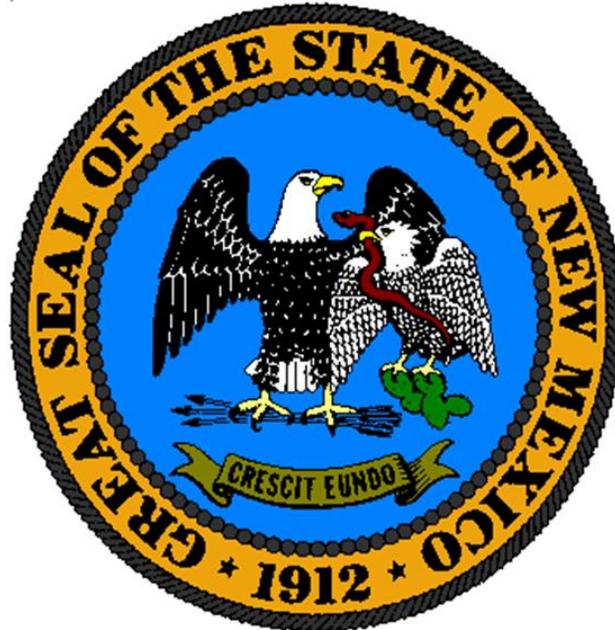


**FY 2013 Comprehensive
Federal Annual Monitoring and Evaluation (FAME) Report**

New Mexico Occupational Safety and Health Bureau (NMOSHB)



Evaluation Period: October 1, 2012 – September 30, 2013

Initial Approval Date: December 10, 1975
State Plan Certification Date: December 4, 1984

**U. S. Department of Labor
Occupational Safety and Health Administration
Region VI
Dallas, Texas**



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I. Executive Summary

A. Summary of the Report

The purpose of the Federal Annual Monitoring and Evaluation (FAME) Report is to assess New Mexico Occupational Health and Safety Bureau (OHSB) performance during Fiscal Year (FY) 2013 with regard to activities mandated by Occupational Safety and Health Administration (OSHA), and to determine the State's progress toward resolving recommendations from the FY 2012 FAME. As part of this comprehensive evaluation, OSHA conducted a review of OHSB's discrimination program case files and enforcement case files, and conducted a special study on targeting. This report also assesses the State's achievements in relation to its annual performance plan goals and its progress toward the goals in its five-year strategic plan.

There are two new recommendations and one observation resulting from the FY 2013 onsite review. The major recommendations include continuing improvements on case file documentation of employer knowledge, reducing citation lapse time, ensuring effective administration of the discrimination program, achieving inspection goals, and clarifying through rulemaking OHS regulation 11.5.1.21.E NMAC on private interviewing. The observation is in relation to the large percentage of in compliance fatality inspections. The recommendations are addressed throughout the report, listed in Section III below, and included as Appendix A. The observation listed is addressed in the report, listed in Section III below, and included as Appendix B.

New Mexico will include all of these issues in their FY 2014 State Internal Evaluation Program (SIEP). We are addressing them on a continuing basis during our quarterly meetings, and we will follow up on each issue during the FY 2014 Abridged Federal Annual Monitoring and Evaluation (FAME).

New Mexico made progress on all of the FY 2013 annual performance plan goals, and the program continues to meet all of its State Plan requirements, as detailed in Sections IV of this report. The Compliance Section conducted 290 inspections, which was below their goal of 505 for the year. The State Plan met all but two of the Local Emphasis Program (LEP) goals for inspections in targeted industries, and responded timely to all unprogrammed activity.

Our review of performance data found many areas where State Plan performance met or exceeded established internal or Federal goals, among them responding to complaints in a timely manner, violation and penalty retention prior to and subsequent to contest, and timely first level decisions subsequent to contest.

As detailed in Section III, there were four recommendations in the FY 2012 FAME Report. Corrective action has now been completed on one of the recommendations. The State Plan is continuing to make progress on the remaining three, which are repeated in this report.

Training sessions for Compliance Officers were conducted on several different occasions to address recommendations on case file documentation (FY 2012 FAME Recommendation 1). The Bureau is continuing to explore methods to further reduce citation lapse time (FY 2012 FAME Recommendation 2), and they have requested legal assistance in drafting and presenting corrections to the private interviewing regulations (FY 2012 FAME Recommendation 4).

B. State Plan Introduction

This is an annual evaluation of the operation of the State of New Mexico Occupational Health and Safety Plan under the 23(g) State Plan grant. This report was prepared under the direction of Eric S. Harbin, Acting Regional Administrator, Region VI, Occupational Safety and Health Administration, U.S. Department of Labor, and covers the period from October 1, 2012, to September 30, 2013. The New Mexico Occupational Health and Safety Program is administered by the Occupational Health and Safety Bureau (OHSB), which is part of the Environmental Protection Division of the New Mexico Environment Department. The State Plan Designee is Ryan Flynn, and the Occupational Health and Safety (OHS) Bureau Chief is Robert Genoway.

The New Mexico program covers all private sector industries within the State, except maritime (longshoring, ship building, and ship breaking) workers and Federal civilian workers, who are under OSHA jurisdiction for enforcement. State and local government workers are also covered. The New Mexico FY 2014 Annual Performance Plan notes that New Mexico has a total work force of 601,389 private sector and 184,319 public sector workers working for 55,065 businesses and public agencies throughout the State. Approximately 88% of the businesses within the State Plan employ 19 or fewer workers.

The Federal share of the initial FY 2013 23(g) grant was \$967,300, and the State Plan share was \$967,300, for a total program of \$1,934,600. Private sector consultation is provided by the Bureau under a 21(d) Cooperative Agreement, while public sector consultation is provided under the 23(g) grant.

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

C. Data and Methodology

This report is based on several data sources, including State Plan Activity Measures (SAMM) Reports; State Indicator Reports (SIR); case file reviews; Occupational Health and Safety Review Commission (OHSRC) decisions; Automated Tracking System (ATS)

Logs; review of State-transmitted documentation in response to Federal Program Changes, Federally-initiated standards, and State-initiated Plan Changes; and ongoing communication regarding legislative, regulatory, and other issues.

The onsite review was conducted January 6-10, 2014. We focused on the State's targeting program, and how the State Plan evaluates the effectiveness of its program, enforcement, and discrimination case file review. Sixty-nine non-fatality enforcement cases, 18 fatality cases, 9 discrimination cases, and 41 screen-outs closed during FY 2013 were reviewed. We also conducted a voluntary survey of all Compliance Officers and Compliance Assistance Specialists to obtain additional information on the impact the State's corrective actions in response to FAME recommendations has had on the program. All other issues were reviewed offsite.

D. Findings and Recommendations

The FAME report contains two new findings and one observation with corresponding OSHA recommendations, which relate to New Mexico's discrimination program and inspections. There were four recommendations in the FY 2012 FAME report; corrective action has been completed on one of the four. There are three remaining issues, which are included as repeat recommendations. These are discussed in Section III, Appendix A, and throughout the body of the report. New Mexico is continuing to address each of the three issues. We will discuss them at our quarterly meetings in FY 2014, and OHSB will include them in the State Internal Evaluation Program (SIEP) issues for 2014.

Finding 13-1

Our on-site review found that in the nine whistleblower cases that were investigated, the investigations were not always conducted in accordance with Section 50-9-25 of the OHS Act and Chapter 13 of the New Mexico FOM.

Recommendation 13-1

New Mexico OHSB should ensure that the OHS Act, OHS regulations, and New Mexico FOM Chapter 13 are followed for all whistleblower investigations.

Corrective Action Plan

OHSB management and whistleblower staff conducted additional review of State Plan whistleblower provisions and policies from August through October 2013 to ensure adherence to statutory requirements. The OHSB investigator received OSHA Whistleblower Investigation training in June 2013. In addition, OHSB has assigned administrative staff to assist with entry and management of data in IMIS.

Finding 13-2

The State Plan inspection goals for FY 2013 were not met. The State Plan completed 290/505 (57.4%) of projected inspection goals.

Recommendation 13-2

New Mexico OHSB should evaluate inspection goals and, if appropriate, modify to reflect changes in available resources.

Correction Action Plan

The State Plan reevaluated their goals during the FY2014 grant cycle, based on an assessment of agency staffing and changes to emphasis programs. Inspection goals were adjusted for FY 2014. OHSB will work closely with the Regional Office quarterly to review progress and make any adjustments necessary to ensure goals are met.

Finding 13-3

Case files reviewed were not always fully and accurately documented.

Recommendation 13-3 (12-1)

New Mexico OHSB should ensure that employer knowledge is documented for all violations.

Corrective Action Plan

NMOHSB continues to stress to compliance staff the importance of documenting employer knowledge when establishing violations. OHSB identified this as an area needing improvement during the FY 2012 SIEP and is reviewing this item again during the 2014 SIEP. The Compliance Program Manager will also ensure that case file reviews include checking the adequacy of such documentation on an on-going basis. This issue will be reviewed periodically during internal Compliance Officer (CO) training sessions, employee evaluations, and future SIEP reviews. The OHSB Bureau Chief and Compliance Manager met with the six attorneys from the state's Office of General Counsel (OGC) on March 3, 2014 to review procedures for evidence collection, with particular emphasis on documenting employer knowledge. OHSB held a training session for compliance staff on March 27, 2014 with the assistance of OGC.

Finding 13-4

Average health citation lapse time in New Mexico is significantly higher than the National average, and increased 25% from 61.4 to 76.8 Safety and 39% from 71.3 to 99 calendar days, from FY 2010 to FY 2013.

Recommendation 13-4 (formerly 12-2)

NM OHSB should review processes and policies to identify roadblocks and inefficiencies.

Corrective Action Plan

There are a number of factors which have resulted in excessive lapse times for OHSB health citations. These include high case loads for health officers, inefficiencies in prioritizing of duties by compliance officers, and a health file tracking process which has not facilitated improvements. Corrective action was initiated when the issue was first identified and has been on-going since that time. OHSB will continue to utilize IMIS reports to identify open cases with prolonged lapse times in order to minimize delays in

citation issuance. OHSB will closely monitor health inspection assignments to ensure caseloads are reasonable. The Compliance Program Manager will review assignment reports and compare these with open inspection reports weekly. OHSB will conduct an in depth review of health referrals alleging serious hazards to identify those in which initial investigation by inquiry may be appropriate. OHSB will continue to perform a monthly analysis of lapse times for individual Compliance Officers and will continue to use lapse times as a major factor during employee performance evaluations. Performance reviews will include an analysis of task prioritization to identify potential improvements, and Compliance Officers will be coached on task prioritization. OHSB will continue to utilize progressive administrative discipline for Compliance Officers whose performance in this area is substandard. OHSB will continue to use IMIS reports and has initiated additional methods to track the progress of health case files including a tracking board. The Compliance Program Manager will check case file progress weekly and meet with Compliance Officers at least monthly on open cases.

Current Status

The first quarter of FY 2014 shows a reduction in lapse times within the target variance provided in the SAMM 7 and 23. OHSB will continue to closely monitor, and we will include the issue in our FY 2014 quarterly meeting agenda.

Finding 13-5

There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations.

Recommendation 12-4 (11-4)

New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).

Corrective Action Plan

OHSB acknowledges the inconsistency in language and interpretation of the private interviewing regulations that were adopted by the Environmental Improvement Board (EIB). As noted in the FY 2011 FAME report, OHSB attempted to resolve the issue in 2009 by proposing statutory changes, but was unsuccessful.

The Environment Department's Office of General Counsel is currently reviewing the regulation, and recommendations for changes are forthcoming to present to the EIB for adoption. They anticipate that the proposed regulatory changes will be presented to the EIB for consideration in FY 2014.

As an interim measure, OHSB has instituted procedures for cases where employee representation falls under the provisions of the regulation to include form letters provided to counsel representing workers. The procedures and forms have been used in rare cases to provide clarification during the interview process.

Current Status

OHSB projects the regulation change will be presented to the EIB in FY 2014. The recommendation remains open.

Observation 13-1: Of the twelve fatalities New Mexico inspected, five (42%) of them were found in compliance.

Current Status

New Mexico OHSB should ensure that New Mexico FOM Chapter 11 procedures are followed for all fatality inspections. We will continue to follow up on this issue at quarterly meetings.

II. Major New Issues

None

III. Assessment of State Plan Performance

Most of the issues addressed throughout this report are measures in the SAMM Report and/or the State Indicator Report (SIR). New Mexico performance as indicated in Appendix D of the SAMM report is discussed during quarterly meetings and ongoing communication.

New Mexico (OHSB) conducted a total of 290 inspections in FY 2013; 212 (73%) were safety and 78 (27%) were health. Construction accounted for 121 (42%) of the total 290 inspections.

Inspection goals were not met during FY 2013 and is the subject of Recommendation 13- New Mexico OHSB should evaluate inspection goals and, if appropriate, modify them to reflect the declining number high hazard industries in the State Plan and the number of planned complex inspections (for example, refinery LEP inspections).

New Mexico transmitted a revised NMFOM and comparison document in November 2009. The Regional Office reviewed the document and provided comments to the State Plan on December 2011. Unless noted below, New Mexico's enforcement policies and procedures are identical to OSHA's.

1. ENFORCEMENT

a) Complaints

New Mexico has interpreted the State Plan OHS Act to define complaints as only those signed notices of alleged hazards filed by current workers or their

representatives. All other notices of alleged hazards, including those from former workers and unsigned notices from current workers or employee representatives, are classified as referrals. All complaints are responded to by inspection in accordance with the New Mexico OHS Act and regulations. Referrals may be handled by phone/fax, letter, or inspection, as determined by the Compliance Program Manager. Appendix D shows that there were five complaint inspections conducted in New Mexico in FY 2013, accounting for 1.7% of inspection activity. Referral inspections accounted for 36.2% (105/290) of inspection activity.

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

SAMM 1 shows that New Mexico averaged 3.4 working days to respond to all serious and/or other than serious complaints by inspection; the State Plan goal is no more than five working days. SAMM 4 shows that both 100% (2/2) of the imminent danger complaints and referrals responded to during the period were inspected within one working day.

Because the New Mexico Act so narrowly defines complaints, we have historically reviewed at quarterly meetings the State's response to referrals alleging serious hazards. The Bureau has an internal strategic goal of responding to 95% of referrals alleging serious hazards within 10 working days. New Mexico responded to 239 of 250 (95.6%) referrals alleging serious hazards within 10 working days.

The goal for SAMM 3 is to notify all of complainants of inspection results within 20 working days of citation issuance or 30 working days of the closing conference for cases without citations. In 3 of the 5 (65%) complaint inspections, complainants were notified of inspection results during the period. In the remaining two complaints, no contact information was provided by the complainant.

b) Fatalities

New Mexico has experienced a leveling-off of Days Away, Restricted, or Transferred (DART) rate reduction. This recent trend mirrors that of nationwide statistics over the past several years. From 2009 through 2012, the national DART rate has remained flat at 1.8 cases per 100,000 workers. The national rate decreased continuously over previous years from a rate of 2.5 in 2004. Similarly, the New Mexico rate has remained relatively flat from 2009 (2.1) through 2012 (1.9), compared to a rate of 2.7 in 2004. Although short-term rates have been flat, long-term reductions continue to indicate the positive effect of OHSB programs.

The micro-to-host All Fatalities Received Report for New Mexico shows that 20 fatalities were reported to the Occupational Health and Safety Bureau (OHSB) in FY 2013. Two were heart attacks; four were auto accidents; one was struck by in a cross walk; and one was natural causes. This resulted in 12 deaths under the jurisdiction of OHSB.

The State Plan experienced a high in-compliance rate for fatalities in FY 2013. This is included as an observation in this report. We will continue to monitor and discuss fatality inspections during our FY 2014 quarterly discussions.

Of the 12 fatal incidents that were inspected, the investigation began within one day in 11 of the 12 (91.6%) cases. In a single case, the accident was reported on Saturday, November 17, 2012. The inspector drove to Carlsbad on Sunday, November 18 and initiated the onsite inspection on the morning of Monday, November 19, less than one business day from reporting. Six of the 12 deaths were in the oil and gas well drilling and servicing industry; 2 were in construction; and 4 were in other industries.

New Mexico continues to place significant enforcement emphasizes on the construction and oil and gas industries. Although construction fatalities were down in FY 2013, the number of fatal accidents in both these industry sectors continues to represent a large proportion of occupational fatalities in the State Plan as a long-term trend.

Between 2011 and 2012, Total Recordable Case (TRC) rates for Public and Private Sectors, and the DART rate for the Private and Public Sectors decreased in New Mexico. The Public Sector TRC rate decreased from 6.4 to 6.1 (-4.1%); the Private Sector TRC rate decreased from 4.2 to 3.9 (-7.1%). The Public Sector DART rate decreased from 2.6 to 2.3 (-11.5%); and the Private Sector DART rate decreased from 2.1 to 1.9 (-9.5%).

The following table shows the five-year trend for these rates.

	New Mexico 2008 Total Case Rate (TRC)	New Mexico 2012 Total Case Rate (TRC)	% change from 2008 to 2012	National Total Case Rate (TRC)
Public Sector	7.2	6.1	-15.3%	5.6
Private Sector	3.8	3.9	2.6%	3.4
	New Mexico 2008 DART rate	New Mexico 2012 DART rate	% change from 2008 to 2012	National DART rate
Public Sector	2.8	2.3	-17.9%	2.4
Private Sector	1.8	1.9	5.6%	1.8

c) Targeting and Programmed Inspections

Chapter 2 of the New Mexico FOM directs Bureau personnel to establish targeting based on annual projections of inspection activity as determined through annual performance planning.

New Mexico uses the high hazard industry list based on Dun and Bradstreet listings, which is provided by OSHA's Directorate of Evaluation and Analysis, to target high hazard manufacturing and general industry sites. Dodge reports are used to target programmed construction inspections. The University of Tennessee provides OHSB a randomly selected list of construction projects from identified or known active projects. This list contains the projected number of sites the Bureau has reported it plans to inspect during the next month. Projects are selected in accordance with OSHA Instruction CPL 02-00-141, Inspection Scheduling for Construction.

In FY 2013, eight Local Emphasis Programs (LEPs) were implemented in conjunction with the strategic and annual performance plans, to address the industries in New Mexico that experience the highest injury and illness rates and/or fatalities. The eight LEPs are All Construction; Fabricated Metal Products; Oil and Gas Well Drilling and Servicing; Refineries; Silica; Warehouse Industry, Nursing and Long-Term Care, and Waste Management. Public input was solicited when LEPs are developed. The Bureau uses BLS and New Mexico Department of Health data on health-related exposures when developing LEPs.

The Bureau also continued activities at PSM-covered facilities, and at facilities with hazards involving primary metals processing and use of hexavalent chromium through the adoption of national emphasis programs. The OSHB adopted an additional National Emphasis Program for exposure to isocyanates during the fiscal year as well. OHSB adopted the provisions of the National Emphasis Program (NEP) on Refineries in their LEP, and is using its procedures for conducting programmed refinery inspections.

Targeting programs are developed through the State's annual performance planning. The process is initiated early during the prior fiscal year through Bureau staff meetings, assignment of staff to individual areas of the performance plan, and finalization of the plan by Bureau management. Performance planning includes review of existing LEPs and potential LEPs based on industry information such as BLS rates.

The Bureau met or exceeded performance plan goals in target industries including fabricated metals, oil and gas well drilling and servicing, and warehouses. The Bureau discontinued its local emphasis program for warehousing for 2014 due to a low number of hazards identified during FY 2013.

New Mexico inspects a large percentage of referrals with alleged serious or imminent danger hazards. Many of these are in industries that are included in the high hazard listing, an LEP, or an NEP.

SAMM 8 which includes both private and public sector data for the State, shows Compliance Officers identified hazards in 36% (36/100) of programmed safety and 18.2% (6/33) of programmed health inspections.

SAMM 20 shows the State Plan in-compliance rates were 57.9% (113/195) for safety, and 72% (49/68) for Health. Current national comparison data is not available.

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

The FY 2013 Inspection (INSP) report shows that 42% (122/290) of New Mexico's inspections were programmed.

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

The construction partnerships and alliances that have existed in New Mexico for several years also affect the construction in-compliance rate. The Total Recordable Case (TRC) rate of 3.2 and Days Away from Work, Restricted, or Transferred (DART) rate of 1.9 for construction, reflect the Bureau's efforts in this area. However, two of the 12 (16.6%) fatalities inspected in FY 2013 occurred in the construction industry, which indicates the need to continue the All Construction Local Emphasis Program.

We discussed the higher health in-compliance rate at the quarterly meetings in FY 2013. One factor affecting this is that Health Compliance Officers focus on health issues and make referrals to safety for possible safety violations. OSHA

Health Compliance Officers often recognize and recommend violations for safety hazards observed on health inspections.

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

d) Citations and Penalties

The New Mexico Occupational Health and Safety Bureau Compliance Section cited a total of 333 violations in FY 2013.

Reducing citation lapse time has been a focus of State Plan efforts for several years.

The micro-to-host Inspection Report for FY 2013 shows New Mexico average citation lapse times of 58.5 working days for safety and 74.3 working days for health, overall 61.5 days.

The OHSB has taken several steps to address this issue; these are described in the documentation of each quarterly meeting. We will continue to discuss strategies to reduce health citation lapse time at quarterly meetings in FY 2014. (See Appendix A, Recommendation 13-4.)

The OHSB has taken several steps to address this issue, and these are described in the documentation of each quarterly meeting. We will continue to discuss strategies to reduce citation lapse time at quarterly meetings in FY 2014. (See Appendix, Recommendation 13-4.)

SAMM 9 shows that the average number of violations per inspection with violations was 2.85 in New Mexico and 2.9 Nationwide. New Mexico identified 1.88 serious violations per inspection with violations; the nationwide average was 2.04.

The micro-to-host Inspection Report for FY 2013 shows that New Mexico Compliance Officers identified a total of 333 violations – 198 (59.4%) serious; 0 (0.0%) willful; 3 (0.9%) repeat; and 132 (39.6%) other-than-serious.

SAMM10 shows the average initial penalty per private sector serious violation in New Mexico was \$1094.16; the Nationwide average (OSHA and all State Plans) was unavailable. The case file reviewed showed the State Plan properly calculated all penalties.

e) Abatement

SAMM 6 shows that New Mexico verified abatement of 100% (91/91) of the private sector and 100% (22/22) of the public sector serious, willful, and repeat violations within 30 days of the final abatement date.

State Indicator Report (SIR) measure C.4 shows that New Mexico assigned abatement dates longer than 30 days for 22% of safety violations. No health violations were assigned abatement dates longer than 30 days.

f) Worker and Union Involvement

The New Mexico Field Operations Manual (NMFOM), Chapter 3, pages 3-8, Section D and Chapter 7, page 7-2, Sections C.1 and C.2 afford workers and/or employee representatives the opportunity to participate in every phase of the inspection process. IMIS SCAN reports show that approximately 15.1% (44/290) of New Mexico inspections conducted in FY 2013 were at union sites.

2. REVIEW PROCEDURES

a) Informal Conferences

The informal conference process in New Mexico allows for either amendments to citations or entering into Informal Settlement Agreements. The Bureau documents these changes in the OSHA Integrated Management Information System (IMIS) with the codes AMEND or ISA. State Indicator Report (SIR) measures C.7 and C.8 provide State Plan data on violations vacated and reclassified prior to contest. These measures show that 1.9% of New Mexico violations were vacated, and 3.8% of New Mexico violations were reclassified prior to contest. SIR measure C.9 shows that 88.6% of New Mexico penalties were retained prior to contest.

b) Formal Review of Citations

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

State Indicator Report (SIR) measures E.1, E.2, and E.3 address changes to citations and penalties subsequent to contest. These include changes made through formal settlement, OHS Review Commission decisions, and court

decisions. SIR measures E.1 and E.2 show that 19% of New Mexico violations were vacated, and 9.4% of New Mexico were reclassified subsequent to contest. SIR measure E.3 shows that 47% of New Mexico penalties were retained subsequent to contest.

SAMM 12 is the average lapse time from receipt of contest to first level decision. The New Mexico average was 115 days; the National (OSHA and all State Plans) was not available. Almost all cases result in formal settlement agreements in New Mexico; only a few each year reached the Review Commission level.

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

Review Commission decisions are available upon request.

The New Mexico Occupational Health and Safety Review Commission (OHSRC) held hearings on two OHSB cases during FY2013, including:

The OHSRC met on January 16, 2013, to review an employee objection to a settlement agreement between the OHSB and Gallup Fire Department. The Commission approved the settlement agreement, which required the Fire Department to provide Hantavirus hazard prevention training to firefighters.

Following a hearing in the case of New Mexico Environment Department (NMED) vs. Southwest Concrete and Paving on January 16, 2013, the OHSRC determined that the employee actions leading to the violation were not reasonably foreseeable and dismissed the OHSB citation against the company. The citation arose from an accident where a Southwest employee used the bucket of a front loader to access a bin at an asphalt plant near Deming. The employee fell onto the tines of the bucket and subsequently died of related injuries. The citation alleged that Southwest had not taken reasonable steps to prevent workers from using the loader bucket as a work platform. OHSB is awaiting the Commission's written order in the case.

3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

a) Standards Adoption

New Mexico's regulations provide that amendments to OSHA standards that have been adopted by the New Mexico Environmental Improvement Board

(EIB) are considered “adopted by reference” without conducting a hearing. Any new OSHA standards or State-initiated standards proposed for adoption require a public hearing.

During this evaluation period, OSHA issued two final rules. New Mexico was current on timely adoption of standards at the start of FY 2013. The State Plan adopted an identical Cranes and Derricks in Construction: Underground Construction and Demolition standard. The State Plan adopted Updating OSHA Standards based on National Consensus Standards; Head Protection for General Industry and Construction. New Mexico has no shipyard, longshoring, or marine terminal employment within its jurisdiction.

Status of 2012 Federal Standards Adopted

Standard:	State Plan Response Date:	Intent to Adopt:	Adopt Identical :	Adoption Due Date:	State Plan Adoption Date:
Direct Final Rule - Cranes and Derricks in Construction: Underground Construction and Demolition: 29 CFR Part 1926	6/21/2013	Yes	Yes	11/23/2013	11/23/2013
Updating OSHA Standards Based on National Consensus Standards; Head Protection: 29 CFR-Parts 1910.15,17,18 &26	3/11/2013	Yes	No	7/16/2013	11/16/2012

No State-initiated standards were adopted in FY 2013.

b) Federal Program/State Plan-Initiated Changes

There were five Federal program changes which a response and/or plan supplement was due in FY 2013. All responses were transmitted prior to the due date.

Status of Federal Program Changes (FPCs) Adoption

FPC Directive/Subject:	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Comments
Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification: CPL 02-01-055	11/26/2012	No	No	N/A – adoption not required	N/A
Inspection Scheduling for Construction CPL 02-00-155	11/28/2012	Yes	No	N/A – adoption not required	NM has an equivalent "ALAE" appeal procedure in NMFOM Chapter 13
Inspection and Citation Guidance for Roadway and Highway Construction Work Zones CPL 02-01-054	12/17/2012	Yes	Yes	3/11/2013	New Mexico adopts identical with State Planequivalencies for personnel and office designations.
Site-Specific Targeting 2012 (SST-12): CPL 02-13-01	3/8/2013	No	No	N/A – adoption not required	Equivalent approved procedure
National Emphasis Program: Occupational Exposure to Isocyanates CPL 03-00-017	8/19/2013	Yes	Yes	8/20/2013	New Mexico adopts identical.

New Mexico transmitted eight State-initiated plan changes during FY 2013 regarding Local Emphasis Programs. All eight have been approved.

4. VARIANCES

New Mexico did not issue any permanent or temporary variances in FY 2013. New Mexico has only issued one temporary variance in its 38-year history. The Bureau honors all multi-State Plan variances that have been issued by OSHA.

5. PUBLIC EMPLOYEE PROGRAM

SAMM 11 shows that 6.9% (20/290) of the total inspections New Mexico conducted were in the public sector. The State's goal is approximately 15%, based on the percentage of public sector employers who are considered in a high hazard industry.

Penalties are assessed for violations identified in public sector inspections. Penalties for serious violations are deemed “paid” (waived) if abatement is verified by the established abatement date.

The Bureau increased compliance assistance activities in the public sector during FY 2013 as part of the overall goal of reducing the injury rate within this sector, which continues to experience injury and illness rates greater than the private sector. The OHSB presented an Introduction to OSHA and information on the compliance inspection process through their association or Alliance with the Municipal League of New Mexico. Four different presentations were made reaching approximately 100 city workers. The OHSB established a working relationship with the New Mexico Department of Health, Public Health Division (NM DOH, PHD) to provide outreach and information to health care workers within the public health care system. In FY 2013, OHSB conducted one outreach activity for representatives from NM DOH, PHD. Bureau staff also assisted in OSHA 10-hour training with two different county organizations reaching approximately 80 workers.

6. DISCRIMINATION PROGRAM

Section 50-9-25.A of the New Mexico Occupational Health and Safety Act provides for discrimination protection equivalent to that provided by OSHA.

New Mexico’s policies and procedures for discrimination complaints under the OHS Act are identical to OSHA’s with one exception. The New Mexico Act provides that discrimination complaints must be filed in writing. If a complainant contacts the Bureau by phone within 30 days of the discriminatory activity and follows up in writing after the 30-day period has expired, the complaint is deemed to have been filed within that 30-day timeframe. The State Plan policies and procedures are contained in NMFOM Chapter 13, and are at least as effective as OSHA’s. Complainants are notified in writing of their right to dually file with OSHA. New Mexico policies and procedures include an internal appeal process.

During this period, the New Mexico Discrimination Investigator did not enter data into the WebIMIS database; therefore, the data on the SAMM report does not reflect actual activity. SAMM 13 shows that 100% (2/2) of New Mexico’s discrimination investigations during the period were completed within 90 days. SAMM 14 shows a 0% (0/2) meritorious case rate for New Mexico; the National rate was 25%. SAMM 15 shows that New Mexico had a 0% (0/0) settlement rate for meritorious cases; the national rate was 89%.

See the table below which provides New Mexico’s actual performance for FY 2013:

11(c) Investigations (SAMM 13, 14, 15)

	FY 2011	FY 2012	FY 2013	FY 2013 National Average (3 years)
Completed Within 90 Days (SAMM 13)	100%	100%	100% (9/9)	100%
Merit Cases (SAMM 14)	9.09%	40%	22% (2/9)	25%
Merit Cases Settled (SAMM 15)	100%	50%	0% (0/2)	89%

OSHA conducted a comprehensive monitoring review of New Mexico’s discrimination program to evaluate the State’s progress and to evaluate the current administration of the State’s discrimination program. During this year’s monitoring cycle, OSHA reviewed 9 discrimination case files and 41 screened out complaints.

The on-site review found that in the nine whistleblower cases that were investigated, the investigations were not always conducted in accordance with Section 50-9-25 of the OHS Act and Chapter 13 of the New Mexico FOM.

The Discrimination Program is the subject of Recommendation 13-1. New Mexico OHSB should ensure that the OHS Act, OHS regulations, and the New Mexico FOM Chapter 13 are followed for all whistleblower investigations.

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

New Mexico sets goals through the strategic planning process for programmed inspections. New LEPs normally include an outreach component for at least the first year of implementation. Programmed general industry inspections are scheduled by rank and county using the Dun and Bradstreet lists.

New Mexico has an effective public sector targeting system that is based on high hazard public sector operations.

8. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPs)

There were no open CASPs at the beginning of FY 2013, and no CASPs were received by OSHA regarding New Mexico in FY 2013.

9. VOLUNTARY COMPLIANCE PROGRAM

New Mexico adopted the federal policy and procedures manuals for Alliances and the Voluntary Protection Program (VPP), but did not adopt the recently revised Partnership Directive dated November 6, 2013. The State Plan has many partnerships

and alliances, as detailed in the New Mexico FY 2013 State Plan OSHA Annual Report (SOAR).

New Mexico cooperative programs include the Zia Star Voluntary Protection Program with 13 sites, 6 partnerships, and 4 alliances. Descriptions of each program and member companies are included in New Mexico State OSHA Annual Report (SOAR), which is available on the New Mexico OHSB website at www.nmenv.state.us/Ohsb_Website/ComplianceAssistance.

The State Plan strengthened its cooperative programs within both the Zia Star Voluntary Protection Program (VPP) and the OHSB Strategic Partnership (OSP) program. The OHSB Compliance Assistance Specialist designated as VPP Coordinator attended a national training conference during the year. The State Plan continues to support six partnerships with 79 member construction companies. The successful implementation of these programs allows OHSB to focus enforcement efforts on higher injury and illness rate industries.

The OHSB and the Construction Health and Safety Council of New Mexico continued to improve partnership processes with the construction industry. The council was formed in 2011 between OHSB and the major construction associations including the Associated General Contractors (AGC), Associated Building Contractors (ABC), and the National Utilities Contractors Association (NUCA) among others. In 2013, the council solidified a process for sharing membership application information and conducting quarterly joint training sessions.

New Mexico focused on improving OSP programs through more comprehensive onsite verification activities and by conducting reviews of existing agreements.

OHSB focused efforts toward training of staff and reviewing current VPP participants during the year. New Mexico had 13 VPP worksites as of September 30, 2013.

The OHSB coordinated and conducted four safety and health outreach events for over 350 participants representing New Mexico Native American Tribes, Pueblos, and Nations. The training events were conducted during two consecutive days in March 2013 and again in September 2013.

Compliance Assistance Specialists and Compliance Officers conducted many various interventions during FY 2013.

FY 2013 Interventions	
Intervention Type	Number of Interventions
Focused Assistance	9
Formal Training	5
Partnership Leveraging	33
Program Review	0

Speech	6
Strategic Planning	0
Technical Assistance	21
VPP Annual Review	0
VPP Evaluation Visit	2
VPP Preapproval Visit	0
Other	18
Total	94

10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM

Private sector consultation services are provided in New Mexico under a 21(d) Cooperative Agreement, and public sector consultation services are provided under the 23(g) State Plan grant. The project began using the new OSHA Information System (OIS) in September of 2013.

New Mexico conducted 20 public sector consultation visits (13 Safety and 7 Health). The Mandated Activities Report for Consultation (MARC) is a computerized report on public sector consultation activities. The MARC contains five performance measures, but MARCs 1 and 2 do not apply to the public sector.

MARC 3 shows that New Mexico consulted with workers in 100% (17/17) of the public sector initial visits.

MARC 4.A shows that 89% (128/144) of the identified serious hazards were corrected in a timely manner (within 14 days of the latest correction due date); the goal is 100%. The 16 hazards that were not corrected within 14 days of the latest correction due date were all issued on one visit, and were verified corrected before 90 days had passed. MARC 4.D shows that 62% (89/144) of the serious hazards were corrected within the original timeframe or on-site; the goal is 65%. MARC 5 shows that there were no serious hazards with corrections more than 90 days past due.

11. STATE PLAN ADMINISTRATION

a) 23(g) State Plan Grant

A review of New Mexico's 23(g) financial grant was conducted in February 2012, and there were no significant findings.

In FY 2013, the federal share of the New Mexico 23(g) grant was \$967,300 and the State share was \$967,300, for a total grant amount of \$1,934,600.

New Mexico abides by the exemptions and limitations on OSHA appropriations, and no inspections were conducted outside of those guidelines.

b) Staffing

As of March 31, 2014, the Bureau has one vacancy – Health Compliance Officer. The 23(g) grant covers the salaries of the Compliance Program Manager, Health Compliance Officer, and 10% of the Consultation Program Manager. The State Plan expects to fill these positions within the next two months. The Bureau filled the vacant administrative manager position in June 2013.

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

c) Internal Training

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

At each quarterly meeting and at the end of each fiscal year, the Bureau Chief provides updates on training received by staff during the period.

d) 18(e) Determination Status

The New Mexico Environment Department first indicated interest in seeking final State Plan approval (18(e) determination) in 1999. We started with a review of the 29 CFR 1902 regulations criteria and indices of effectiveness, and began compiling the 18(e) determination outline. The outline was provided to the State Plan for input, and the former Bureau Chief began working on the State Plan response.

Much progress has been made, but the issue of private interviewing is still problematic. There are apparent inconsistencies in language and interpretation within the State's private interviewing regulations themselves. The issue was addressed through proposed changes to the State Plan regulations. The New Mexico Environmental Improvement Board (EIB) did not adopt the changes as proposed. The Department then drafted legislation to change the OHS Act to ensure private interviewing. The legislation was introduced in the 2009 legislative session, but did not pass. The Bureau is now working with the Department's legal staff to determine the appropriate next steps. This was the subject of a recommendation in past FAME reports and is a continuing recommendation in this report. (See Appendix A, Recommendation 13-5.) We will follow progress on this issue each quarter and will continue to work together toward achieving the goal of 18(e) final determination.

e) Integrated Management Information System (IMIS)

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

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

The micro Debt Collection Tracking reports are designed for OSHA and do not facilitate the State's debt collection process. The IMIS System Administrator uses the Open Inspections Report to track cases, ensure the New Mexico Field Operations Manual (NMFOM) procedures are followed, and ensure penalties are collected.

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

The State's Consultation program moved from the OSHA Integrated Management Information System (IMIS) to the OSHA Information System (OIS) in late August 2013.

f) State Internal Evaluation Program (SIEP)

New Mexico developed and implemented a comprehensive State Internal Evaluation Program (SIEP) in FY 2008. All issues in the evaluation program are reviewed at least once every five years.

The State Plan did not conduct the SIEP in FY 2013 due to staffing and financial constraints. They intend to continue the program in FY 2014.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

New Mexico made progress on their FY 2013 Annual Performance Plan goals, as discussed in the New Mexico FY 2013 State OSHA Annual Report (SOAR) and below.

New Mexico transmitted their FY 2013 Annual Performance Plan and appropriate financial documentation during the FY 2013 grant application process. The Regional Office reviewed and concurred with the annual performance goals for FY 2013. The FY 2013 Annual Performance Plan was officially approved by the Assistant Secretary when the FY 2013 23(g) grant was awarded.

Details of the State’s performance in relation to the FY 2013 Annual performance plan are highlighted below:

- Goal 1.1: The strategic goal is to reduce the total injury and illness DART rate by 8% by 2014 through focusing on targeted safety and health hazards. The DART rates for 2013 will not be available until October 2014; however the 2012 overall DART rate of 2.0 is a decrease of 8.3% from the 2007 baseline rate. The State Plan has met the 5-year strategic goal for this measure.
- Goal 1.2: The New Mexico FY 2013 annual performance goal is to experience fewer than 12 workplace fatalities requiring OHSB investigation. There were 12 such fatalities in FY 2013. OHSB conducted 52.4% (152/290) of the total inspections in construction and oil and gas well drilling and servicing. These two industries accounted for 6 of the 12 (50%) workplace deaths reported in 12 incidents in FY 2013.
- Goal 1.3: Goal was deleted during FY 2011.
- Goal 1.4: New Mexico exceeded the annual performance goal for increasing participants in strategic partnerships. The goal is 75; at the end of FY 2013 there were 79 members in OHSB partnership programs.
- Goal 1.5: The goal is to increase VPP from 11 to 13 approved VPP members by the end of FY 2013, and there were 13 companies approved as Zia Star VPP members as of September 30, 2013.
- Goal 1.6: The following chart details the goals and accomplishments for educating employers and workers by increasing materials available in languages other than English and by conducting workshops and conferences in growing industries.

Goal	Results
1. Participate in 13 workshops.	OHSB staff participated in 21 workshops in FY 2013.
2. Participate in 9 speaking engagements	OHSB staff participated in 8 speaking engagements in FY 2013.
3. Participate in 3 outreach activities in a language other than English.	OHSB staff participated in 8 outreach activities conducted in Spanish during FY 2013.

- Goal 2.1: New Mexico's goal is to respond to 100% of workplace fatalities within 1 working day of notification. New Mexico responded to 11 of 12 (91.6%) incidents of workplace fatalities within one working day of notification. In a single case, the worksite was inactive post-accident and the employer could not initially be located. This issue is also discussed in Section III.A.2 of this report.
- Goal 2.2: New Mexico's goal is to respond to 95% of referrals alleging serious hazards within 10 working days. They responded to 96% (239/250). This issue is also discussed in Section III A.1 of this report.
- Goal 2.3: New Mexico's goal is to complete 95% of discrimination investigations within 60 days. (This is a more ambitious goal than that established in SAMM 13, which is to complete 100% of discrimination investigations with 90 days.) New Mexico completed 22% (2/9) discrimination complaint investigations within 60 days. This issue is also discussed in Section III Section F of this report

V. Other Special Measures of Effectiveness and Areas of Note

The OHSB hosted the Occupational Safety & Health State Plan Association (OSHSPA) Winter Meeting in Santa Fe from January 8th through 9th, 2013. Representatives from State Plans nationwide, as well as OSHA, were present to discuss issues faced. OHSB presented information on its unique cooperative programs and on its enforcement efforts in the public sector during the meeting.

Appendix A – New and Continued Findings and Recommendations
FY 2013 New Mexico State Plan Comprehensive FAME Report

FY- Rec#	Finding	Recommendation	FY 2012
13-1	In the nine whistleblower cases that were investigated, the investigations were not always conducted in accordance with Section 50-9-25 of the OHS Act and Chapter 13 of the New Mexico FOM.	New Mexico OHSB should ensure that the OHS Act, OHS regulations, and New Mexico FOM Chapter 13 are followed for all whistleblower investigations.	
13-2	The State Plan inspection goals for FY 2013 were not met. The State Plan completed 290/505 (57.4%) of projected inspection goals.	Evaluate inspection goals and if appropriate, modify to reflect changes in available resources.	
13-3	Case files reviewed were not always fully and accurately documented for employer knowledge as required by their FOM.	New Mexico OHSB should ensure that employer knowledge is documented.	12-1
13-4	Average health citation lapse time in New Mexico is significantly higher than the National average, and increased 25% from 61.4 to 76.8 Safety and 39% from 71.3 to 99 calendar days, from FY 2010 to FY 2013.	New Mexico OHSB should review processes and policies to identify roadblocks and inefficiencies.	12-2
13-5	There are apparent inconsistencies in language and interpretation within the State’s private interviewing regulations.	New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).	12-4

Appendix B – Observations Subject to Continued Monitoring
FY 2013 New Mexico State Plan Comprehensive FAME Report

OB #	Observations	Federal Monitoring Plan	FY 2013
OB-1	Of the twelve fatalities New Mexico inspected, five (42%) of them were found in compliance.	OSHA Region VI will continue to follow up on all fatality inspections and discuss at the quarterly meetings.	

Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 New Mexico State Plan Comprehensive FAME Report

FY 2013 New Mexico State Plan Comprehensive FAME Report					
FY 12-Rec #	Finding	Recommendation	State Plan Response/Corrective Active	Completion Date	Current Status
12-1	Case files reviewed were not always fully and accurately documented.	<p>New Mexico OHSB should ensure that:</p> <ol style="list-style-type: none"> 1. The case file diary sheets document all actions taken, when they were taken, and by whom. 2. Documentation of employee discussions relative to violations or complaint items is included in all case files. 3. Employee exposure to hazards is documented. 4. Employer knowledge is documented. 	<p>OHSB will continue to review individual files for thoroughness and consistency in diary use. The 2012 State Internal Evaluation Program (SIEP), which is on-going, includes a review of this subject. The Compliance Program Manager provided additional instruction to Compliance Officers during a meeting and training session on August 24, 2012.</p>	<ol style="list-style-type: none"> 1. Sixty-three of 69 cases (91%) included the proper documentation on the diary sheets. 2. The case file reviews found that 59 of the 65 cases (90.8%) show workers were interviewed. 3. Case file reviewed showed Compliance Officers were documented employee exposure appropriately. 4. The 2012 SIEP reviewed employer knowledge documentation and found that all cases were documented. This item will be addressed throughout FY 2014. OHSB will continue to monitor closely. 	<p>The State Plan has completed corrective action on items 1-3 and we consider the recommendation closed.</p> <p>4. Recommendation 4 of 12-1 will be repeated for FY 2014</p>

Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 New Mexico State Plan Comprehensive FAME Report

12-2	<p>Average health citation lapse time in New Mexico is significantly higher than the National average, and increased 25% from 71.3 to 99.0 calendar days, from FY 2010 to FY 2013. This has been a focus of State Plan efforts for several years, and was identified in the 2011 State Plan Internal Evaluation Program (SIEP) review. Steps were taken at that time and are continuing, in an effort to reduce the lapse time.</p>	<p>New Mexico OHSB should continue efforts to reduce health citation lapse time.</p>	<p>Corrective action was initiated when the issue was first identified and has been on-going since that time. OHSB will continue to utilize IMIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance.</p> <p>OHSB will closely monitor health inspection assignments to ensure caseloads are reasonable. The Compliance Manager will review assignment reports and compare these with open inspection reports weekly. OHSB will also more closely review health referrals alleging serious hazards to identify those where an initial investigation by inquiry may be appropriate.</p> <p>OHSB will continue to perform a monthly</p>	<p>The first quarter of 2013 shows a reduction in lapse times to within target variance provided for in State Activities Mandated Measures. OHSB will continue to monitor closely.</p>	<p>This recommendation will be repeated for FY 2014.</p>
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**Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 New Mexico State Plan Comprehensive FAME Report**

			<p>analysis of lapse times for individual Compliance Officers and will continue to use lapse times as a major factor during employee performance evaluations. Performance reviews will include an analysis of task prioritization to identify potential improvements, and Compliance Officers will be coached on task prioritization. OHSB will continue to utilize progressive administrative discipline for Compliance Officers whose performance in this area is substandard.</p> <p>OHSB will continue to use IMIS reports and has initiated additional methods for tracking the progress of health case files, including a tracking board. The Compliance Manager will check file progress weekly and meet with Compliance Officers</p>		
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Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 New Mexico State Plan Comprehensive FAME Report

			at least monthly on open cases.		
12-3	<p>This issue was included in the 2011 SIEP review. In the universe of 24 cases, the reviewer identified 4 cases where abatement dates might have been shorter. The Compliance Manager reviewed the cases and discussed them with the Compliance Officers.</p> <p>Fifteen of the 44 (34%) case files we reviewed had at least one violation with abatement dates we considered longer than necessary.</p>	<p>New Mexico OHSB should ensure that, in accordance with NMFOM Chapter 5, Section II.C.2.k, “The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation.”</p> <p>Corrective action completed; awaiting verification.</p>	<p>The Compliance Program Manager provided additional instruction to Compliance Officers during a meeting and training session on August 24, 2012. The Compliance Program Manager will continue to emphasize to Compliance Officers at staff meetings and during review of individual case files, the need to consider abatement periods for violations based on the circumstances in each individual case in order to achieve optimum results in abatement time intervals.</p>	<p>OHSB also monitors SIR data for “Abatement Periods for Violations” to compare New Mexico data with Federal data and ensure that the number of safety violations with abatement periods greater than 30 days and health violations with abatement periods greater than 60 days, are minimized.</p> <p>The Compliance Program Manager provided additional instruction to Compliance Officers during a meeting and training session on August 24, 2012. The Compliance Program Manager will continue to emphasize to Compliance Officers at staff meeting and during review of individual case files, the need to consider abatement periods for violations based on the circumstances in each</p>	<p>30 of the 44 (85.7%) case files we reviewed had at least one violation with abatement dates considered appropriate. The Compliance Manager reviewed the cases and discussed the circumstances of each of the cases with the onsite team.</p> <p>The State Plan has completed corrective action on this issue and we consider this recommendation closed.</p>

Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 New Mexico State Plan Comprehensive FAME Report

				individual case, in order to achieve optimum results in abatement time intervals.	
12-4	There are apparent inconsistencies in language and interpretation within the State’s private interviewing regulations. New Mexico managers are discussing proposed regulatory changes with New Mexico Environment Department (NMED) legal staff. We will continue to monitor progress on this issue.	New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).	The Environment Department’s Office of General Counsel is currently reviewing the regulation, and recommendations for changes are forthcoming to present to the Environmental Improvement Board. We anticipate that the proposed regulatory changes will be presented to the Environmental Improvement Board for consideration in FY 2014.	The Environment Department’s Office of General Counsel is currently reviewing the regulation, and recommendations for changes are forthcoming to present to the EIB for adoption. We anticipate that the proposed regulatory changes will be presented to the EIB for consideration in FY 2014.	This recommendation will be repeated for FY 2014.

**Appendix D – FY 2-13 State Activity Mandated Measures (SAMM) Report
FY 2013 New Mexico State Plan Comprehensive FAME Report**

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: New Mexico			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	3.4	(Negotiated fixed number for each state) - 5	State Plan data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	0	(Negotiated fixed number for each state) - 0	State Plan data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State Plan data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State Plan data taken directly from SAMM report generated through IMIS.

Appendix C – Status of FY 2012 Findings and Recommendations
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9a	Average number of violations per inspection with violations by violation type	1.88	SWR: 2.04	State Plan data taken directly from SAMP report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	0.97	Other: .88	
11	Percent of total inspections in the public sector	6.9	(Negotiated fixed number for each state) - 15%	State Plan data taken directly from SAMP report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	100	100%	State Plan data taken directly from SAMP report generated through IMIS.
14	Percent of 11c complaints that are meritorious	0	24.8% meritorious	State Plan data taken directly from SAMP report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	74	90 Days	State Plan data taken directly from SAMP report generated through IMIS.
17	Planned vs. actual inspections - safety/health	212/78	(Negotiated fixed number for each state) - 400/105	State Plan data taken directly from SAMP report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1-25 Workers	a. 460.14		State Plan data taken directly from SAMP report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Workers	b. 1107.32		
18c	Average current serious penalty - 101-250	c. 1380.26		

Appendix C – Status of FY 2012 Findings and Recommendations
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	Workers			
18d	Average current serious penalty - 251+ Workers	d. 905.11		
18e	Average current serious penalty - Total 1 - 250+ Workers	e. 778.39		
19	Percent of enforcement presence	1.10%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety - 57.95	Safety - 29.1	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	Health - 72.06	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	81%	100%	State Plan data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	59.44	43.4	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	88.44	57.05	

Appendix C – Status of FY 2012 Findings and Recommendations
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24	Percent penalty retained	88.77	66	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State Plan data taken directly from SAMM report generated through IMIS.