

**New Mexico Environment Department  
Occupational Health and Safety Bureau  
State Internal Evaluation Program**

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## **I. Management Summary**

New Mexico's State Internal Evaluation Program (SIEP) was initiated to determine if program operations conform to policies and procedures established by the State Plan. The SIEP identifies areas in which additional procedures should be developed in response to the demands of the organization.

This plan is designed to encompass a five-year period. On an annual basis, areas of vulnerability for the New Mexico Occupational Health and Safety Bureau will be determined. The specific portions of this evaluation program pertaining to the areas of vulnerability will be implemented each year. Regardless of the vulnerability determination, all areas of the program will be executed at least once every five years.

OSHA employees who have sufficient knowledge of the functional area but who are not directly responsible for the performance of the function will perform the evaluations. It is believed sufficient and appropriate personnel exist within the Bureau to perform this SIEP.

The primary mechanism for the program assessment is the completion of an evaluation questionnaire tailored to each of the major programmatic functions of the bureau. Completion of the questionnaire requires on-the-job evaluation, the use of the Integrated Management Information System (IMIS), other report review, employee interviews, and case file review.

The outcome of the internal evaluation will include the results of the evaluation questionnaires, a management summary, recommendations, and management responses. It is expected the SIEP will be a valuable tool in improving the overall quality of job performance within the Bureau.

## **II. Vulnerability Analysis**

The importance of a comprehensive annual evaluation is understood and agreed upon by all parties. However, the time and resources required to perform a comprehensive audit of all programmatic functions would negatively affect other bureau activities. Therefore, the first step in the annual SIEP will be a vulnerability analysis conducted jointly by the Bureau Chief, State Plan Program Manager, and the New Mexico Bureau Program Managers. The purpose of the analysis will be to limit the focus of that year's evaluation to those areas where the bureau is most vulnerable.

Based upon the following criteria each programmatic function will either be included or excluded in the annual evaluation.

1. Has this programmatic function been reviewed within the last 5 years?
2. Will improvement in this programmatic function address areas of weakness identified by any quarterly review of the Mandated Activity Report for Consultation (for public or private sector)?
3. Will improvement in this programmatic function address areas of weakness identified by any quarterly review of the State Activity Mandated Measures.
3. Will improvement in this programmatic function address areas of weakness identified by any quarterly review of the State Indicator Report (SIR)?
4. Will improvement in this programmatic function address any other areas of weakness within the Bureau?

### **III. Questionnaire by Programmatic Functions**

The following bureau functions represent the major areas of operation within the New Mexico State Plan. A determination will be made during the vulnerability analysis to include or exclude the function from that year's annual evaluation. Within each of the following functions is a description of the evaluation questions. Where further explanatory information is required, a reference is provided to the section of the Field Operation Manual (FOM) or other pertinent publication.

In the annual SIEP, only the functions chosen because of the vulnerability analysis will be included.

## **A. Un-Programmed Inspections**

1. Are inspections scheduled according to the Bureau's order of priority?  
(As described in FOM Chapter 2, Section B.)
2. Are inspections completed for imminent danger investigations the same day as the danger was reported? (As described in FOM Chapter 11.B.1)
3. If an inspection could not be completed for imminent danger investigations within the same day as reported, are they performed during the next working day?
4. Are inspections completed in response to complaints within 5 working days?
5. Are inspections completed for serious referrals investigated within 10 working days?
6. Are inspections completed for other than serious referrals within 30 working days?
7. Are follow-up investigations conducted within 30 days following the latest violation abatement date for: (as described in FOM Chapter 2, Section E.1.b.2.)
  - (a) Willful, repeated and high gravity serious violations?
  - (b) Failure to abate notifications?
  - (c) Serious citations issued to a public sector employer?
  - (d) Citations related to imminent danger situations?
  - (e) Employer failure to respond to request for abatement information?
8. Are monitoring inspections conducted as required? (As described in FOM, Chapter 2, Section E.1.c).

## **B. Programmed Safety and Health Inspections**

1. Are programmed inspections concentrated in industries having a high hazard rating? (As described in FOM, Chapter 2, Section E.2)

(a) For safety?

(b) For health?

2. Are the following State Program lists available for the current fiscal year?

(a) Non-manufacturing list?

(b) High hazard Establishment for Safety?

(c) High hazard Establishment for Health?

3. Is the ranking from the Safety Establishment List (provided in OSHA Instruction CPL2.25) used to determine safety inspections schedules?

4. Is the ranking from the Health Establishment List (provided in OSHA Instruction CPL2.25) used to determine health inspections schedules?

5. Are exempt establishments excluded from inspection lists?

(a) For Voluntary Protection Programs (VPPs)

(b) For Partnerships

(c) For Sharps

(d) For funding exemptions and limitations

6. Are the general industry safety and health master files updated to include all known employers?
7. Are additions to the Establishment Lists made with the appropriate codes? (As described in FOM Chapter 2, Section E.2.a.2.b.1.b.4.a)
8. Are deletions to the Establishment Lists made with the appropriate codes? (As described in FOM Chapter 2, Section E.2.a.2.b.1.b.4.b)
9. Are Local Emphasis programs scheduled?
  - (a) Fabricated Metal (NAICS 332-337 & 339)?
  - (b) Earth Products (NAICS 327)?
  - (c) All Construction (NAICS 236-238)?
  - (d) Oil & Gas (NAICS 211 & 213)?
  - (e) Agriculture (NAICS 111 & 1151)?
  - (f) Convenience Stores (NAICS 44512, 44711)?
  - (g) Refineries (NAICS 32411)
  - (h) Waste Management (NAICS 5611, 5622, 562920)
  - (i) Silica (NAICS 236, 237, 238, 327)
10. Are Public Sector inspections scheduled according to established procedures?
11. Are 10% of the inspections performed in Public Sector establishments for the year?
12. Are all assignments inspected unless they meet the criteria for "no inspection"?
13. Are the assignment lists completed before the next list is started?
14. Are inspections scheduled for construction worksites based on established procedures? (As described in FOM Chapter 2, Section E.2.b.2.)
15. Are inspections scheduled for construction based on current information available concerning construction site status?
16. Is program analysis conducted to determine effectiveness of the scheduling system?

### **C. Fatality/Catastrophe Investigations**

1. Does the scope of FAT/CAT investigations comply with Bureau policy?
2. Are reported fatalities and catastrophes investigated within one working day?
3. Is the OSHA Form 36 completed?
4. If the FAT/CAT is investigated, is the OSHA Form 170 completed at the time the OSHA -1 is completed?
5. Are FAT/CAT reports reviewed by supervisor?
6. Are FAT/CAT reports reviewed for criminal potential and referred to legal if necessary?
7. Are COs who are assigned to perform fatality investigations appropriate for that activity based on training received?
8. Are fatal fact sheets used to record and track fatality activity?
9. Are lessons learned from fatality/catastrophe investigations used to educate other employers?

### **D. Complaints**

1. When complaints are received by phone, is the complainant informed of the right to have his/her identity kept confidential?
2. Are complaints recorded properly on the OSHA-7 Form?
3. Are procedures followed to formalize a complaint? (As described in FOM, Chapter 9, Section 3.)
4. Are complainants informed of the protection against discrimination afforded by NMAC 50-9-25?
5. Is sufficient information obtained in Item 8 of the OSHA-7 to determine if there are reasonable grounds for a violation? (As described in FOM, Chapter 9, Section 4.)
6. Is sufficient information obtained in Item 8 of the OSHA-7 for classification? (As described in FOM, Chapter 9, Section 4.)
7. Are complaints evaluated properly with all evaluation decisions fully documented in the file?

8. Does the scope of any complaint inspection adhere to Bureau policies and procedures? (As described in FOM, Chapter 9 Section 7.a)
9. Is the identity of the complainant removed from the complaint?
10. Is every complaint item fully investigated and compliance or noncompliance documented in the case file?
11. After a complaint inspection is completed, is the timely letter written to the complainant providing the results of the inspection?
12. Does the letter to the complainant provide an explanation of why a citation was issued or not issued?
13. Does the letter to the complainant explain their rights of appeal?
14. What reports or other methods are used to track all complaint activities?
15. Are IMIS reports or other methods effectively used to track complaints?

## **E. Referrals**

1. Are referrals recorded properly using the OSHA-90 form?
2. Are CO referrals generally limited to potentially serious hazards observed during an inspection or visible from or in public areas, or from one discipline to another?
3. Are referrals evaluated in accordance with the guidelines for evaluating complaints and referrals? (As described in FOM Chapter 9, Section 4)
4. Are referrals that are classified as other-than-serious initially investigated by letter? (As described in FOM Chapter 9 Section 7.a)
5. Are investigations of referrals conducted properly? (As described in FOM Chapter 9 Section 8).
6. Except for referrals alleging serious or imminent danger hazards, are referrals made by other government agencies initially investigated by letter?
7. Is the scope of referral inspections decided in accordance with the guidelines for the scope of complaint inspections?
8. Is a file established for every referral received, including those initially investigated by letter and those where no investigation is conducted?
9. Are the results of a referral inspection sent to the referring safety and health agency or other governmental agency?
10. Are IMIS reports or other methods effectively used to track referral activities?

## **F. Assurance of Abatement**

1. Are follow-up inspections conducted for the following cases?
  - (a) willful violations
  - (b) failure-to-abate notices
  - (c) imminent danger situations
  - (d) repeat violations
  - (e) serious high gravity violations
  - (f) as recommended by the CO

2. Is "Abated at time of inspection" documented when abatement is witnessed by the Compliance Officer (CO)?
3. Are mandatory follow-ups adequately tracked?
4. Is a follow-up inspection performed when there is no assurance of abatement in the case file?
5. For assigned abatement dates in excess of 30 calendar days, is there an explanation in the case file?
6. Is adequate evidence of abatement received in accordance with Bureau policies and procedures? (As described in FOM Chapter 3, Section E.4)
7. Are open abatement dates adequately tracked?
8. Is a late notice sent when the employer fails to submit a timely abatement report?
9. Is a follow-up scheduled if no contact is made by the employer within 10 working days?
10. Is the IMIS updated?

#### **G. Case File Documentation**

1. Does each inspection case file include a case file summary sheet comprising a chronological record of significant actions taken that affect the case?
2. Are employee and employer contacts documented for every inspection?
3. Does every inspection, including follow-up inspections, include an examination of injury and illness records?
4. Is injury data entered into IMIS?
5. Is the employer's safety and health program evaluated and documented on all inspections, including when appropriate, confined space entry, hazard communication, lockout/tagout, and blood borne programs?
6. Are apparent violations fully described on the field worksheet to include measurements, identification numbers, locations, hazards, and injury/illness classification?
7. Is actual or potential exposure documented?

8. Are violations appropriately grouped? (As described in FOM Chapter 5 Section C)
9. Is screening sampling conducted when appropriate?
10. On general duty violations, are the four necessary elements documented in the case file?
11. For repeated violations, does the case file contain a copy of the prior citation and is the repeated basis entered in the AVD of the citation?
12. In the determination of a serious violation, do all COs consider the following elements?
  - (a) Type of accident or health exposure the violated standard is designed to prevent
  - (b) Type of injury/illness reasonably expected
  - (c) Whether the injury/illness could include death or serious physical harm
  - (d) Whether the employer knew or could have known of the condition
13. Are the severity and probability factors based on the instance with the highest probability/severity quotient?
14. Is there adequate documentation to support a proposed penalty?
15. Are feasible engineering controls described on citations?
16. On willful violations, did the CO carefully develop and record on the OSHA-1B all evidence that shows the employer committed an intentional and knowing violation or committed a violation with plain indifference to the law?

#### **H. Citation Processing**

1. Is the lapse time between each action from the date of opening conference to initial citation issuance date calculated and analyzed?
2. What is current lapse time for safety?
3. What is current lapse time for health?
4. If necessary, has an effort been made to reduce the lapse time?
5. Are citations proofed for accuracy before mailing?

6. Are methods used to ensure that citations are not issued to employers in NAICS codes exempt under the federal Appropriations Bill?
7. For repeated violations, is the employer fully informed of what previous citation serves as a basis for the repeat citation?
8. Does the letter to the employer accompanying the citation indicate required abatement evidence?

#### **I. Settlement of Cases**

1. Are employee representatives notified by mail or phone, of the informal conferences and given the opportunity to participate?
2. Is the contest period calculated and checked before the informal conference date is scheduled?
3. Are discussions held at informal conferences adequately documented, including comments made, justification for reclassification, withdrawal, or penalty reduction, and specific abatement actions taken?
4. Are procedures followed for processing informal settlement agreements?
5. Is OSHA-166 data entered into the IMIS to indicate all changes to citations?
6. Is a copy of all informal settlement agreements given to employee representatives or posted for employee information?
7. Did the Bureau give formal notice in writing to the employer that the citation will become final and un-reviewable at the end of the contest period unless the employer either signs the agreement or files a notice of contest?
8. Is information on Form 167-I entered into the IMIS for every informal conference?
9. If the settlement effort is unsuccessful and the employer contests the citation, is documentation included in the case file stating the terms of the final settlement offer?

#### **J. Petitions to Modify Abatement (PMA)**

1. When not all PMA requirements are met, is a letter sent to the employer within 10 working days explaining requirements and requesting the missing elements?

2. Are monitoring inspections conducted when necessary and in a timely manner? Before or after final abatement date?
3. Are PMA decisions made within 10 working days following the 15-day period after receipt of complete PMA package?
4. Are employer/employee representatives notified of PMA decisions?
5. Is data from Forms 166 and 167-I entered into IMIS for every approved PMA?
6. Are Petitions to Modify Abatement adequately tracked?

**K. Equipment Maintenance, Calibration, and Personal Protective Equipment (PPE)**

1. Are detector tubes and sampling media discarded after expiration dates?
2. Are calibration records maintained and kept current for all technical equipment used for compliance purposes?
3. Is all technical equipment calibrated annually, or as required by the manufacturer or established procedures?
4. Has the Bureau established a written respiratory protection program, and other programs required and designed to assure employee protection?
5. Are quantitative respirator face fit tests done on an annual basis for all affected Bureau personnel?
6. Are Compliance Officers and Consultants trained annually in the use of PPE, including respirators and hearing protection?
7. Are arrangements made for disposal of contaminated clothing?
8. Is technical equipment available and issued in response to demands anticipated during an inspection?
9. Is an adequate supply of replacement parts available for equipment?
10. Do all affected personnel receive a physical exam within 30 calendar days after hiring and on an annual basis thereafter as required by OPN 63?
11. Has a PPE Coordinator been designated?
12. Is equipment inventory properly managed as reflected by current and accurate inventory documentation?

## **L. Variances**

1. Are State variance requests processed in a timely and appropriate manner using requirements mandated by 11.5.5 NMAC?
2. Are state variances previously granted regularly reviewed to ensure compliance with terms of the variance agreement?
3. Are any deviations to the variance agreement reported and addressed?
4. Is a log maintained of variance activity on ATS?
5. Is information related to granted variances communicated to appropriate parties?
  - (a) Staff
  - (b) Federal OSHA
  - (c) Public
  - (d) Affected employees

## **M. Denial of Entry and Warrant Application**

1. When do the compliance officers report a denial of entry to the compliance manager?
2. When are warrant packages accurately prepared and submitted to the district court?
3. Is a warrant log maintained on IMIS for denials of entry in which warrants are not obtained?
4. How long does it take to obtain warrants obtained from the court?
5. When does the compliance officer attempt to serve the warrants?
6. Is the anticipatory warrant procedure utilized in advance of inspections in which the Bureau has evidence of being denied entry in previous inspections?
7. What effect does the Office of General Counsel's role in processing warrant requests have on warrant turn-around time?
8. Are denials of entry for which entry cannot be obtained reported to Federal OSHA?

**N. OSHA Discrimination Activities (NMSA 50-9-25)**

1. Are those persons who file safety and health complaints advised of the protection against discrimination afforded by NMAC 50-9-25?
2. Are discrimination complaints screened to determine whether any potential safety and/or health hazards are involved?
3. When a discrimination complaint is received by phone, is it recorded on the Employment Discrimination Complaint form (OSHA 87)?
4. How is the record of all discrimination complaints maintained?
5. Does the discrimination record include the names, addresses, and telephone numbers of the complainants and respondents as well as the date the complaints were made?
6. Are discrimination complaint determinations made within 60 days after the complaints are filed?
7. Is a tracking system in place to ensure that time restrictions are met?
8. What tracking system is in place to record and keep track of appeals?
9. Are complainants notified of the status of an appeal within 16 days?

## **O. Case Controls**

1. Are complaints tracked to assure adherence with applicable bureau policies and procedures?
2. Are referrals tracked to assure adherence with applicable bureau policies and procedures?
3. Are programmed inspections tracked to assure adherence with applicable bureau policies and procedures?
4. Is progress from assignment to the date of citation tracked to assure adherence with applicable bureau policies and procedures?
5. Is the six-month statute of limitations tracked to assure adherence with applicable bureau policies and procedures?
6. Are fatalities/catastrophes tracked to assure adherence with applicable bureau policies and procedures?
7. Are open inspections tracked to assure adherence with applicable bureau policies and procedures?
8. Are informal settlement agreements tracked to assure adherence with applicable bureau policies and procedures?
9. Are formal settlement agreements tracked to assure adherence with applicable bureau policies and procedures?
10. Are penalty collections tracked to assure adherence with applicable bureau policies and procedures?
11. Are lapse times tracked to assure adherence with applicable bureau policies and procedures?
12. Are required follow-ups tracked to assure adherence with applicable bureau policies and procedures?
13. Are denial of entries tracked to assure adherence with applicable bureau policies and procedures?
14. Are warrant applications tracked to assure adherence with applicable bureau policies and procedures?
15. Are discrimination complaints tracked to assure adherence with applicable bureau policies and procedures?
16. Are violation abatements tracked to assure adherence with applicable bureau policies and procedures?

17. Are advance notice proceedings tracked to assure adherence with applicable bureau policies and procedures?

18. Are final orders tracked to assure adherence with applicable bureau policies and procedures?

**P. Standards**

1. Are standards adopted within the required six-month period?
2. Are State standards adoption procedures followed?
3. Are appropriate State standards submitted timely?
4. Is the field staff notified of standards changes in a timely manner?
5. Is the 5A1 general duty clause used for interim enforcement?
6. What interim enforcement procedures are implemented prior to adoption of new Federal standards?
7. Are hearings and adoption conducted within 6 months?

**Q. Training of Staff**

1. Have supervisors identified the training needs of their personnel?
2. Are annual training plans developed for all staff?
3. Is a training record maintained for each CHSO?
4. Is there an adequate orientation training program established and utilized for new employees?
5. Is each member of the staff receiving at least 40 hours of formal training annually?

## **R. Education**

1. Is there an existing outreach program and policy?
2. Is the policy being followed?
3. Is a method for participant feedback utilized?
4. Is the feedback providing the desired results?
5. Is the backlog of requests for training handled adequately?
6. Is a list of office resource material available and updated?
7. Are the state services available adequately publicized?
8. Is the system developed to track internal and external training, responsive to program needs?
9. Is statistical information relating to educational programs maintained?  
How current?

## **S. Consultation**

1. Are on-the-job evaluations of consultants performed?
2. Are employer's obligations communicated in writing?
3. Is the relationship of consultation programs to compliance communicated to employers?
4. Is a system in place for prioritizing requests received?
5. Is any backlog effectively tracked?
6. Are appropriate non-abated conditions referred to enforcement in a timely manner?
7. Are consultation reports issued to employers in a timely manner?
8. Is consultation data entered into the IMIS on a timely basis?
9. Are available consultation "P" reports used to track appropriate data that affects program performance?
10. Is correction verification of serious hazards accomplished within 60 calendar days for safety and 75 calendar days for health?
11. Did consultative report review indicate adherence to division policy?

**T. Laboratory – for 23(g)**

1. Are the existing laboratory procedures responsive to Bureau needs in this area?
2. Are procedures for sample handling being followed?
3. Is the laboratory accredited?
4. Are chain-of-custody procedures for laboratory samples being followed?
5. Does the laboratory sample turn-around time allow for the issuance of citations within 30 days of the opening conference?
6. Does the lab participate in PAT program?

**U. Contested Cases**

1. Are the Bureau's procedures for contested cases followed?
2. Are procedures for the case settlement after contest being followed?
3. Is enforcement staff notified of contested case disposition?
4. Are contested cases adequately tracked to assure adherence to procedures?
5. Is follow-up action taken regarding adverse decisions?

**V. Response to Federal Program changes**

1. Are all Federal program changes responded to within the guidelines specified in the change memo?
2. Where required, are plan supplements in response to Federal Program Changes submitted within the guidelines specified in the change memo?

**W. Personnel**

1. Are employee evaluation forms completed for all new employees?
2. For probationary employees, are two interim reviews conducted at the appropriate times?
3. For probationary employees, are the final appraisal conducted at the appropriate time?

4. For non-probationary employees are the interim review conducted at the appropriate time?

5. For non-probationary employees are the annual review conducted at the appropriate time?

#### **X. Grants**

1. Are quarterly reports prepared in a timely manner?

2. Are “draw down” reports prepared in a timely manner?

3. Is the annual grant application done in a timely manner?

#### **IV. Evaluation Performance**

This section of the document will describe the process for the actual performance of the SIEP. The determination of how to answer each questionnaire item will be determined by the personnel performing the evaluation. Techniques that will be used include:

1. On-the-job evaluations

2. Review using the IMIS

3. Case file reviews

4. Employee interviews

##### **A. Personnel**

The selection of personnel to perform the evaluation will be based upon the following criteria:

1. The person selected cannot be responsible for the performance of the programmatic function.
2. The person selected must have sufficient experience in the programmatic function to perform the evaluation.
3. A person can perform the evaluation for more than one programmatic function.
4. The person selected should be freed from performing their normal job responsibilities during the period of the evaluation.

#### **B. Time Frame for evaluation performance**

It is anticipated the performance of the SIEP will require less than one week of time to conduct. Where possible the evaluation performance should be conducted in a contiguous fashion. Exceptions can be made if the selected personnel are required to respond to a critical issue.

#### **C. Selection of Evaluation Data**

When case files are used as part of the evaluation, the files will be randomly selected using a procedure contained at Appendix K of OSHA Instruction STP 2-22A CH-4. The sample size of the file review will be dictated by the number of inspections that have occurred since the last review.

#### **V. Recommendations by Programmatic Functions**

In this section, the personnel responsible for the evaluation of each section will make their recommendations for improvements. The recommendations should be based upon the findings recorded in the questionnaires.

Any recommendations for improving the evaluation process itself should also be noted, e.g. additional questions to include in the questionnaire for the programmatic function.

- A. Un-programmed Inspection Scheduling**
- B. Programmed Safety and Health Inspections**
- C. Fatality/Catastrophe Investigations**
- D. Complaints**
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- F. Assurance of Abatement**
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- S. Consultation**
- T. Laboratory – for 23(g)**
- U. Contested Cases**

## **VI. Management Responses**

This section will contain management responses to each recommendation provided in the recommendation section above. The management response will provide details on the improvement plan to be implemented specific to the recommendations made in this report. The management response should also

include a decision of when to repeat each programmatic function in subsequent annual evaluations.

**VII. Supporting Material**

This section will include copies of completed questionnaires and any other supporting material used during the performance of the annual evaluation.