailed in Attachment F, the New Mexico FY 2010 State OSHA Annual Report (SOAR), and discussed below.

The OHSB continued nine local emphasis programs to address the high hazard industries identified in their strategic plan and industries where fatalities have occurred. They are Oil and Gas Well Drilling and Servicing; Construction; Hand Labor Agricultural Operations; Fabricated Metal Products; Stone, Clay, and Glass Products; Silica; Refineries; Waste Management; and ARRA Projects. An internal OHSB directive was issued for each LEP, outreach was conducted, consultation and training services were offered, and programmed-planned inspections were initiated.

New Mexico transmitted their new 5-year Strategic Plan, Annual Performance Plan, and appropriate financial documentation, during the FY 2010 grant application process. The Regional Office reviewed and concurred with the strategic goals and the annual performance goals for FY 2010. Both documents were approved by the Assistant Secretary when the FY 2010 23(g) grant was awarded.

Highlights of State performance in relation to strategic goals in FY 2010 include:

Goal 1.1: OHSB conducted 692 inspections and 239 consultation visits in FY 2010. The DART rates for 2010 will not be available until October 2011. The

overall DART rate increased from 2.0 in 2008 to 2.1 in 2009. The increase was limited to the public sector, which increased from 2.3 to 3.1. The private sector rate remained at 1.8.

- Goal 1.2: OHSB conducted 59% (407/692) of the total inspections in construction and oil and gas well drilling and servicing. These two industries accounted for 10 of the 13 (77%) workplace deaths reported in 12 incidents in FY 2010.
- Goal 1.3: New Mexico met or exceeded the annual performance goals for increasing the number of participants in the CARES and Oil and Gas Safe Site exemption programs. The goal for SHARP approved companies by the end of FY 2010 was 10; New Mexico had 8 approved sites.
- Goal 1.4: New Mexico exceeded the annual performance goal for increasing participants in strategic partnerships. The goal was 59; at the end of FY 2010 there were 71 members in OHSB partnership programs.
- Goal 1.5: The goal was to have 10 approved VPP members by the end of FY 2010, and there were 11 companies approved as Zia Star VPP members by that time.
- Goal 1.6: The following chart details the goals and accomplishments for educating employers and employees by increasing materials available in languages other than English and by conducting workshops and conferences in growth industries.

Goal	Results
1. Participate in 13 workshops.	OHSB staff participated in 17 workshops in FY 2010.
2. Participate in 9 speaking engagements	OHSB staff participated in 8 speaking engagements in FY 2010.
3. Participate in 3 outreach activities in a language other than English.	OHSB staff participated in 3 outreach activities conducted in Spanish during FY 2010.
4. Participate in 2 home health care or health care support activities.	OHSB staff participated in 2 health care support activities in FY 2010.

- Goal 2.1: New Mexico responded to 10 of 12 (83.3%) incidents of workplace fatalities within one working day of notification. In one case, it took some time to determine if the fatality occurred at a location under State OHSB or Federal OSHA jurisdiction, and in the other case the person who died was the owner of the company.
- Goal 2.2: New Mexico’s goal is to respond by inspection to 95% of referrals alleging serious hazards within 10 working days. The average number of

working days to respond was 4.66, and 89.7% (286/319) were investigated within 10 working days.

Goal 2.3: New Mexico's goal is to complete 95% of discrimination investigations within 60 days. (This is a more ambitious goal than that established in State Activity Mandated Measure (SAMM) 13, which is to complete 100% of discrimination investigations within 90 days.) New Mexico completed investigation of 11 of 13 (84.6%) discrimination complaints within 60 days.

Appendix A
FY 2010 New Mexico (OHSB) Enhanced FAME Follow-up Report
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-1	<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>	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.	09-2
10-2	Case files reviewed were not always fully and accurately documented.	<p>New Mexico OHSB should ensure that:</p> <ol style="list-style-type: none"> 1. Each case files contains a diary sheet that documents all actions taken, when they were taken, and by whom. 2. Documentation of employee discussions relative to violations or complaint items is included in all case files. 3. Employee exposure to hazards is documented. 4. Employer knowledge is documented. 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 recognition); state how the hazard would cause death or serious physical harm; and identify the feasible abatement methods. 6. OSHA-300 log data is documented and entered into the IMIS for all appropriate case files. 	09-3
10-3	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.	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.	09-4

Appendix A
FY 2010 New Mexico (OHSB) Enhanced FAME Follow-up Report
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-4	Average health citation lapse time in New Mexico is significantly higher than the National average. This has 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.	New Mexico OHSB should continue efforts to further reduce health citation lapse time.	09-5
10-5	In a very small number of instances (4 of 225), violations were not properly classified in accordance with the severity of the potential injuries/illnesses that could result. These included asphyxia, systemic poisoning, and electrical shock being noted as minimal severity.	New Mexico OHSB should ensure that Compliance Officers appropriately record the severity of all injuries and illnesses identified as violations.	09-6
10-6	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.	09-7
10-7	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."	09-9

Appendix A
FY 2010 New Mexico (OHSB) Enhanced FAME Follow-up Report
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-8	The reasons why a violation was changed as the result of an informal conference were not always documented in the case files.	New Mexico OHSB should ensure that the reasons why violations and/or penalties are changed at the Informal Conference are documented in the case file, in accordance with Chapter 8, Section I.A.5 of the New Mexico Field Operations Manual	09-10
10-9	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).	09-12

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
09-1	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 days and that all complainants were notified on time. The timeframes for	Completed

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
				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.	
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 guidelines in the NMFOM, and that Compliance Officers receive instruction on the new guidelines.</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 2009.</p>

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
09-03	Case files reviewed were not always fully and accurately documented.	<p>New Mexico OHSB should ensure that:</p> <p>7. Each case files contains a diary sheet that documents all actions taken, when they were taken, and by whom.</p> <p>8. Documentation of employee discussions relative to violations or complaint items is included in all case files.</p> <p>9. Employee exposure to hazards is documented.</p> <p>10. Employer knowledge is documented.</p> <p>11. 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 recognition); state how the hazard would cause death or serious physical harm; and identify the feasible abatement methods.</p> <p>OSHA-300 log data is documented and entered into</p>	<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 Internal Evaluation Program. The Compliance Program Manager responded to a similar recommendation from the SIEP by conducting training sessions that emphasized the</p>	<p>1. Compliance Officers were instructed in the use of the diary sheet, and inclusion in all case files was implemented in August 2010.</p> <p>2. Training on documentation of employee statements was provided to compliance staff on August 9, 2010, and August 30, 2010.</p> <p>3. Training on employee exposure documentation was provided to compliance staff on August 9, 2010, and August 30, 2010.</p> <p>4. Training on employer knowledge was provided to compliance staff on August 9, 2010.</p> <p>5. Training on general duty clause descriptions was provided to compliance staff on May 10, 2010.</p> <p>6. Training has been completed for all on board Compliance Officers, and</p>	<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>

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
		<p>the IMIS for all appropriate case files.</p>	<p>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 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>	<p>will be ongoing as new Compliance Officers are hired.</p>	

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
09-04	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.	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.	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.	Compliance Officers have been reminded to identify and document union participation in inspection activities.	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.
09-05	Average health citation lapse time in New Mexico is significantly higher than the National average. This has 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.	New Mexico OHSB should continue efforts to further reduce health citation lapse time.	OHSB will continue to utilize IMIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. 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	This has 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 lapse times as a result. The 71.3 calendar day	Continued We will continue to discuss strategies to reduce health citation lapse times at quarterly meetings. The specific steps OHSB has taken over the years to

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
			<p>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>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>	<p>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.</p>
09-06	<p>In a very small number of instances (4 of 225), violations were not properly classified in accordance with the severity of the potential injuries/illnesses that could result. These included asphyxia, systemic poisoning, and electrical shock being noted as minimal severity.</p>	<p>New Mexico OHSB should ensure that Compliance Officers appropriately record the severity of all injuries and illnesses identified as violations.</p>	<p>OHSB has conducted training for Compliance Officers to ensure that potential injuries and illnesses associated with identified hazards are appropriately described.</p>	<p>Training to ensure that potential injuries and illness associated with identified hazards are appropriately described to compliance staff on May 10, 2010, and August 9, 2010.</p>	<p>Continued Pending further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that violations are properly classified.</p>

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
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. (Deleted)	New Mexico OHSB should ensure that Compliance Officers complete the "Violation Calculation" guide on the back of the OHSB Field Worksheet, to ensure uniformity in assessing severity and probability for penalty calculations. (Deleted)			Deleted
09-09	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	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 Compliance Program Manager has emphasized to Compliance Officers the need to consider abatement period for violations based on the circumstances in each individual	Training on assessing the shortest timeframe within which the employer can reasonably be expected to correct the violation was conducted on May 10,	Continued Pending further Federal monitoring. Both the FY 2011 SIEP

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
	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.	the employer can reasonably be expected to correct the violation.”	case in order to achieve optimum results in abatement time intervals.	2010, for all compliance staff.	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
09-10	The reasons why a violation was changed as the result of an informal administrative review were not always documented in the case files.	New Mexico OHSB should ensure that the reasons why violations and/or penalties are changed at the Informal Administrative Review are documented in the case file.	The Bureau will review the current NMFOM sections on settlements after Informal Administrative Review, and will develop language to address this issue.	OHSB questions the advisability of always documenting the reasons for changing violations 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	Continued Pending review of draft NMFOM revisions and further Federal monitoring. Both the FY 2011 SIEP and Federal OSHA case file reviews should confirm that the NMFOM provisions

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
				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.	regarding settlements are being followed.
09-11	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.

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
09-12	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 available to assist as requested.

Appendix C
New Mexico State Plan
FY 2010 Enforcement Activity

	NM	State Plan Total	Federal OSHA
Total Inspections	692	57,124	40,993
Safety	542	45,023	34,337
% Safety	78%	79%	84%
Health	150	12,101	6,656
% Health	22%	21%	16%
Construction	417	22,993	24,430
% Construction	60%	40%	60%
Public Sector	67	8,031	N/A
% Public Sector	10%	14%	N/A
Programmed	406	35,085	24,759
% Programmed	59%	61%	60%
Complaint	15	8,986	8,027
% Complaint	2%	16%	20%
Accident	12	2,967	830
Insp w/ Viols Cited	227	34,109	29,136
% Insp w/ Viols Cited (NIC)	33%	60%	71%
% NIC w/ Serious Violations	84%	62.3%	88.2%
Total Violations	647	120,417	96,742
Serious	443	52,593	74,885
% Serious	68%	44%	77%
Willful	10	278	1,519
Repeat	4	2,054	2,758
Serious/Willful/Repeat	457	54,925	79,162
% S/W/R	71%	46%	82%
Failure to Abate	-	460	334
Other than Serious	190	65,031	17,244
% Other	29%	54%	18%
Avg # Violations/ Initial Inspection	2.7	3.4	3.2
Total Penalties	\$1,273,262	\$ 72,233,480	\$ 183,594,060
Avg Current Penalty / Serious Violation	\$ 1,225.50	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 1,087.60	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	28.3%	47.7%	40.9%
% Insp w/ Contested Viols	26.0%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	9.1	16.2	18.6
Avg Case Hrs/Insp- Health	13.2	26.1	33
Lapse Days Insp to Citation Issued- Safety	45.7	33.6	37.9
Lapse Days Insp to Citation Issued- Health	57.2	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	9	1,715	2,510

Appendix D State Activity Mandated Measures (SAMM)

NOV 12, 2010
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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
STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: NEW MEXICO

RID: 0653500

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate for each State	39	0	Negotiated fixed number
Complaint Inspections	3.00 13	0	
2. Average number of days to initiate for each State	0	0	Negotiated fixed number
Complaint Investigations	0	0	
3. Percent of Complaints where Complainants were notified on time	11 84.62 13	0 0	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	9 100.00 9	0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	199 100.00 199	3 75.00 4	100%
Public	75 100.00 75	0 0	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety Data (1 year)	11723 61.37	1671 59.67	2624646 47.3 National
Health Data (1 year)	191 3352 71.31	28 570 71.25	55472 750805 61.9 National
	47	8	12129

*NM 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D State Activity Mandated Measures (SAMM)

NOV 12, 2010

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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
STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: NEW MEXICO

RID: 0653500

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				
Safety	89	7	93201	
Data (3 years)	26.97	18.42	58.4	National
Health	330	38	159705	
Data (3 years)	11	2	10916	National
Other	24.44	14.29	50.9	
Data (3 years)	45	14	21459	
9. Average Violations per Inspection with Vioations				
S/W/R	500	73	428293	
Data (3 years)	2.10	2.02	2.1	National
Other	238	36	201768	
Data (3 years)	183	39	240266	National
Other	.76	1.08	1.2	
Data (3 years)	238	36	201768	
10. Average Initial Penalty per Serious Violation (Private Sector Only)	378750	59150	509912690	
Data (3 years)	1069.91	845.00	1360.4	National
11. Percent of Total Inspections in Public Sector	354	70	374823	
this State (3 years)	67	1	213	
	9.68	2.22	11.4	Data for
12. Average lapse time from receipt of Contest to first level decision	692	45	1862	
Data (3 years)	3445	563	3826802	
	104.39	93.83	217.8	National
13. Percent of 11c Investigations Completed within 90 days	33	6	17571	
	12	1	100%	
	92.31	100.00		
	13	1		
14. Percent of 11c Complaints that are Meritorious	3	0	1461	
Data (3 years)	23.08	.00	21.2	National
15. Percent of Meritorious 11c Complaints that are Settled	13	1	6902	
Data (3 years)	2	0	1256	
	66.67		86.0	National
	3	0	1461	

*NM 11.12
ANALYSIS AND REVISION

**PRELIMINARY DATA SUBJECT TO

Appendix E State Information Report (SIR)

SIR Q4 SIR35 101007 093301 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

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = NEW MEXICO

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 62.4 8493	100 69.4 144	11403 63.8 17860	180 68.7 262	21912 65.1 33647	307 64.6 475	43788 65.9 66434	532 62.7 848
B. HEALTH	488 30.6 1597	26 54.2 48	1094 33.7 3249	34 47.9 71	2232 35.0 6378	47 38.5 122	4202 35.1 11960	110 49.3 223
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4663 72.7 6413	13 10.3 126	9421 71.2 13232	33 15.3 215	17649 69.1 25525	72 20.8 346	34350 67.1 51214	191 28.7 665
B. HEALTH	451 57.8 780	3 16.7 18	880 53.9 1632	6 23.1 26	1756 55.4 3168	13 28.9 45	3238 53.4 6066	41 34.2 120
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	17341 81.6 21261	83 70.9 117	33678 81.5 41304	147 70.0 210	62211 81.0 76839	272 69.6 391	117447 80.1 146593	681 69.0 987
B. HEALTH	3233 69.6 4645	13 48.1 27	6183 70.5 8776	21 45.7 46	11743 70.2 16725	47 52.8 89	21554 69.6 30947	125 53.6 233
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	3054 15.0 20398	11 12.5 88	6515 16.3 39855	12 7.2 167	12732 17.2 74010	20 6.4 311	25040 17.7 141219	37 4.5 815
B. HEALTH PERCENT >60 DAYS	255 5.6 4548	1 5.3 19	633 7.3 8681	1 2.2 46	1406 8.5 16580	5 6.2 81	2977 9.6 30862	6 3.3 183

Appendix E State Information Report (SIR)

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U. S. D E P A R T M E N T O F L A B O R

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = NEW MEXICO

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								
OTHER--THAN--SERIOUS	587112	1400	1106734	1400	2038916	1400	3500911	2050
	837.5	1400.0	803.1	1400.0	894.3	1400.0	967.6	1025.0
	701	1	1378	1	2280	1	3618	2
B. HEALTH								
OTHER--THAN--SERIOUS	249175	0	434447	0	732953	0	1039303	250
	817.0	.0	801.6	.0	835.8	.0	842.2	250.0
	305	0	542	0	877	0	1234	1
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	9778	174	20529	338	38849	592	76136	1076
	5.8	9.2	5.7	7.3	5.5	6.0	5.5	5.9
	1679	19	3593	46	7112	99	13925	182
B. HEALTH								
	1864	60	3844	88	7547	157	14276	312
	2.1	6.7	2.0	4.6	1.9	4.2	1.8	4.1
	908	9	1940	19	3898	37	8070	76
7. VIOLATIONS VACATED %								
	1123	5	2474	12	5103	16	10425	36
	3.7	5.1	4.3	5.6	4.7	4.1	5.0	3.6
	29962	99	57441	213	108213	395	207527	1007
8. VIOLATIONS RECLASSIFIED %								
	844	0	1978	0	4276	0	9196	7
	2.8	.0	3.4	.0	4.0	.0	4.4	.7
	29962	99	57441	213	108213	395	207527	1007
9. PENALTY RETENTION %								
	15767907	55400	30073309	120200	57457651	207149	111052615	523949
	64.5	82.4	63.9	87.4	63.0	89.0	62.8	85.1
	24439885	67200	47032897	137550	91194322	232800	176868726	615825

Appendix E State Information Report (SIR)

U. S. D E P A R T M E N T O F L A B O R

PAGE 3

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

CURRENT MONTH = SEPTEMBER 2010

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 T A T E = N E W M E X I C O

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	100 69.4 144	6 66.7 9	180 68.7 262	20 74.1 27	307 64.6 475	30 73.2 41	532 62.7 848	62 66.7 93
B. HEALTH	26 54.2 48	1 12.5 8	34 47.9 71	1 8.3 12	47 38.5 122	3 12.0 25	110 49.3 223	31 48.4 64
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	83 70.9 117	56 88.9 63	147 70.0 210	57 85.1 67	272 69.6 391	111 81.0 137	681 69.0 987	188 79.7 236
B. HEALTH	13 48.1 27	1 25.0 4	21 45.7 46	4 50.0 8	47 52.8 89	19 61.3 31	125 53.6 233	62 60.8 102

Appendix E State Information Report (SIR)

1101007

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

PAGE 4

CURRENT MONTH = SEPTEMBER 2010

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = NEW MEXICO

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	610 22.5 2709	5 13.2 38	1134 23.2 4888	15 21.4 70	2052 21.9 9366	28 13.3 210	3827 23.0 16668	74 13.6 544
2. VIOLATIONS RECLASSIFIED %	306 11.3 2709	5 13.2 38	585 12.0 4888	5 7.1 70	1100 11.7 9366	17 8.1 210	2217 13.3 16668	48 8.8 544
3. PENALTY RETENTION %	4940512 65.3 7563023	18325 53.7 34100	7526155 62.3 12074308	25810 55.7 46375	12856359 58.1 22143463	71979 58.8 122375	23378285 58.4 40052611	196350 64.1 306525

Appendix F
State OSHA Annual Report (SOAR)

Available Separately

Appendix G New Mexico FY 2010 MARC

OSHA MARC REPORT
 REPORT END DATE: SEP 2010
 QUARTER: 4

DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 MANDATED ACTIVITIES REPORT FOR CONSULTATION

OCT 24, 2010
 PAGE 1 OF 1

PROJECT NAME: New Mexico

PUBLIC SECTOR

	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	14	
1. Percent of Initial Visits In High Hazard Establishments		Not Less than 90%
Number of High Hazard Visits	0	
Percent	100.00	
Number of Initial Visits	11	
2. Percent of Initial Visits to		Not Less than 90%
Initial Visits	0	
Visits to 250 Employees in Establishments	0	M.M.
Visits to 500 Employees or by Employer	0	100.00
J. Percent of Visits where Consultant Conferred with Employees		
Initial		
Number with Employer Conferences	0	"
Percent	100.00	
Number of Initial Visits	0	11
Follow-Up		
Number with Employer Conferences	0	2
Percent	100.00	
Number of Follow-Up Visits	1	2
Printed & Assisted Visits with Compliance Assistance ONLY		
Number with Employer Conference	0	0
Percent		
Number of T&A Visits	0	0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix G New Mexico FY 2010 MARC

<u>Number of Serious Hazards Verified</u>	27	115 }
<u>CORRECTED (IM ORIGINAL TIME OR ONSITE)</u>		
On-Site		
Within Original Time Frame	26	114
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for Last] Years, excluding Current Quarter)		

****PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION**

**Appendix H
FEDERAL PROGRAM CHANGES AND STATE RESPONSES**

Date	Number	Title	Date Response Due/Adoption Required?	State Response
07/08/10	CPL-02 (10-05)	Chemical Facilities NEP – Extension of OSHA Notice 09-06 (CPL 02) dated July 27, 2009	09/11/10/ NO	07/15/10 – New Mexico did not adopt the original NEP, so adopting a short extension of the program at this point is not necessary. We eagerly await the results of this pilot program and anticipate adopting any directives or procedures that result from this pilot. New Mexico has very few PSM Covered chemical facilities that are not already covered by emphasis programs. If we do perform a programmed or unprogrammed inspection at one of these facilities, we will use the inspection process and procedures defined in this NEP as a guideline for conducting the inspection.
06/18/10	CPL-02-00-149	Severe Violator Enforcement Program (SVEP)	08/28/10/ YES	07/26/10 – New Mexico adopted an identical program except for the use of previously transmitted State equivalent structure and offices to be used to replace federal structure and offices.
04/30/10	CPL-02-00-048	Enforcement Policies Relating to Floors/Nets and Shear Connectors	07/26/10/ NO	06/01/10 – New Mexico adopted this directive with only minor changes required to conform to New Mexico terminology, policies, and positions.
02/23/10	CPL-02-02-076	NEP Hexavalent Chromium	05/03/10/ NO	03/18/10 – New Mexico adopted this NEP with only minor changes to conform to New Mexico terminology, policies, and positions.

**Appendix H
FEDERAL PROGRAM CHANGES AND STATE RESPONSES**

Date	Number	Title	Date Response Due/Adoption Required?	State Response
02/19/10	CPL-02(10-02)	Revisions to NEP on Recordkeeping	05/16/10/ YES	03/18/10 – New Mexico adopted this NEP with only minor changes required to conform to New Mexico terminology, policies, and positions.
11/20/09	CPL-02-02-075	Enforcement Procedures for 2009 H1N1 Influenza	01/26/10/ NO	12/10/09 – New Mexico adopted an identical policy on 12/10/09.
11/09/09	CPL-02-00-148	Revisions to FOM November 2009	01/17/10/ YES	11/30/09 - OHSB transmitted their response, revised NMFOM, and comparison document in response to the November 2009 OFOM revisions, on 11/30/09. The document is currently under review in the Regional Office.
10/30/09	CPL-03-00-011	NEP – Flavorings	01/30/10/ NO	12/10/09 - New Mexico responded on 12/10/09 that they have no facilities manufacturing food flavorings containing diacetyl in the State. If a new facility begins manufacturing food flavorings containing diacetyl, they will reevaluate their response to the NEP.
09/30/09	CPL-02-09-08	Injury and Illness Recordkeeping National Emphasis Program	11/30/09/ NO	On 10/20/09, New Mexico responded that they would not adopt the NEP at this time. On 1/19/10, New Mexico transmitted a revised response, which states that they will adopt an identical NEP, with minor changes required to conform to New Mexico terminology, policies, and positions.
09/30/09	CPL-02-01-046	Rescission of OSHA’s de minimis policies relating to floors/nets and shear connectors	11/30/09/ NO	10/20/09 New Mexico adopted this rescission. The State did not initially adopt CPL 2-1.34 in 2002 when it was issued. With the removal of the de minimis language, NM has now adopted CPL 02-02-034 (CPL 2-1.34).

**Appendix H
FEDERAL PROGRAM CHANGES AND STATE RESPONSES**

Date	Number	Title	Date Response Due/Adoption Required?	State Response
8/18/08	CPL-03-00-010	NEP Petroleum Refineries - Extension of Time	10/30/2009/ NO	New Mexico adopted a Local Emphasis Program for Refineries in 2007, when the original Federal NEP was issued. Their LEP extends over several years, and will expire on September 30, 2011.

**APPENDIX I
STATE-INITIATED PLAN CHANGES**

Date of State Adoption	Description	Date Transmitted to Region
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards in for Warehouse Industry (NAICS 493)	09/29/09
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards in the Manufacture of Fabricated Metal Products (NAICS 331-333 and 335-336)	09/29/09
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards in for Construction Industry (NAICS 236, 237, and 238)	09/29/09
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards in for Oil & Gas Well Drilling and Servicing Industry (NAICS 211 and 213)	09/29/09
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards in for Hand Labor Agricultural Operations (NAICS 111 and 1151)	09/29/09
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards Associated with Silica Exposures (NAICS 236-238 and 327)	09/29/09
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards in for Refineries	09/29/09
10/01/09	Local Emphasis Program (LEP) for Health and Safety Hazards Associated with Waste Management and Remediation (NAICS 5621, 5622, and 562920)	09/29/09
06/09/2010	Local Emphasis Program (LEP) for the American Recovery and Reinvestment Act (ARRA)	6/09/10
03/09/2010	Changes to the OHSB Organizational Chart	3/09/10

**APPENDIX J
FEDERAL STANDARDS AND STATE RESPONSES**

Date	Number	Title	State Adoption Due Date	State Response
11/09/09	29 CFR PART 1910.102	Acetylene - Direct Final Rule	5/10/10	New Mexico adopted identical amendments to this standard on 11/09/09 and they became effective that date.
9/29/09	29 CFR PARTS 1910,1915, 1917, and 1918	Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment	3/09/10	New Mexico adopted identical standards for 29 CFR 1910. New Mexico does not cover the maritime industry (1915, 1917, and 1918). The standards became effective on 10/9/09.

**APPENDIX K
FY 2010 INTERNAL TRAINING**

Description	Administratio n	Compliance	Consultation	Total
Accident Investigation		1		1
Advanced Accident Investigation		1		
Basic Rigging Course (Crane Services or Crosby Group)		1	5	6
Basic Whistleblower	1			1
Combustible Dust		1		1
Confidentiality Training	2			2
Consultation Systems Assessment Training			2	2
Cranes, Derricks and Material Safety		3	3	6
Defensive Driving	1	4	1	6
Excavation, Trenching and Soil Mechanics		2		2
Hazardous Materials		1		
Human Resource and Office of General Counsel Inspector Training		7		7
Industrial Hygiene	1	4	1	6
Introduction to Accident Investigation		1	1	2
Living in a Union Environment		1	1	2
Machinery and Machine Guarding Standards		1	1	2
Machinery and Machine Guarding Standards			1	1
Orientation to Industrial Hygienist Laboratory			1	1
Permit-Required Confined Space Entry		1		1

**APPENDIX K
FY 2010 INTERNAL TRAINING**

Description	Administration	Compliance	Consultation	Total
Recordkeeping Rules Seminar		1		1
Standards for General Industry		4	2	6
Standards for the Construction Industry		4		
Storm Water Pollution Prevention		1		
Trainer Course in OSH Standards for the Construction Industry		2		2
Trainer Course in Standards for General Industry		1		1
Webinar - Recordkeeping NEP Interviewing	5	10		15
Webinar Cranes and Derricks	2	5	2	9
Webinar H1N1 Compliance Directive		3		3
Webinar Penalty Policies	3	9		12
Webinar Roadway Safety Training Tool Introduction	1	3	3	7
Work Zone Traffic Control		1		1
Totals	16	73	24	106