

FY 2020
Follow-up Federal Annual Monitoring Evaluation (FAME) Report
New Mexico Occupational Health and Safety Bureau (NMOHSB)



Evaluation Period: October 1, 2019 – September 30, 2020

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Prepared by:
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I. Executive Summary

This is an annual evaluation of the operation of the State of New Mexico Occupational Health and Safety Bureau (OHSB) under the 23(g) State Plan grant. This report was prepared under the direction of Eric. S. Harbin, Regional Administrator, Region VI, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor and covers the period from October 1, 2019 to September 30, 2020.

The primary purpose of this report is to assess the State Plan's progress in Fiscal Year (FY) 2020 in resolving outstanding findings from the previous FY 2020 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report. In the fiscal year 2020, the New Mexico Occupational Health and Safety Bureau ("OHSB" or "the Bureau") focused on its mission to assure every employee healthful and safe working environment.

OHSB's overall performance, as it related to mandated activities and the implementation of policies and regulations, continues to be at an acceptable level with the exception of certain elements noted in this report.

There are two continued findings for FY 2020. Finding FY 2020-01 notes that in 19% (10/54) of the case files reviewed, employees were not interviewed and 35% (19/54) of these case files lacked documentation of employee interviews. Finding FY 2020-02 highlights that OHSB safety and health inspections declined to 178 inspections out its goal of 345, representing only 50.9% (140) of their safety goal and 54.3% (38) of their health goal.

During FY 2020, New Mexico conducted activities in its State Emphasis Programs (SEPs) and applicable National Emphasis Programs (NEPs), including SEPs within the industries of construction, primary and fabricated metals, oil and gas well drilling and servicing, and hospitals and nursing care.

The OHSB Strategic Partnership for Construction and Alliance programs were integral to overall success in reducing state injury rates. The OHSB and the New Mexico Construction Safety Coalition continued to improve partnership processes in the construction industry with the sharing of information and ideas to promote work site health and safety.

New Mexico received one new Zia STAR Voluntary Protection Program Application during the year 2020. There are Seventy-two (72) member companies participating in six industry association partnerships. Each held quarterly meetings throughout the year.

New Mexico continues to experience Days Away, Restricted, or Transferred (DART) rates significantly lower than nationwide rates.

II. State Plan Background

A. Background

The New Mexico Occupational Health and Safety Program is administered by the Occupational Health and Safety Bureau, which is part of the Environmental Protection Division of the New Mexico Environment Department. The State Plan Cabinet Secretary of the New Mexico Environment Department is James C. Kenney, and the OHSB Bureau Chief is Robert Genoway.

The New Mexico OHSB covers all private sector industries and state and local government workers within the state, except maritime (longshoring, ship building, and ship breaking), federal workers, Tribal lands, military installations, and other areas of exclusive federal jurisdiction.

The State of New Mexico has a total work force of 834,612, of which 636,159 are private sector workers and 149,391 are state and local government workers. It has approximately 59,864 private sector businesses and 3,214 public agencies (excluding the federal government). From 2015 to 2019, the major industry sector that experienced the largest numeric and percentage growth in New Mexico was professional and business services, which realized an increase of 2,800 jobs. The industry's employment grew by 2.8 %.

The Bureau faced its greatest historical challenge in fighting the COVID-19 pandemic as an occupational hazard while engaging in its ongoing strategic plan activities to protect New Mexico workers.

The State of New Mexico mandated 100% of positive cases be reported in the state. The process yielded over 42,000 complaints from the state; OHSB received over 1,000 of these for further processing.

New Mexico's fatality numbers increased due to COVID-19, much like the rest of the country. On March 11, 2021, New Mexico mandated 100% contact tracing for positive COVID-19 cases. OHSB's additional responsibility to assist with contact tracing for positive workplace case identification impacted their primary functions under the 21(d) and 23(g) grants.

OHSB set up an alternate email account to receive notifications from the National Contact Center (NCC) and distinguish COVID complaints from safety/health complaints. Calls of fatalities, catastrophes, and events reported from the National Contact Center are sent to the new email address and reviewed by selected managers and designated bureau employees. This ensured high priority emails were differentiated among the increased amount of emails received in their existing email complaint system and not overlooked.

OHSB continued to work with the New Mexico Construction Safety Council (CSC) during the pandemic. The CSC cooperative effort integrated best practices for COVID-19 prevention at worksites during the pandemic. The CSC is comprised of OHSB, the

Associated Building Contractors (ABC), Associated Contractors of New Mexico (ACNM), Associated General Contractors (AGC), American Subcontractors Association of New Mexico, Mechanical Contractors Association of New Mexico, and the New Mexico Utilities Contractors Association (NMUCA). OHSB worked with established Alliances including the Southeast New Mexico Service, Transmission, Exploration and Production Safety Network.

Through targeted enforcement, cooperative assistance, and outreach efforts, OHSB used a broad approach to reach high-hazard industries both prior to and during the COVID-19 pandemic. OHSB also participated in several OSHA NEPs including Primary Metals, Hexavalent Chromium and Process Safety Management in Chemical Processing Facilities. The Bureau continued its SEP for silica exposure in the construction and earth products manufacturing industries.

During FY 2020, 20 safety inspection abatement cases and four health inspection abatement cases were not closed. These hazards remained unabated for more than 60 days after the cases were closed for safety inspections and more than 90 days after the cases were closed for health inspections. OSHA will continue to monitor OHSB's abatement practices to ensure improvement in this area.

OITSS (OSHA Information Technology Support System) Whistleblower data shows that OHSB received 67 whistleblower complaints. Three of these complaints appear to be duplicate entries with the same docket number and complainant.

Of the 64 whistleblower complaints received in FY 2020, eliminating the duplicates, fifty-three 53 were administratively closed, one was settled, six were dismissed, and four were still open at the end of FY 2020. 18 of the whistleblower complaints received in FY 2020 were coded in OITSS as COVID-19. Of these 18 complaints, two were settled, three were dismissed, one is pending intake (screening status), one is pending investigation and eleven were administratively closed.

OHSB continued to have greater than normal staff turnover throughout FY 2018, FY 2019 and FY 2020. During FY 2020, seven of the 29 staff positions (24%) were vacant, which affected the achievement of OHSB's goals.

As of February 5, 2020, OHSB currently has two administrative staff vacancies, two consultation staff vacancies, two safety Compliance Officer (CO) vacancies and one health CO vacancy. They are actively trying to fill these positions. However, they have had problems getting positions advertised and filled through the government's hiring system. The State Plan struggles with low salaries compared with the private sector, which is an impediment to recruiting and retention.

Fully staffed, OHSB is comprised of 29 positions:

- One Bureau Chief
- One Discrimination Investigator

- One Compliance Assistant
- One Administrative Program Manager, who oversees four filled positions. Currently, there are two vacancies in the administrative program.
- One Consultation Program Manager, who oversees four filled positions. Currently, there are two vacancies in the consultation program.
- One Compliance Program Manager, who oversees one Supervisor and seven filled positions. Currently, there are three vacancies in the compliance program.

The Federal funding for the New Mexico 23(g) grant for Fiscal Year (FY) 2020 was \$1,013,800, with a total funding allocation of \$2,027,600. The program lapsed funds, however, resulting in the return of \$12,174.59 in unused federal dollars. The bureau did not successfully manage its funds to ensure they were fully obligated during the period. OHSB also de-obligated \$50,250 in 23(g) federal funds in 2019.

OSHA conducted a review of OHSB’s 23(g) financial grant and there were no findings. OHSB abides by the exemptions and limitations on OSHA appropriations, and they conducted no inspections outside of those guidelines.

Five Year Funding Comparison

Fiscal Year	Federal Award (\$)	State Plan Match (\$)	Total Funding (\$)	One Time Funding	De-obligated /lapsed funds
2020	1,013,800	1,013,800	2,027,600	0	12,174.59
2019	994,500	994,500	1,989,000	0	50,250
2018	994,500	994,500	1,989,000	0	19,500
2017	994,500	994,500	1,989,000	0	4,300
2016	994,500	994,500	1,989,000	14,300.00	10,728.59

New Mexico administers a combined onsite consultation program under 21(d) and 23(g) funding. Public sector consultation is provided to state and local government agencies under the 23(g) State Plan grant, while private sector consultation is provided under a 21(d) Cooperative Agreement.

Most of the staff members work out of the Santa Fe or Albuquerque offices, with one CO stationed in Las Cruces and one CO in Roswell. This has allowed OHSB to provide more rapid response to reports of hazards, including imminent danger situations and accidents, as detailed in this report.

B. New Issues

Fatalities were not all responded to in one day and abatement is not completed in some cases. During FY 2020, there were 10 of 12 Fatalities responded to in one day. The expectation for all State Plans is for 100% of fatalities to be responded to in one day. OHSB was 83.33% effective in meeting the target goal.

Two additional new observations have been added related to lapse time and in compliance rates. The in compliance rate for safety inspections of 41.09% exceeded the Further Review Level (FRL) range of 24.82% to 37.24%. The average lapse times for safety and health inspections exceeded the FRL based on a three-year national average. Lapse times were 86.42 days for safety and 97 days for health. While these particular observations are new this year, these have been ongoing issues within OHSB.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report
- Mandated Activities Report for Consultation
- State OSHA Annual Report (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan

Each State Activity Mandated Measures (SAMM) Report has an agreed upon Further Review Level (FRL) that is either a single number or a range of numbers above and below the national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity.

B. Findings and Observations

This FY 2020 follow-up FAME report contains two continued findings and three new observations. There were no new findings and no completed findings. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2019 recommendation in detail. Appendix D describes the State Activity Mandated Measures Report. Appendix E presents the State Plan's FY 2020 State OSHA Annual Report.

Findings (Status of Previous and New Items)

Completed Findings

None

Continued Findings

Finding FY 2020-01: (Formerly FY 2019-01, FY 2018-01, FY 2018-OB-1) In 10 of 54 (19%) of the non-fatality case files reviewed during the FY 2019 Comprehensive FAME review, employees were not interviewed. Also, 19 of 54 (35%) of these case files lacked documentation of employee interviews.

Status: Open. OHSB is ensuring basic interview documentation follows their FOM. End of the Year SAMM 13 showed 99.44% of inspections had employee walk around or interviews. This is an indication that interviews and documentation may be included in the case files. However, a comprehensive case file review is needed to ensure completion.

Finding FY 2020-02: (Formally FY 2019-02, FY 2018-05) In FY 2020, OHSB conducted 38 health inspections, which was 54.3% of their goal of 70. OHSB conducted 140 Safety Inspections, which was 51% of their goal of 275. The 178 total inspection was 52% of its goal of 345.

Status: Open. The FRL range for inspections was 261.25 to 288.75 for safety inspections, of which 140 were conducted. The FRL range for health inspection was 66.5 to 73.5, of which 38 were conducted. This continues to be an area of challenge for the New Mexico State Plan and an area of concern for OSHA.

New Findings:

None

Observations

FY 2020 Observations

Observation FY 2020-OB-01: In FY 2020, two of 12 (83.33%) work related fatality investigations were not responded to within one day. The FRL for this item is fixed for all State Plans at 100%.

Status: This observation was identified in the End of the Year SAMM report. The State Plan responded to the remaining 10 covered fatalities within one day of notification. OSHA believes this is due in part to the increased COVID-19 responses and complaints.

Federal Monitoring Plan: Quarterly meetings held with OHSB will focus on progress made during the year to resolve these concerns.

Observation FY 2020-OB-02: New Mexico's in compliance rates for safety inspections did not meet the FRL based on a three-year national average. During FY 2020, the State Plan had a safety inspection in compliance rate of 41.09%, with a FRL range of 24.82% to 37.24%.

Status: The State Plan believes this is due to their opening of multiple investigations at each multi-employer construction site. This practice creates higher in compliance rates. At the same time, it is troubling given their low numbers of inspections. OHSB should examine its targeting program to ensure it is best utilizing its resources to target high-hazard industries. The in compliance rate for health inspections of 19.35% was lower than the national average for in compliance inspections national average. The latter (health inspections) is a positive indicator.

Federal Monitoring Plan: Quarterly meetings held with OHSB will focus on progress made during the year to resolve these concerns.

Observation FY 2020-OB-03: The average lapse time for safety and health inspections exceeded the Further Review Levels based on a three-year national average range (+-20%). New Mexico's average lapse time for safety inspections was 86.42 days, with an acceptable range of 40.46 to 60.70 days. The average lapse time for health inspections was 97 days, with an acceptable range of 48.31 to 72.47 days.

Status: It should be noted the high lapse times were identified prior to COVID-19 reaching pandemic levels in New Mexico and has been a concern in previous years.

Federal Monitoring Plan: Quarterly meetings held with OHSB will focus on progress made during the year to resolve these concerns.

C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL, which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2020 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure. SAMMs 7, 9, 10, and 11 all result in findings and observations and have been discussed previously. The State Plan was outside the FRL on the following SAMMs:

SAMM 1a – Average Number of Work Days to Initiate Complaint Inspections (State Formula)

Discussion of State Plan Data and FRL: In FY 2020, OHSB averaged 10.89 days to initiate a complaint inspection. The FRL is negotiated between OSHA and the State Plan at 5 days.

Explanation: Although work-at-home orders and shutdowns related to COVID-19 impacted OHSB's work, OHSB needs to improve their timely response to complaints. This is a cause for concern and OSHA will continue to monitor this indicator and discuss with the State Plan during quarterly meetings.

SAMM 2a – Average Number of Work Days to Initiate Complaint Investigations (State Formula)

Discussion of State Plan Data and FRL: In FY 2020, OHSB averaged 3.06 days to initiate a complaint inspection. The FRL is negotiated between OSHA and the State Plans at zero.

Explanation: Although work-at-home orders and shutdowns related to COVID-19 impacted OHSB's work, OHSB needs to improve their timely response to complaints. This is a cause for concern and OSHA will continue to monitor this indicator and discuss with the State Plan during quarterly meetings.

SAMM 14 – Percent of 11(c) Investigations Completed within the 90 days

Discussion of State Plan Data and FRL: In FY 2020, OHSB completed only 17% of its 11(c) investigations within 90 days. The FRL for all State Plans is fixed at 100%.

Explanation: The varying complexity of the 11(c) investigations, as well as the difficulty in conducting such investigations during the COVID pandemic, makes this indicator difficult to assess during this period. OSHA will continue to monitor this indicator and discuss with the State Plan during quarterly meetings.

SAMM 16 – Average Number of Calendar Days to Complete an 11(c) Investigation

Discussion of State Plan Data and FRL: In FY 2020, OHSB averaged 188 days to complete an 11(c) investigation. The FRL for all State Plans is fixed at 90 days.

Explanation: The varying complexity of the 11(c) investigations, as well as the difficulty in conducting such investigations during the COVID pandemic, makes this indicator difficult to assess during this period. OSHA will continue to monitor the progress of this indicator during quarterly meetings.

SAMM 17 – Percent of Enforcement Presence

Discussion of State Plan Data and FRL: In FY 2020, OHSB's enforcement presence was 0.51%. The FRL was +/- 25% of 1.09, a range of 0.82 to 1.36.

Explanation: Despite its policy of opening up multiple inspections with every construction worksite visit, New Mexico OHSB has a limited enforcement presence in the state. This is a serious cause for concern and indicative of broader questions about its targeting program. OSHA will continue to monitor the progress of this indicator during quarterly meetings.

Appendix A – New and Continued Findings and Recommendations

FY 2020 New Mexico Follow-Up FAME Report

FY 2020-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2020-01	During FY 2019, in 19% (10/54) of the case files reviewed, employees were not interviewed and 35% (19/54) of these case files lacked documentation of employee interviews.	OHSB should ensure basic employee interview documentation is consistently in the case file and adequately documented using narrative to explain what occurred during the inspection or why citations were or were not recommended, as required by OHSB FOM.	FY 2019-01 FY 2018-01 FY 2018-OB-01
FY 2020-02	In FY 2020, OHSB conducted 54 health inspections, which was 53% below their goal of 115. The range of acceptable data not requiring further review is from 109.25 to 120.75 for health. OHSB conducted 140 Safety Inspections, which was 51% of their goal of 275. The 178 total inspection was 52% of its goal of 345.	The State Plan should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach their health inspection goals.	FY 2019-02 FY 2018-05

Appendix B – Observations Subject to New and Continued Monitoring

FY 2020 New Mexico Follow-Up FAME Report

Observation # FY 2020-OB-#	Observation# FY 20XX-OB- # or FY 20XX- #	Observation	Federal Monitoring Plan	Current Status
FY 2020-OB-01		In FY 2020, two of 12 (17%) of fatalities were not responded to within one day.	Quarterly meetings held with OHSB will focus on progress made during the year to resolve these concerns.	New
FY 2020-OB-02		New Mexico's in compliance rates for safety and health inspections did not meet the FRL based on a three-year national average. During FY 2020, the State Plan had a safety inspection in compliance rate of 41.09%, with a FRL range of 24.82% to 37.24%.	Quarterly meetings held with OHSB will focus on progress made during the year to resolve these concerns.	New
FY 2020-OB-03		Average lapse time for safety and health inspections exceeded FRL. Safety lapse time was 86.42 days and health lapse time was 97 days.	Quarterly meetings held with OHSB will focus on progress made during the year to resolve these concerns.	New

Appendix C - Status of FY 2019 Findings and Recommendations

FY 2020 New Mexico Follow-Up FAME Report

FY 2019-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2019-01	19% Of case files reviewed lacked employee interview documentation and or employee interviews.	OHSB should follow their FOM in entering basic interview documentation in casefiles	OHSB will continue to schedule and ensure completion of courses and conduct internal training to address documenting interviews.	Not completed	Open March 1, 2021
FY 2019-02	OHSB conducted 54 health inspections, which was 53% below their goal of 115, the range of acceptable data not requiring further review is from 109.25 to 120.75 for health.	OHSB should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach their health inspection goals.	Although OHSB expects health inspections to continue to be challenging during FY2020, OHSB will continue to work with the Regional Office to modify its inspection goals as needed. OHSB expects to achieve its full health inspection goals.	Not completed	Open March 1, 2021

**Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
FY 2020 New Mexico Follow-Up FAME Report**

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: New Mexico – OHSB			FY 2020	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	10.89	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	6	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	3.06	0	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	1.14	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.81	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.76 to 1.14 for OTS.
		Other: 0.55	+/- 20% of Other: 0.95	
6	Percent of total inspections in state and local government workplaces	3.93%	+/- 5% of 7.25%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not

**Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
FY 2020 New Mexico Follow-Up FAME Report**

U.S. Department of Labor				
				requiring further review is from 6.88% to 7.61%.
7	Planned v. actual inspections – safety/health	S: 140	+/- 5% of S: 275	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 261.25 to 288.75 for safety and from 66.50 to 73.50 for health.
		H: 38	+/- 5% of H: 70	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,396.61	+/- 25% of \$2,964.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,223.65 to \$3,706.78.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,320.00	+/- 25% of \$1,967.64	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,475.73 to \$2,495.55.
	b. Average current serious penalty in private sector (26-100 workers)	\$2,671.691	+/- 25% of \$3,513.45	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,635.09 to \$4,391.81.
	c. Average current serious penalty in private sector (101-250 workers)	\$4,649.26	+/- 25% of \$5,027.02	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,770.27 to \$6,283.78.
	d. Average current serious penalty in private sector	\$4,286.32	+/- 25% of \$6,190.91	The further review level is based on a three-year national average. The

**Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
FY 2020 New Mexico Follow-Up FAME Report**

U.S. Department of Labor				
	(greater than 250 workers)			range of acceptable data not requiring further review is from \$4,643.09 to \$7,738.64.
9	Percent in compliance	S: 41.09%	+/- 20% of S: 31.03%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.82% to 37.24% for safety and from 29.72% to 44.58% for health.
		H: 19.35%	+/- 20% of H: 37.15%	
10	Percent of work-related fatalities responded to in one workday	83.33%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 86.42	+/- 20% of S: 50.58	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 40.46 to 60.70 for safety and from 48.31 to 72.47 for health.
		H: 97	+/- 20% of H: 60.39	
12	Percent penalty retained	78.67%	+/- 15% of 67.51%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 57.38% to 77.64%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.44%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	17%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	20%	+/- 20% of 18%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 14.40% to 21.60%.

**Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report
FY 2020 New Mexico Follow-Up FAME Report**

U.S. Department of Labor				
16	Average number of calendar days to complete an 11(c) investigation	188	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	0.51%	+/- 25% of 1.09%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.82% to 1.36%.

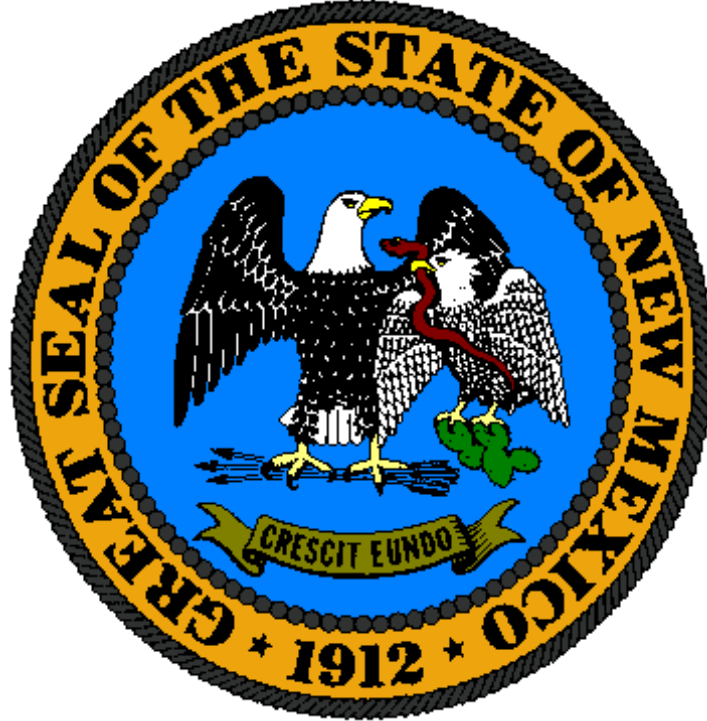
NOTE: the national averages in this report are three year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 9, 2020, as part of OSHA’s official end-of-year data run.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 New Mexico Follow-Up FAME Report

**New Mexico Environment Department
Occupational Health and Safety Bureau**

State OSHA Annual Report



Fiscal Year 2020

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 New Mexico Follow-Up FAME Report

October 1, 2019 – September 30, 2020

Michell Lujan Grisham, Governor
James C. Kenney, Cabinet Secretary
Robert Genoway, Bureau Chief

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

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Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 New Mexico Follow-Up FAME Report

I. Executive Summary

In the fiscal year 2020, the New Mexico Occupational Health and Safety Bureau (“OHSB” or “the Bureau”) focused on its mission to assure every employee healthful and safe working conditions. The Bureau also faced its greatest historical challenge in fighting the COVID-19 pandemic as an occupational hazard while engaging strategic plan activities to protect New Mexico workers.

The COVID-19 pandemic dominated OHSB’s focus during the second half of FY2020. The Bureau took a lead role among state agencies in prevention efforts ranging from outreach and assistance to enforcement including fatality investigations. A summary of OHSB COVID-19 efforts and activities is included in Appendix B of this report.

Through targeted enforcement, cooperative assistance, and outreach efforts, the OHSB used a broad approach to reach industries most in need of reductions in injuries and illnesses both prior to and during the COVID-19 pandemic. New Mexico engaged activities in its State Emphasis Programs (SEPs) and applicable National Emphasis Programs (NEPs) including SEPs within the industries of construction, primary and fabricated metals, oil and gas well drilling and servicing, and hospitals and nursing care during FY2020. The Bureau continued its SEP for silica exposure in the construction and earth products manufacturing industries. OHSB also participated in several OSHA NEPs including Primary Metals, Hexavalent Chromium and Process Safety Management in Chemical Processing Facilities.

The OHSB Strategic Partnership for Construction (OSPC) and Alliance programs were integral to overall successes in reducing state injury rates. The OHSB and the New Mexico Construction Safety Coalition (CSC) continued to improve partnership processes in the construction industry with sharing of information and ideas to promote site health and safety. The cooperative effort integrated best practices for COVID-19 prevention at

Regional OSHA and OHSB management recognized the career and service of a retiring compliance supervisor in December 2020



worksites during the pandemic. The CSC is comprised of OHSB, the Associated Building Contractors (ABC), Associated Contractors of New Mexico (ACNM), Associated General Contractors (AGC), American Subcontractors Association of New Mexico, Mechanical Contractors Association of New Mexico, and the New Mexico Utilities Contractors Association (NMUCA). The OHSB worked with established Alliances including the Southeast New Mexico Service, Transmission, Exploration, and Production Safety Network. The OHSB continued to experience significant staff turnover throughout FY2020 with an average compliance officer vacancy rate of 20%. The Bureau also hired an Administrative and Operations Manager in FY2020 and initiated a process of restructuring of administrative and financial operations to align with Environment Department strategic plans.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)

FY 2020 New Mexico Follow-Up FAME Report

Progress toward Strategic Plan Accomplishment

Through strategic planning and regular meetings among management, compliance, and cooperative programs staff, OHSB coordinated efforts to reach industries and employees where the greatest potential for injuries and illness exist. The Bureau's performance plan for FY2020 focused on two major strategic areas that included activities for affecting reductions in injuries, illnesses and fatalities. While the Bureau did not achieve its inspection goals, it engaged in substantial activities to prevent workplace spread of COVID-19 in FY2020 as outlined in Appendix B of this report.

Enforcement Activities

The OHSB continued to implement state emphasis programs for fabricated metal products, oil and gas well drilling and servicing operations, construction, exposure to silica, hospitals and nursing care facilities. The Bureau also engaged in enforcement at facilities with hazards involving primary metals processing and use of hexavalent chromium through the adoption of national emphasis programs. The state used SEPs to target industries with high injury and fatality rates.

New Mexico continued to place significant enforcement emphasis in the construction and oil and gas industries. The number of fatal accidents in both these industry sectors represent a large proportion of occupational fatalities in the state as a long-term trend. Fatal accidents in the oil and gas industry continued to represent the highest among all sectors. OHSB focused resources toward enforcement in the oil and gas industry in FY2020 based on the continuing high rate of fatalities within the industry as compared to rates in all industry within the Bureau's jurisdiction. Additional emphasis was placed on inspecting tank battery sites where employees have been injured and killed during explosions, fires and exposure to hydrocarbon vapors.

FY2020 inspection of an oil and gas tank battery



New Mexico Senate Bill 229 (SB 229), signed into law on April 6, 2017, amended the state Occupational Health and Safety Act, 50-9 NMSA 1978, to adjust maximum and minimum penalties in conformance with federal law. The legislation adopted the equivalent federal maximum and minimum penalty levels and authorized the NMED

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Cabinet Secretary to increase levels annually to account for inflation. OHSB subsequently amended its policies to increase assessed penalties. Among the differences between federal and state policy, New Mexico records inspection activity for construction companies that follow regulatory requirements. This ensures those companies receive recognition of their safety efforts and qualify for penalty reductions. While the policy results in an “in-compliance” rate greater than the nationwide average for inspections, OHSB believes compliant employers should receive appropriate recognition for maintaining safe workplaces.

Whistleblower Protection

The OHSB continues to build upon the success of its whistleblower discrimination investigation program. In FY2020, the Bureau received 112 discrimination complaints, opened 10 investigations, made 10 determinations, and found merit in 3 cases.

Cooperative Program Activities

Zia Star Voluntary Protection Program (VPP)

The OHSB strengthened its Zia Star Voluntary Protection Program by adding an additional worksite and reviewing current VPP participants during the year. The Bureau received one new application for participation in FY2020 and approved the site. There are currently eight participants in the Zia Star program. The following is a list of program participants:

New Mexico Zia Star VPP	
Company	Location
Georgia Pacific	Santa Teresa
Southwest Generation, Valencia Power, LLC	Belen
Intel Corporation	Rio Rancho
NextEra Energy Resources	House
NuStar Energy	Albuquerque
Raytheon Missile Systems	Albuquerque
The ROCO Corporation	Rio Rancho
Tri-State Generation and Transmission	Prewitt

OHSB Strategic Partnership in Construction (OSPC) Program

New Mexico improved strategic partnership programs through comprehensive onsite verification activities and by conducting reviews of existing agreements. The Bureau currently has partnerships with industry groups such as the Associated General Contractors, the Associated Contractors of New Mexico, the Associated Builders and Contractors, the New Mexico Utility Contractors Association, the Mechanical Contractors Association, and the American Subcontractors Association. OHSB and partner members focus work on common safety issues. There are 72 member companies participating in six industry association partnerships.

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The New Mexico Construction Safety Coalition held quarterly meetings in FY2020 including remote meetings during the second half of the year. The Coalition is composed of OHSB staff and representatives for each of the six OSPC partnership associations.

Public Sector Consultation

The OHSB Consultation Program conducted 41 visits in the public sector during FY2020 including 17 health and 19 safety visits.

Consultation Program 23(g) Public Sector Visits for FY 2020 – Q1 - Q4	
Visit Type	Number of Visits
Public Sector Visits Goal	30
Both (Includes 5 T&E Visits)	5
Health (Includes 1 Follow Up Visit)	17
Safety (Includes 3 Follow Up Visits)	19
Total Visits	41

Compliance Assistance and Outreach

Career Fairs – OHSB provided information on the field of occupational health and safety at the College Career Connection Day in Albuquerque in November 2019. The APS-sponsored event was targeted to Native American high school students and included workshops and presentations by colleges, businesses, and agencies including OHSB and State Forestry.

OHSB compliance assistance specialist explains respiratory protection to students at CNM Career Day



In February 2020, OHSB compliance assistance and enforcement staff presented health and safety information to students at the Central New Mexico (CNM) College Career Day in Albuquerque.

Tree Care Outreach – An OHSB compliance assistance specialist participated in the 2020 Think Trees New Mexico Urban Tree Care Conference as a member on the

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New Mexico Tree Worker Safety panel. OHSB also provided technical assistance and publications for approximately 300 participants representing public and private sector arborists, landscapers and landscape architects.

Oil and Gas Outreach – OHSB participates in quarterly meetings of the Southeast New Mexico Service, Transmission, Exploration and Production Safety (STEPS) Network, presenting information on OSHA programs including the Safe + Sound campaign. OHSB also has an Alliance agreement with STEPS. At a January 2020 meeting the OHSB Consultation Manager was recognized for her cooperative work with the oil and gas industry at the STEPS Network’s January 2020 quarterly meeting in Hobbs. The Network is comprised of representatives from government and operators, contractors, vendors, and suppliers engaged in oil and gas industry activities in the Permian Basin.

OHSB Consultation Manager receives recognition award from STEPS Network in January 2020



Medical Resident Training – OHSB continued its participation in the University of New Mexico (UNM) Medical School’s Occupational Medicine Rotation. The Bureau has coordinated occupational medicine rotations with the UNM Center for



Occupational and Environmental Health Promotion since 2007 with the purpose of providing information about health and safety hazards in the workplace as well as OSHA regulations, including reporting and recordkeeping requirements and OHSB’s State Emphasis Program for hospitals, nursing and residential care facilities. In November 2020, OHSB’s VPP Coordinator and a resident of the UNM Preventive Medicine Residency Program visited a New Mexico Zia Star Voluntary Protection Program (VPP) energy partner site as a part of physician rotations.

OHSB VPP Coordinator and UNM medical resident tour VPP energy worksite

Administrative Activities

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The Bureau's Administration Section historically provides necessary support functions including financial, information systems, and labor statistics management. Financial staff meets regularly with management to ensure budgets are properly projected and funds appropriately expended. OHSB continues to use the OSHA Information System (OIS) for enforcement data. Labor statistics staff continues to excel at injury, illness, and fatality data collection.

During the second half of FY2021, OHSB plans to restructure its Administrative Section into a Planning and Operations Section to achieve a more robust strategic planning and performance program and integrate financial tasks within the Administrative Services Division.

Federal Annual Monitoring Evaluation (FAME) Recommendations

Federal OSHA conducts an annual review of OHSB programs through the Federal Annual Monitoring Evaluation (FAME). From the FY2019 FAME, OSHA made two recommendations for improvement of the New Mexico state plan. The following summarize OHSB actions toward implementing the federal recommendations during FY2020.

A. Recommendation 19-1:

OHSB should ensure basic employee interview documentation should be consistently in the case file and adequately documented using narrative to explain what occurred during the inspection or why citations were or were not recommended, as required by the OHSB FOM.

OHSB historically maintains high rates of penalty retention and low rates of vacating and reclassifying violations, demonstrating the quality of issued citations. As part of yearly reviews, OSHA continues to provide insight and assistance in further strengthening the quality of OHSB inspection processes.

During FY2020 OHSB worked with compliance staff to enhance documentation of employee interviews and discussions. To drive continuous improvement, supervisors reviewed case files to ensure the adequacy of documentation on an on-going basis. Management reviewed violation documentation periodically during internal compliance officer (CO) training sessions and employee evaluations. The Bureau also provided COs with formal interview training during the week of December 9, 2019. OHSB continues to schedule and ensure completion of courses during FY2020 as available during the ongoing COVID-19 pandemic.

B. Recommendation 19-2:

The State Plan should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach their health inspection goals.

OHSB experienced a rate of staff turnover in FY2019 that was much higher than historical averages. The Bureau carried an average vacancy rate among health compliance officers of approximately 42 percent during the fiscal year. Factors influencing the turnover rate included a strong economy in New Mexico resulting in

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losing staff to the private sector and an increase in hiring of health and safety professionals at federal facilities in the state.

During FY2019 OHSB made a concerted effort to fill staff vacancies and provide newly hired staff with training needed to conduct inspections. The current vacancy rate among health officers is 20% and the Bureau has been unable to fill one of the three health officer positions due to insufficient budget. OHSB expected low numbers for both health and safety inspections during FY2020 due to redirecting of health resources to the ongoing COVID-19 pandemic. In anticipation of increasing field activities in FY2021, OHSB will direct the resources needed to achieve health inspection goals by the end of FY2021.

Conclusion

The OHSB utilized available resources to deliver enforcement and compliance assistance activities to target industries where workers are most at risk of injury and illness. The Bureau developed and implemented innovative programs to prevent and control workplace transmission of COVID-19. The OHSB analyzed the need for enforcement and compliance assistance activity in various industries, and adjusted emphasis programs to affect positive change in injury and illness experience in those industries.

New Mexico continues to experience Days Away, Restricted, or Transferred (DART) rates significantly lower than nationwide rates. This trend continued in 2019 as the New Mexico DART rate of 1.2 cases per 100 workers was 25 percent below the nationwide average of 1.6 (rates for 2020 will not be published until late 2021). The state DART rate of 1.4 for 2018 was 18 percent below the national rate of 1.7, following a 2017 difference of 19 percent. Long-term rates continue to reflect the positive influence of OHSB programs.

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Appendix A – Summary of FY2020 Performance Plan Results

The following tables summarize the Annual Performance Plan results for the Compliance and Cooperative Program activities of the New Mexico Occupational Health and Safety Bureau for fiscal year 2020. The referenced goals were established prior to the start of the fiscal year. Goals associated with consultation activities (Goal 1.3) are not described in this report.

5 Year Strategic Goal 1.1: Reduce the total New Mexico injury and illness DART rates by 5% through 2024 by focusing on targeted safety and health hazards.			
FY2020 Performance Goal 1.1: Experience a total injury and illness DART rate of less than 1.3 for CY2020 by conducting 345 enforcement inspections and 230 consultation visits, 125 21d outreach activities, and 100 compliance assistance activities (including VPP, alliances, and Partnership activities).			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Number of enforcement inspections • Number of consultation visits • Number of 23g compliance assistance activities • Number of 21d outreach activities 	<ul style="list-style-type: none"> • 182 enforcement inspections • 88 consultation visits • 115 23g assistance interventions • 436 21d outreach interventions 	COVID-19 had a major impact on all program area goals. A compliance assistance specialist and compliance officer were temporarily assigned dedicated duties to COVID work in FY2020.
Primary Outcome Measure	Injury and illness DART rate of less than 1.3 for CY2020	The New Mexico DART rate was 1.2 for 2019	BLS rates for 2020 are not currently available

5 Year Strategic Goal 1.2: Reduce the 5-year average of OHSB investigated workplace fatalities by 5% through scheduled inspections and visits at workplaces in targeted industries.			
FY2020 Performance Goal 1.2: Experience fewer than 10 workplace fatalities requiring OHSB investigations in FY2020.			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Number of enforcement inspections in Oil & Gas • Number of enforcement inspections in Construction • Number of fatalities in Oil & Gas • Number of fatalities in Construction • 23g compliance assistance activities in the SEPs • 21d outreach activities in the SEPs 	<ul style="list-style-type: none"> • 18 oil & gas industry inspections • 43 construction inspections • 3 oil & gas industry fatalities • 1 construction industry fatality • 56 compliance assistance activities • 108 consultation visit/compliance SEP assistance activities 	
Primary Outcome Measures	Record fewer than 10 NM OSHA investigated fatalities in FY2020	OHSB investigated 15 work fatalities in FY2020	OHSB investigated 3 COVID-19 workplace fatalities

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5 Year Strategic Goal 1.3: Increase the number of SHARP or pre-SHARP participants by one employer in FY 2020.
FY2020 Performance Goal 1.3*: Increase the number of SHARP or pre-SHARP participants by one employer in FY 2020. No new SHARP or pre-SHARP sites were added in FY2020.

5 Year Strategic Goal 1.4: Improve the quality of participant health and safety programs by achieving average DART rates for combined top-level members in the OHSB Strategic Partnership for Construction (OSPC) at more than 20% below rates in respective industries by 2024.			
FY2020 Performance Goal 1.4: Achieve average DART rates for combined top-level OSPC members at more than 4% below DART rates in respective industries.			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	Verification activities for partnership members	35 verification activities	
Primary Outcome Measures	Overall DART for all top-level members	Not available	Data is currently unavailable for this measure. 2020 data will be collected and analyzed during 2021

5 Year Strategic Goal 1.5: Recognize employers with outstanding health and safety programs, illness and injury rates through participation in the NM Zia Star Voluntary Protection Program.			
FY2020 Performance Goal 1.5: Complete all new and renewal onsite reviews, and issue participation awards within prescribed timeframes during FY 2020.			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	Number of new and renewal applications	OHSB received one new and one renewal application	OHSB VPP coordinator reassigned to COVID-19 response in late 2020
Intermediate Outcome Measures	Number of VPP participants	New Mexico had 8 VPP participant worksites at the end of FY2020	
Primary Outcome Measures	Percent of awards issued timely	OHSB issued 100% of awards timely in FY2020	

5 Year Strategic Goal 2.1: Initiate inspections for reported fatalities within 1 working day 100% of the time.			
FY2020 Performance Goal 2.1: Initiate inspections for reported fatalities within 1 working day 100% of the time.			
Performance Indicator Type	Indicator	Results	Comments

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Activity Measures	Number of fatality reports in fiscal year	OHSB received 27 reports of fatal workplace accidents in FY2020	
Intermediate Outcome Measures	Number of fatality reports under OHSB jurisdiction in fiscal year Number of fatality reports under OHSB jurisdiction responded to within 1 workday	There were 15 fatal accidents under OHSB jurisdiction in FY2020 OHSB responded to 13 fatal accidents within 1 working day	OHSB investigated 3 workplace COVID-19 deaths in FY2020 OHSB initiated 2 investigations of COVID-19 deaths beyond the one-day period
Primary Outcome Measures	Percent of responses to fatality reports under OHSB jurisdiction initiated within 1 working day	OHSB initiated 87% of fatality investigations within 1 working day	

5 Year Strategic Goal 2.2: Promptly investigate complaints and referrals alleging serious health or safety hazards.			
FY2020 Performance Goal 2.2: Initiate investigations of complaints and referrals alleging serious hazards within the following timeframes 95% of the time: <ol style="list-style-type: none"> 1. Investigations by inquiry within 3 days of receipt; 2. Investigations by inspection within 5 days of receipt. 			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	Number of complaints/referrals alleging serious hazards responded to during the year	623	OHSB received more than 1,000 complaints/referrals in FY2020
Intermediate Outcome Measures	Average number of days to initiate complaint/referral inquiry Average number of days to initiate complaint/referral inspection	0.5 days 5 days	
Primary Outcome Measures	Percent of investigations initiated by inquiry within goal	92.6% (577 of 623)	Inquiry = 98.1% (511 of 521) Inspection = 64.7% (66 of 102)

5 Year Strategic Goal 2.3: Notify complainants of discrimination investigation determinations within 60 days 90% of the time.			
FY2020 Performance Goal 2.3: Notify complainants of discrimination investigation determinations within 60 days 90% of the time.			
Performance Indicator Type	Indicator	Results	Comments

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Activity Measures	Number of discrimination cases opened	OHSB opened 10 cases in FY2020	
Primary Outcome Measures	Percent of discrimination cases completed within 60 days	20% (2 of 10 cases)	

Appendix B – New Mexico OHSB COVID-19 Activities

A. Summary

On March 11, 2020, New Mexico Governor Michelle Lujan Grisham issued Executive Order 2020-004, Order Declaring a State of Public Health Emergency, invoking the powers provided by the All Hazard Emergency Management Act and the Emergency Licensing Act, declaring a public health emergency due to the spread of COVID-19 in the state. The Order directed that all cabinets, departments, and agencies shall comply with the directives in the Order and any instruction given by the Department of Health (DOH).

On March 19, 2020, DOH Cabinet Secretary Kathyleen M. Kunkel issued an Amended Public Health Order (PHO) requiring businesses, establishments and facilities in New Mexico adhere to conditions and restrictions to prevent the spread of COVID-19, and directing the New Mexico Environment Department (NMED), among others, to take all appropriate steps to ensure compliance with the PHO. As a result of the order, OHSB initiated emphasis programs involving worker protection against COVID-19 and expanded pandemic prevention efforts on May 26, 2020 by taking the lead statewide role in COVID-19 Rapid Response, whereby the State responds to reported positive cases among New Mexico employees and assists employers in complying with health orders to prevent spread of the virus in workplaces.

On August 5, 2020, Environment Secretary James C. Kenney issued an emergency temporary standard (ETS), under authority of the state Occupational Health and Safety Act, requiring employers to report all positive COVID-19 cases among workers within four hours. The ETS was later adopted as a permanent rule in FY2021 by the New Mexico Environmental Improvement Board. OHSB also entered into an agreement with the New Mexico Department of Workforce Solutions to hire a temporary staff of 26 specialists and support positions, under a Department of Labor Dislocated Worker grant, to handle the thousands of Rapid Responses to positive worker cases.

Through September 30, 2020, NMED completed more than 2,500 rapid responses at workplaces statewide. Further, OHSB was assigned the lead role in responding to statewide complaints regarding violations of the PHO and investigated multiple occupational COVID-19 fatalities.

B. Enforcement

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COVID-19 State Emphasis Program

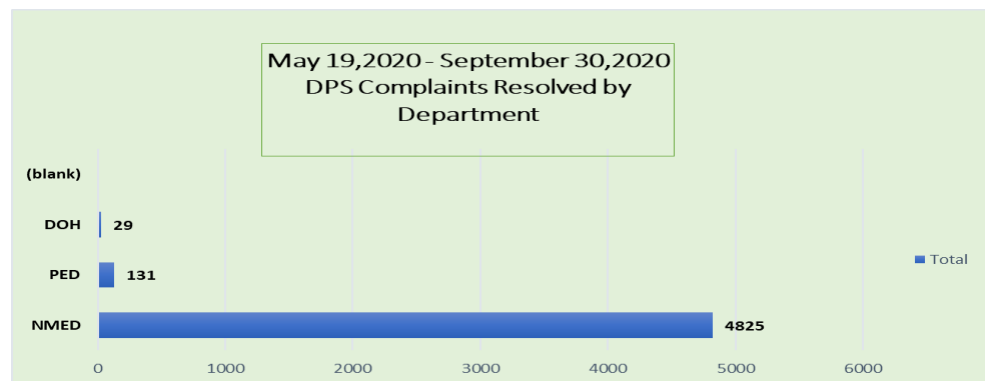
Under the New Mexico Occupational Health and Safety Act, employers are required to comply with regulations promulgated by the Environmental Improvement Board including incorporated federal standards. Several regulations and standards address measures to protect employees from exposure to COVID-19.

In addition to applicable regulations and standards, the Act's general duty clause covers recognized hazards that are likely to cause death or serious physical harm to employees. Under the general duty clause, an employer is required to implement feasible methods to control recognized hazards. For COVID-19, feasible abatement methods include those established through executive order, recommendations from public health authorities, occupational health authorities including OHSB, and industry-established best practices effective in controlling the hazards of COVID-19. Incorporating guidelines from the New Mexico Department of Health, federal OSHA and CDC, the Bureau developed instruction OHSB 20-07, SEP for COVID-19, with an effective date of March 19, 2020.

COVID-19 Complaints and Referrals

OHSB logged more than 1,000 complaints and referrals directly from employees and other sources including the general public in FY2020. More than half of complaints and referrals alleged COVID-19 hazards and violations of public health orders affecting workers.

In addition to complaints and referrals made directly to OHSB, the state implemented a COVID-19 hotline system through the Department of Public Safety (DPS) that logged thousands of complaints including many alleging workplace exposures. Several state agencies were assigned to respond to the complaints including the Department of Health (DOH), Public Education Department (PED) for schools, and NMED. In late May 2020, NMED and OHSB were assigned responsibility for coordinating these public health complaints. From May through September 2020, NMED responded to more than 4,000

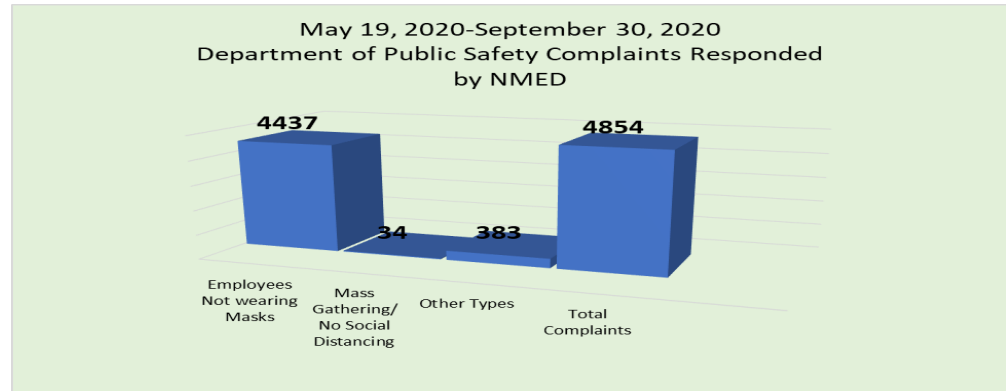


complaints received through the system.

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Most DPS complaints were handled via phone calls to employers for resolution. The nature of allegations in the complaints overwhelmingly involved employees not wearing face covers (masks) while in the presence of others, in violation of public health orders, COVID-Safe Practices and the OHSB general duty clause. In some cases where there was no response or a response inadequately addressed alleged hazards to workers, cases were elevated to the OHSB compliance section for enforcement.



As a result of complaints and referrals made directly to the Bureau and through the DPS system, OHSB conducted 16 onsite inspections and posted notices of imminent danger at 7 worksites for violations of the Act and public health orders exposing employees to COVID-19.

COVID-19 Enforcement in Manufacturing Facilities

Manufacturing facilities are an integral part of the New Mexico supply chain and identified as essential business under the state's public health orders. In May 2020 the New Mexico Economic Recovery Council published COVID-Safe Practices (CSP) that apply to all business and require manufacturers to provide face coverings and methods to physically separate workers by distancing or barriers. OHSB investigated 21 COVID-19 complaints at manufacturing facilities, including 8 at food processors, prior to release of the CSP.



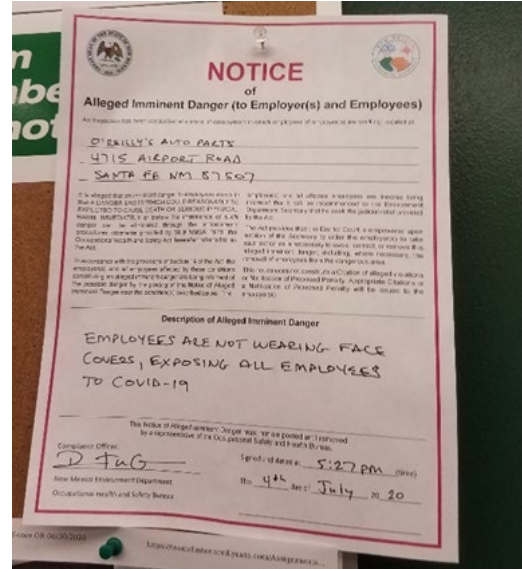
Citations for COVID-19 Violations

During FY2020 OHSB conducted 16 inspections of establishments for COVID-19, including three fatality investigations, and found violations at 8 establishments. Proposed penalties for COVID-19 violations totaled more than \$160,000 in FY2020.

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On September 1, 2020, OHSB issued Serious and Willful citations for violations of the state's Occupational Health and Safety Act. A retail establishment in Santa Fe did not ensure employees wore face coverings in violation of state law, public health orders and COVID-Safe Practices, exposing employees to the imminent danger of COVID-19. The store also did not post signage requiring customers to wear face coverings while inside the store, further endangering employees. OHSB posted a notice of imminent danger during a Saturday inspection in July and the company's corporate office corrected the violations by the following Monday morning. The case was settled in early FY2021 with the company paying the full proposed penalty of \$79,200.



COVID-19 Fatality Investigations

During FY2020 OHSB conducted 3 investigations of workplace COVID-19 fatalities including two at nursing homes and one (involving 2 fatalities) at a hospital. Citations were issued in both cases involving nursing homes for violations of the respiratory protection standard with penalties exceeding \$30,000 in each case.

C. Rapid Response

In early May 2020, New Mexico experienced its first notable worker outbreak of COVID-19 at a food manufacturing facility in the southern part of the state. OHSB and the state Department of Health (DOH) worked together to investigate conditions at the facility and direct temporary closure to control transmission. Following this event, the agencies developed a system for reporting positive COVID-19 cases captured through the DOH contact tracing program. DOH collected case information daily and reported cases involving workers to OHSB for immediate **Rapid Response** to prevent an outbreak.

A COVID-19 Rapid Response in New Mexico is intended to ensure that: A positive employee is immediately isolated from the workplace; operations are ceased and the affected work area(s) are immediately isolated; all close contacts (by NM definition any person exposed within 6 feet for 3 minutes or more is a close contact) are quarantined for 14 days; the affected area(s) are disinfected; the employer demonstrates implementation of all required CSPs; and worker testing is scheduled as directed by DOH.

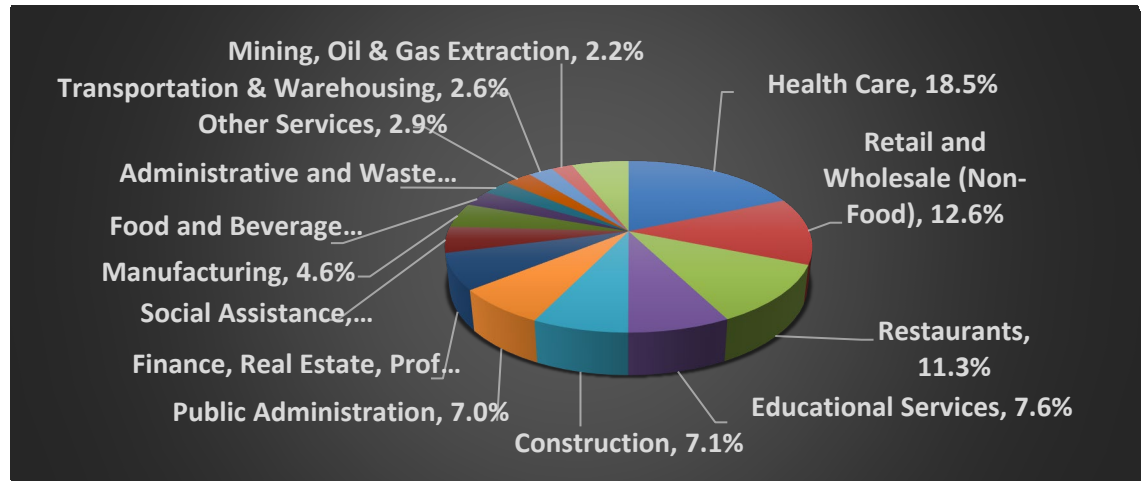
From May through September of 2020, the state conducted approximately 3,000 rapid responses at establishments statewide. OHSB conducted 85% (more than 2,500) of

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those responses. Other agencies including DOH, Public Education Department (PED), Aging and Long Term Services Department (ALTSD), Corrections Department, and Early Childhood Education and Care Department (ECECD) were also assigned cases to address transmission among both workers and other served populations (residents, patients, students, etc.). With most establishments under its jurisdiction, OHSB took the lead role in coordinating, tracking and assigning agency response to worker cases. The chart below shows the distribution of rapid responses among industries in New Mexico between May and September 2020.

RAPID RESPONSE TO POSITIVE COVID-19 WORKERS IN NEW MEXICO BY INDUSTRY



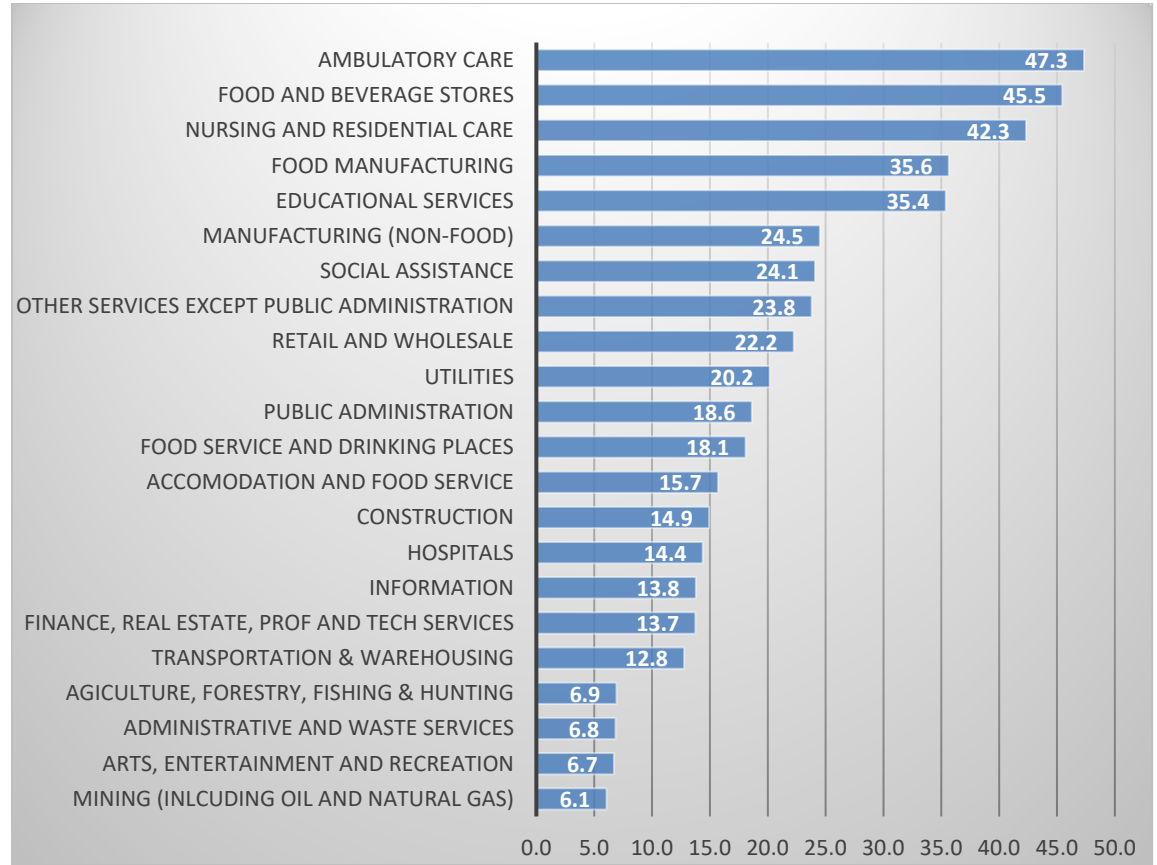
By July 2020 OHSB recognized it would not be able to sustain an effective outreach response to reported cases of COVID-19 among workers due to staff resource limits and the increasing rate of worker cases. The Bureau reached out to other state agencies to assist and partnered with the Department of Workforce Solutions to create a temporary staff of 26 positions, including 20 COVID response specialists and 6 support positions, under a displaced worker grant. By the end of FY2020 the Bureau filled 19 of the temporary positions and in October 2020 all 26 were filled, just ahead of the November peak in COVID-19 cases.

The following graph breaks down the industry distribution of rapid responses in New Mexico per 1,000 employees from May through December 2020.

RAPID RESPONSES PER 1,000 EMPLOYEES

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D. Highlighted COVID-19 Outreach Activities During FY2020

In March 2020 the Bureau conducted a mass outreach effort including email blasts and robocalls to more than 20,000 employers to inform them of their COVID-19 responsibilities under OHSB and public health orders. Many of the outreach activities involved distancing requirements, personal protective equipment and questions or concerns regarding essential and non-essential business.

In April 2020 OHSB developed and published a COVID-19 frequently asked questions (FAQ) page to assist employers in complying with New Mexico public health orders and COVID Safe Practice requirements for workplaces. NMED and OHSB also developed a COVID-19 resource page with FAQs, guidance documents and other resources to assist employers.

In May 2020 OHSB initiated a response effort to guide employers in making workplaces safe following reporting of positive employee cases (rapid response). Consultants conducted rapid response outreach to employers as part of the effort. A Bureau compliance assistance specialist was assigned to the OHSB COVID-19 response where he assisted in the development and management of a data management systems, FAQs, e-mail alerts, and supervision of COVID-19 response outreach. The Bureau also launched

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an interactive online mapping system to provide information on workplace COVID-19 complaints statewide.

In June 2020 OHSB collaborated with DOH to provide employers access to COVID-19 testing of employees in essential businesses including food manufacturing facilities. Bureau staff worked closely with employers and local public health offices statewide to gather employee data and schedule testing. The Bureau also worked with the state's restaurant association and other industries to encourage and provide worker testing.

In July 2020 the Bureau developed a data reporting system to present information to the Governor's Office and the public on workplace COVID-19 response statistics. A series of graphs and tables is updated weekly on the NMED webpage with information on industry response, state agency activity and county statistics. The Bureau also began daily publishing of COVID-19 response logs on the NMED webpage to inform workers and the public of establishments with positive cases.

In August 2020 a senior industrial hygiene compliance officer and a compliance assistance specialist were promoted to temporary supervisors to coordinate COVID-19 rapid response outreach efforts and oversee 20 temporary response specialist positions that would later be filled through a Department of Workforce Solutions (DWS) displaced worker grant. Six temporary response specialists were hired under the DWS grant in August and trained to assist employers develop COVID-Safe Practices and comply with public health order requirements following notification of positive cases among workers. The Bureau coordinated the development of a positive worker database with the Department of Health (DOH) and Department of Information Technology (DoIT) to integrate workplace case data with contact tracing, epidemiologist case investigation and fatality data using a DOH Salesforce platform. OHSB also worked with the Public Education Department to address school reopening and coordination of prevention activities and positive case response among staff and students.

In September 2020 OHSB hired eight additional temporary COVID-19 response specialists under the DWS grant and trained them in the use of the Salesforce platform and outreach for the Bureau's emergency temporary standard for reporting positive COVID-19 cases. By the end of FY2020 temporary response specialists were handling most employer outreach interactions in responding to positive worker cases to prevent occupational outbreaks of the virus.