

**FY 2014 Follow-up
Federal Annual Monitoring and Evaluation (FAME) Report**

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



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I. Executive Summary

A. State Plan Activities, Themes, and Progress

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 John M. Hermanson, Regional Administrator, Region VI, Occupational Safety and Health Administration, U.S. Department of Labor, and covers the period from October 1, 2013, to September 30, 2014. The purpose of this report is to assess the New Mexico Occupational Health and Safety Bureau's (OHSB) State Plan activities for the Fiscal Year (FY) 2014 and its progress in resolving ongoing findings. This report also reviews recommendations from the FY 2013 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report focusing on the status of corrective activities.

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

New Mexico is focusing substantial resources in the oil and gas industry, including both enforcement and cooperative programs. OHSB moved a compliance officer position to Roswell, proximal to industry activities, and filled the position in December 2013. For FY2015, OHSB doubled its inspection goal for the industry.

As part of a robust cooperative programs effort in oil and gas, the State Plan engaged in a variety of outreach, assistance and alliance activities in FY2014, including:

In March 2014, OHSB collaborated with oil and gas industry and local utility companies in Southeast New Mexico to establish a rig/heavy equipment move task force. The task force is focused on the prevention of injuries and electrocutions associated with equipment moves by developing and communicating best practices for the oil and gas industry in Southeast New Mexico.

OHSB and the New Mexico Oil & Gas Association (NMOGA) extended a 2012 alliance agreement for two additional years to foster safer New Mexico workplaces. The alliance was signed on April 11, 2014, during a working meeting between the two organizations. As part of the alliance agreement, representatives from both organizations meet quarterly to work on a wide range of programs and initiatives dedicated to improving worker safety and reducing accidents. A key project developed under the agreement is a website, <http://nmoilandgassafety.org/>. The site facilitates safety, health, environmental and security alerts to workers across the oil and gas industry.

On September 19, 2014, OHSB met with representatives of the National Institute for Occupational Safety and Health (NIOSH), the Bureau of Labor Statistics (BLS), and the New Mexico Department of Health (NMDOH) to collaborate on an initiative for addressing fatal occupational accidents in the oil and gas industry in New Mexico. The agencies are exploring methods for sharing of information and data on industry accidents, which is expected to aid in

the development of improved prevention strategies. OHSB is working closely with NMDOH to track information on industry accidents and develop trend reports for future programmatic use.

During FY 2014, New Mexico continued to make progress in addressing the five findings and recommendations, and one observation from the FY 2013 FAME. There were four recommendations carried over from the FY 2013 FAME to this year's report. The recommendations include: continuing improvements on case file documentation of employer knowledge, reducing citation lapse time, ensuring effective administration of the discrimination program, and clarifying, through rulemaking, OHS regulation 11.5.1.21.E NMAC on private interviewing. FAME findings are being monitored by OSHA and are anticipated to be resolved during the next comprehensive FAME evaluation period in FY 2015.

New Mexico will include all of these issues in their FY 2015 State Internal Evaluation Program (SIEP). The Region is addressing them on a continuing basis during the quarterly meetings, and will follow up on each issue during the FY 2015 FAME.

During FY2014 New Mexico continued to engage in activities related to Local Emphasis Programs (LEPs) targeting industries such as: construction, fabricated metals, refineries, oil & gas, warehouses, nursing and long-term care facilities, and waste management. The State Plan continued its LEP for silica exposure in the construction, and earth products manufacturing industries. OHSB also participated in several of OSHA's National Emphasis Programs (NEPs) including: Primary Metals, Hexavalent Chromium, and Process Safety Management in Chemical Processing Facilities.

The OHSB utilized available resources to deliver enforcement and compliance assistance activities to target industries where workers are most at risk of injury and illness. The Bureau met or exceeded performance plan goals in many areas. The OHSB analyzed the need for enforcement and compliance assistance activity in various industries, and adjusted emphasis programs in an effort to affect positive change in injury and illness occurrences in those industries.

The State Plan continues to be timely with responses to federal program changes, adoption of standards, and notifying OSHA of any major state-initiated changes.

New Mexico experienced a fifteen percent reduction in Days Away, Restricted, or Transferred (DART) rates from 2012 to 2013 (from a rate of 2.0 to 1.7 per 100,000 workers). This was good news following a trend of level rates, which mirrored that of nationwide statistics over the past several years. Long-term reductions continue to indicate the positive effect of OHSB programs.

B. State Plan Introduction

The New Mexico Occupational Health and Safety Program is administrated by the Occupational Health and Safety Bureau (OHSB), which is part of the Environmental Protection Division of the New Mexico Environment Department. The State Designee 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 with the exception of maritime (longshoring, ship building, and ship breaking) workers and federal civilian workers, Indian Reservations, The United States Postal Service, and military installations, who fall under the jurisdiction of federal OSHA for enforcement. State and local government workers are covered by OHSB.

According to the New Mexico Department of Workforce Solutions Quarterly Census, New Mexico has a total work force of 602,924 private sector and 182,575 public sector workers employed by 56,247 businesses and public agencies throughout the State. Approximately 88% of the businesses within the state employ 19 or fewer workers.

The New Mexico workforce is represented by a diverse population with a large concentration of workers whose primary language is not English. OHSB continually monitors the changing nature of work processes and workplace demographics in New Mexico to assure programs are effectively targeting occupational health and safety issues.

The New Mexico Department of Workforce Solutions projects employment growth between 2010 and 2020 to add 136,000 jobs to the economy. The highest growth rates are expected to be in the areas of healthcare and social assistance (28.1%), followed by mining (26%). The overall increase in mining jobs includes oil and gas extraction and support activities, with an expected increase of 29%. Other energy industries, including solar and wind energy development, continue to grow and represent unique issues with regard to employee safety.

The Federal share of the initial FY 2014 23(g) grant was \$967,300 and the State 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.

FY 2010 – 2014 Funding History						
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	One Time Funding	DE obligated back to Federal OSHA
2014	967,300	967,300	0	1,934,600	0	0
2013	1,027,300	1,027,300	0	2,054,600	0	2,531
2012	1,027,300	1,027,300	0	2,054,600	0	147,255
2011	998,300	998,300	0	1,996,600	0	58,295
2010	828,000	828,000	0	1,656,000	40,000	69,183

The OHSB staff consists of a 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 Compliance Assistance Specialists; 1 Discrimination Investigator; and 5 administrative staff members. Most of the staff members work out of the Santa Fe or Albuquerque offices, while one Compliance Officer is stationed in Las Cruces and another Compliance Officer works out of Roswell. This allows the Bureau to provide a more

rapid response to reports of hazards, including imminent danger situations and accidents, as detailed in this report.

C. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA did not perform the level of case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME.

This report is based on several data sources: State Plan Activity Measures (SAMM) Reports; State Indicator Reports (SIR); Discrimination case files review; Occupational Health and Safety Review Commission (OHSRC) decisions; Automated Tracking System (ATS) Logs; 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.

D. Findings and Observations

This FY 2014 follow-up FAME Report contains four continued findings and recommendations from FY 2013 FAME. The recommendations include; continuing improvements on case file documentation of employer knowledge, reducing citation lapse time, ensuring effective administration of the discrimination program, and clarifying through rulemaking OHS regulation 11.5.1.21.E NMAC on private interviewing.

There were no new findings or recommendations made in the FY 2014 FAME. As noted above, four findings were identified in FY 2013 and were carried over into the FY 2014 Follow-Up FAME Report for further monitoring. There was one finding completed and one observation closed.

II. Assessment of State Plan Performance

A. Major New Issues

None

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

New Mexico made progress on their FY 2014 Annual Performance Plan goals, as discussed in the New Mexico FY 2014 State OSHA Annual Report (SOAR) and below.

Details of the State's performance in relation to the FY 2014 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 2014 will not be available until October 2015; however, the 2013 overall DART rate of 1.7 is lower than 2.0 goal for FY 2013. The State Plan has met the 5-year strategic goal for this measure.

- Goal 1.2: The New Mexico FY 2014 annual performance goal is to experience fewer than 12 workplace fatalities requiring OHSB investigation. There were 12 such fatalities in FY 2014. OHSB conducted 54% (228/420) of the total inspections in construction and 7% (28/420) in oil and gas well drilling and servicing. These two industries accounted for 75% (9 of 12) workplace deaths reported in FY 2014.
- Goal 1.3: This goal was deleted during FY 2011.
- Goal 1.4: The goal is to increase the number of new company participants in strategic partnerships to 75. There were 71 members in OHSB partnership programs at the end of FY 2014.

OHSB engaged in transitional activities during FY2014 to strengthen its compliance assistance programs in preparation for a new 5-year Strategic Plan to commence in FY2015. During FY2014, OHSB directed a portion of its compliance assistance resources to developing or improving program directives. The state also redirected CAS resources to additional emphasis in industries where focus was needed, such as oil and gas well drilling and servicing.

The state redirected resources from outreach, intended to increase participation in OHSB strategic construction partnerships, to develop a state directive in response to the revised federal directive for OSHA Strategic Partnership Programs. The redirection of resources resulted in the program falling four participants short of its goal (Goal 1.4) of having 75 participants in the program, but had the overall positive effect of strengthening the program through the development of goals focused more on injury reductions.

- Goal 1.5: The goal is to increase VPP from 13 to 14 approved VPP members by the end of FY 2014, and there were 13 companies approved as Zia Star VPP members as of September 30, 2014.
- OHSB fell two establishments short of its goal (Goal 1.5) of having 14 VPP participants by the end of FY2014. During FY2014, OHSB directed a substantial portion of the New Mexico CAS/VVP Coordinator's activities toward outreach, training and other cooperative assistance within oil and gas well drilling and servicing, where additional focus was needed based on the significant increase in industry activity. OHSB was able to maintain effective oversight of VPP activities during the year, including completing all recertification reviews for active participants.

Goal 1.6: The following chart details the goals and accomplishments for educating employers and workers regarding the value of occupational safety and health by increasing materials available in a language other than English, and by conducting workshops and conferences in growing industries.

Goal	Results
Participate in 3 speaking engagements	OHSB staff participated in 2 speaking engagements in FY 2014.
Participate in 2 outreach activities in a language other than English.	OHSB staff participated in 2 outreach activities conducted in Spanish during FY 2014.

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 12 of 12 (100%) incidents of workplace fatalities within one working day of notification.

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% (302/313).

Goal 2.3: New Mexico’s goal is to complete 95% of discrimination investigations within 60 days. (This is a more ambitious goal than that established in State Activity Mandated Measure (SAMM) 13, which is to complete 100% of discrimination investigations with 90 days.) New Mexico completed 40% (2/5) of discrimination complaint investigations within 60 days. This issue is also discussed in Section C of this report.

C. Highlights from the State Activity Mandated Measures (SAMM)

SAMM 1 shows that New Mexico averaged 6.85 working days to respond to all serious and/or other than serious complaints by inspection; the State goal is no more than five working days.

OHSB received seven valid formal complaints in FY 2014, and initiated inspections for five of the complaints within the 5-day reference period. For the two remaining cases, one was assigned untimely due to internal handling of a faxed complaint and the other was inspected untimely due to the compliance officer taking unexpected leave following the assignment. The Region considers this an anomaly. Looking back to FY 2011, the State Plan has always been under 4 days. The State Plan has reviewed its complaint handling processes with the appropriate Bureau staff to prevent recurrence.

SAMM 2 shows the average number of work days to initiate complaint investigations. The State Plan initiated all complaint investigations on the same day they were reported.

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 7 of the 7 (100%) complaint inspections, complainants were notified of inspection results during the period.

SAMM 4 shows that 100% (3/3) of the imminent danger complaints and referrals responded to during the period were inspected within one working day.

Because the New Mexico Occupational Health and Safety Act so narrowly defines complaints, during quarterly meetings we have historically reviewed the State Plan’s response to referrals alleging serious hazards. The Bureau has an internal strategic goal of responding to 96% of referrals alleging serious hazards within 10 working days. New Mexico responded to 302 of 313 (96%) referrals alleging serious hazards within 10 working days.

Complaints (SAMM 1, 2, 3)

SAMM	FY 2014	FY 2013	FY 2012	FY 2011	Goal
Average number of work days to initiate complaint inspections (SAMM 1)	6.85	3.40	3.53	3.87	5
Average number of work days to initiate complaint investigations (SAMM 2)	0	0	0	0	0
Percent of complaints and referrals responded to within 1 work day (imminent danger) (SAMM 4)	100%	100%	100%	100%	100%

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.

OHSB is currently developing an online complaint form to facilitate receipt of written complaints in accordance with New Mexico statute. For all complaints received verbally by phone, discrimination investigation staff ensures that complainants are immediately directed to resources where their complaints are reduced to writing to be submitted within the statutory framework. OHSB will consider seeking a statutory change at the state level if deemed necessary.

OHSB personnel transitions that occurred from FY 2013 through FY 2014, which included hiring and training a whistleblower investigator, resulted in a backlog of cases in FY2014. The

backlog caused the bureau to fall short of its goal of completing investigations within established timeframes. OHSB completed 40 percent of investigations within 90 days, which was significantly below the 100% reference mark set in the SAMM report. A significant increase in the number of whistleblower complaints filed in FY 2014 compared to prior years also contributed to the investigation backlog. The State Plan logged 43 complaints in FY 2014, compared to an average of 14 complaints per year during the previous 5 years. OHSB responded to the increase in complaints by shifting staff resources to the Whistleblower program.

11c Complaints	FY 2011	FY 2012	FY 2013	FY 2014
Received	7	7	2	33
Determination	7	6	0	24

SAMM 13 shows that 40% (2/5) of New Mexico’s discrimination investigations during the period were completed within 90 days. SAMM 14 shows a 20% (1/5) meritorious case rate for New Mexico. SAMM 15 shows that New Mexico had a 100% (1/1) settlement rate for meritorious cases.

See the table below which provides New Mexico’s actual performance for FY 2014:

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

	FY 2011	FY 2012	FY 2013	FY 2014	Reference
Completed Within 90 Days (SAMM 13)	100%	100%	100% (9/9)	40% (2/5)	100%
Merit Cases (SAMM 14)	9.09%	40%	22% (2/9)	20% (1/5)	24.8%
Merit Cases Settled (SAMM 15)	100%	50%	0% (0/2)	100% (1/1)	89%

The State Plan continues to make improvements in their Discrimination Program. We will continue to discuss the program at our quarterly meetings, and an experienced federal investigator will be available to the State Plan for guidance.

SAMM measures 20a and 20b show the State Plan’s in-compliance rates were 66% (174/265) for safety inspections, and 53% (40/76) for health inspections. The national data is not available. This measure is based on a national average which draws from the collective experience of State Plans and Federal OSHA from FY 2009-2011.

Most of the in-compliance safety inspections were within the construction industry. One contributing factor is 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; many of these are in-compliance inspections. Federal OSHA Compliance Officers do not open an inspection with all contractors unless an employee of that contractor was observed being exposed to a hazard during a focused inspection. 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 51% (216/420) of New Mexico's inspections were programmed.

SAMM 21, percent of fatalities responded to in one working day, shows 83%. The measure should have reflected 100%, as the State Plan has since corrected some data entry errors. The State responded to all of the fatalities within one working day.

SAMM 23, average lapse time from inspection open date to issue date was 70.58 days for safety inspections, and 66.44 days for health inspections. The reference is 43.4 days for safety and 57.04 days for health. The national data is not available. This measure is based on the FY 2011 national average, which draws from the collective experience of State Plans and Federal OSHA from FY 2009-2011.

New Mexico OSHA consistently exceeds SAMM 24, percent penalty retained. The State Plan retained 90% of their penalties, while the reference is 66%. Current national data is not available.

III. Assessment of State Plan Corrective Actions

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

There were 16 fatal accidents reported in FY 2014, though only 12 were under OHSB jurisdiction. Of those 12 fatal accidents that were inspected, the investigation began within one day in all 12 (100%) cases.

Status: Closed. During FY 2014 the State Plan experienced 12 fatalities, eight of the twelve (67%) New Mexico fatalities inspections closed in FY 2014 had citations issued. OHSB ensured FOM Chapter 11 procedures were thoroughly followed on all fatality inspections during FY 2014.

Recommendation 13-2 - New Mexico OHSB should evaluate inspection goals and, if appropriate, modify to reflect changes in available resources.

The State Plan inspection goals for FY 2013 were not met. They completed 57% of their projected inspection goals, resulting in the 13.2 finding on the FY 2013 FAME.

OHSB has reviewed inspection goals for recent years and found several areas where adjustments to activities did not result in goal adjustments. The Bureau adopted federal directives and has developed internal directives which have resulted in an increase in more complex and time-

intensive inspections. The additional time, resource of staff training, preparation and activities associated with these inspections, has resulted in a reduction of overall inspection numbers.

OHSB reevaluated inspection 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 to 390 (300 safety and 90 health). The State exceeded their inspection goals for FY 2014.

Status: Completed.

Recommendation 14-1 (formerly 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.

From FY 2012 through FY 2014, OHSB experienced a number of personnel transitions affecting its whistleblower discrimination program. This resulted in serious challenges to maintaining program effectiveness.

Status: Continued. OHSB hired a new discrimination investigator in May 2014. OHSB management and whistleblower staff conducted reviews of both federal and State Plan whistleblower provisions and policies during FY 2014 to ensure adherence with statutory requirements. The OHSB investigator received OSHA Whistleblower Investigation training in June 2014. OHSB received additional training for Whistleblower staff with Region VI OSHA in September 2014. In December 2014, an OSHA investigator spent a full week in Santa Fe, providing additional personalized training for the OHSB investigator. The bureau also assigned administrative staff to assist with entry and management of data in the federal Integrated Management Information System (IMIS).

A discrimination investigator travels to OHSB for each of our quarterly meetings. He provides the State Plan with additional training and guidance as they continue to strengthen their program. OHSB is conducting investigations in accordance with the NM FOM. However, a significant increase in the number of whistleblower complaints filed in FY2014 compared to prior years contributed to an investigation backlog. The bureau logged 43 complaints in FY2014, compared to an average of 14 complaints per year for the previous 5 years. OHSB responded to the increase in complaints by shifting staff resources to the whistleblower program. OHSB expects to complete the backlogged cases and make determinations on all new cases within timeframes established in the State Activity Mandated Measures report prior to the end of FY2015.

OHSB would like to note State Plan grants have not received any portion of the increased federal OSHA budget for whistleblower programs. At the same time, the state is experiencing increased whistleblower complaints as a result of increased nationwide press from OSHA and complaints received through new federal reporting systems. OHSB has shifted staff and budgetary resources to whistleblower activities at the cost of reducing resources in other important programs, including enforcement.

Recommendation 14-2 (formerly 13-3): New Mexico OHSB should ensure that employer knowledge is documented for all violations.

The case files reviewed during the FY 2013 FAME were not always fully and accurately documented for employer knowledge as required by their Field Operations Manual (FOM).

Status: Continued. In FY 2014 OHSB continued to stress to compliance staff the importance of documenting employer knowledge when establishing violations. Training sessions for Compliance Officers were conducted on several occasions to address the recommendations on case file documentation. OHSB identified this as an area needing improvement during its FY 2012 SIEP. The Compliance Program Manager ensured case file reviews included checking the adequacy of such documentation on an on-going basis. The OHSB Bureau Chief and Compliance Manager met with 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. In addition, OHSB held a training session for compliance staff on March 27, 2014 with the assistance of OGC.

Recommendation 14-3 (formerly 13-4): Average health citation lapse time in New Mexico is significantly higher than the National average, and increased 26% from 61.4 to 87.4. Safety citation lapse time decreased 5% from 71.3 to 67.1 calendar days, between FY 2010 to FY 2014. NM OHSB should review processes and policies to identify roadblocks and inefficiencies.

Status: Continued. Average health citation lapse time is significantly higher than the national average. During FY 2014, the average citation lapse time was 87.46 days for health inspections and 67.17 days for safety inspections. Health was considerably lower than the previous year's 99 calendar days, but safety is higher. The original finding was only for health lapse time and was based on State Activity Mandated Measures (SAMM) 7, the average number of calendar days from opening conference to citation issuance. This measure is no longer mandated for State Plans.

Due to the recent mandated activity policy revisions during FY 2012, lapse time calculations during FY 2014 are now being monitored using SAMM 23 rather than SAMM 7, which was used during previous years. The SAMM information above is provided for informational purposes only. This recommendation is revised to reflect SAMM 23 and to include safety inspections.

SAMM 23, average lapse time from inspection open date to issuance date was 70.58 days for safety and 66.44 days for health, which is within the 20% reference range (safety is well outside of the range at 63%). The reference is 43.4 safety and 57.04 for health. The national data is not available. This measure is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA from FY 2009-2011. We will continue to monitor both safety and health based on the historical trend of high health lapse time.

The State Plan has continued to utilize Integrated Management Information System (IMIS) and OSHA Information System (OIS) reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance.

As part of an ongoing effort to reduce health lapse times, OHSB instituted several measures to aid staff in timely closing inspection files. OHSB continued to utilize IMIS/OIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. Management closely monitored health inspection assignments to ensure caseloads were reasonable. The Compliance Program Manager reviewed assignment reports to compare with open inspection reports weekly. OHSB also more closely reviewed health referrals alleging serious hazards to identify those where an initial investigation by inquiry was appropriate. OHSB performed a monthly analysis of lapse times for individual Compliance Officers and used lapse times as a major factor during employee performance evaluations. Performance reviews included an analysis of task prioritization to identify potential improvements, and supervisors coached Compliance Officers on task prioritization. The Compliance Program Manager reviewed file progress weekly and met with Compliance Officers at least monthly on open cases. As a result, OHSB was able to reduce health lapse times to within the 20% reference range compared to national average for FY 2014.

We consider this recommendation open, and will continue to monitor and discuss at FY 2015 quarterly meetings.

Recommendation 14-4 (formerly 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).

Status: Continued. 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 2013 FAME report, OHSB attempted to resolve the issue in 2009 by proposing statutory changes, but was unsuccessful.

As discussed in recent meetings between OHSB and OSHA, the initial concerns voiced by OHSB over the presumed inconsistency in the language contained in 11.5.1 NMAC regarding private employee interviews have not resulted in problems in the practice of interviews. The presumption of an inconsistency was made by OHSB based on language contained in the definition section of the state regulation (11.5.1.7) promulgated by the Environment Improvement Board (EIB) in 2008; the state presumed that lack of carrying language from the definition section to the inspection procedures section (11.5.1.21) by the EIB presented potential inconsistency. OHSB was concerned that conflicting interpretation might arise, although no such interpretations have been made to date. OHSB developed procedures and form letters, including letters that must be signed by personal counsel when representing workers during private interviews, which have mitigated the potential for conflict or inconsistency. Based on an ongoing review, OHSB no longer considers any perceived inconsistency in the regulatory language an issue in the effective conduct of private interviews. Although OHSB may seek to amend the private interview regulation when appropriate, our position is that the matter has been sufficiently resolved.

The Environment Department's Office of General Counsel (OGC) is currently reviewing the regulation, and will make recommendations if needed. We anticipate this review will be concluded in the FY 2015 FAME.

Appendix A – New and Continued Findings and Recommendations

FY 2014 New Mexico Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 2013
2014-1	In the nine whistleblower cases 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.	2013-1
2014-2	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 for all violations.	2013-3
2014-3	Average lapse time from inspection to open date to issuance date was 70.58 days for safety and 66.44 days for health, which is within the 20% reference range (safety is well outside of the range at 63%). The reference is 43.4 safety and 57.04 for health. The Region will continue to monitor both safety and health based on the historical trend of high health lapse time. NM OHSB should review processes and policies to identify roadblocks and inefficiencies.	New Mexico OHSB should review processes and policies to identify roadblocks and inefficiencies.	2013-4
2014-4	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).	2013-5

Appendix B – Observations Subject to New and Continued Monitoring

FY 2014 New Mexico Follow-up FAME Report

Observation # FY 2014-OB-#	Observation# FY 20XX- OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
	FY 2013-OB-1	Of the twelve fatalities New Mexico inspected, five (42%) of them were found in compliance.	<p>OSHA Region VI will continue to follow up on all fatality inspections and discuss at the quarterly meetings.</p> <p>There were 16 fatal accidents reported in FY 2014, of those 16 only 12 were under OHSB jurisdiction. Of those 12 fatal accidents that were inspected, the investigation began within one day in 12 of the 12 (100%) cases.</p>	Closed

Appendix C - Status of FY 2013 Findings and Recommendations

FY 2014 New Mexico Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
2013-1	In the nine whistleblower cases 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.	<p>OHSB management and whistleblower staff conducted additional review of both federal and 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 2014. In addition, OHSB has assigned administrative staff to assist with entry and management of data in the federal Integrated Management Information System (IMIS).</p> <p>OHSB is conducting investigations in accordance with the NM FOM. However, a significant increase in the number of whistleblower complaints filed in FY2014 compared to prior years contributed to an investigation backlog. The bureau logged 43 complaints in FY2014, compared to an average of 14 complaints per year for the previous 5 years. OHSB responded to the increase in complaints by shifting staff resources to the whistleblower program. OHSB</p>	03/30/2015	Open

Appendix C - Status of FY 2013 Findings and Recommendations

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			<p>expects to complete the backlogged cases and make determinations on all new cases within timeframes established in the State Activity Mandated Measures report prior to the end of FY2015.</p> <p>OHSB would like to note state plan grants have not received any portion of the increased federal OSHA budget for whistleblower programs. At the same time, the state is experiencing increased whistleblower complaints as a result of increased nationwide press from OSHA and complaints received through new federal reporting systems. OHSB has shifted staff and budgetary resources to whistleblower activities at the cost of reducing resources in other important programs, including enforcement.</p>		
2013-2	<p>Inspection goals were not met during FY 2013. The state completed 290/505 (57%) of projected inspection goals.</p>	<p>New Mexico OHSB should evaluate inspection goals and, if appropriate, modify them to reflect changes in available resources.</p>	<p>OHSB reevaluated inspection 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</p>	09/30/2014	Completed.

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			are met.		
2013-3	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 for all violations.	OHSB 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.	09/30/2015	Awaiting Verification

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2013-4	<p>Average health citation lapse time 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.</p>	<p>New Mexico OHSB should review processes and policies to identify roadblocks and inefficiencies.</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. 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 also more closely review health referrals alleging serious hazards to identify those where an 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</p>	09/30/2015	Open
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			Compliance Officers whose performance in this area is substandard. 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 Program Manager will check file progress weekly and meet with Compliance Officers at least monthly on open cases.		
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).	OHSB is continuing to work with the Environment Department's Office of General Counsel to review the regulation. We anticipate that the proposed regulatory changes will be presented to the EIB for consideration in FY 2015. 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 employees. The procedures and forms have been used in rare cases as necessary to provide clarification during the interview process.	09/30/2015	Open

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 New Mexico Follow-up FAME Report

OSHA is in the process of moving operations from a legacy data system (NCR) to a modern data system (OIS). During FY 2014, federal OSHA case files were captured on OIS, while most State Plan case files continued to be processed through NCR. New Mexico opened 411 enforcement inspections in FY 2014. Of those, 411 inspections were captured in NCR, while 0 were captured in OIS. The SAMM Report, which is native to IMIS (a system that generates reports from the NCR), is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data

For FY14 we will use a format very similar to the one used for FY13. Below is an explanation of which date OSHA was able to use when calculating each metric.

- a. Measures 1 & 2 will use State Plan data for FY14 as captured in NCR and compared to the State Plan's negotiated number. Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- b. Measures 20a-b, 23, and 24 will use State Plan data for FY14 as captured in NCR and compared to the historical FY2011 national average (FY09-11). Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- c. Measures 5, 9, 11, 17, 19, 21, and 25 will use State Plan data for FY14 as tabulated manually to include both OIS and NCR data and compared to the fixed/negotiated/national numbers associated with them.
- d. Measures 13, 14 and 16 will be extracted from NCR (OIS conversion should not impact). National data will be pulled from WebIMIS for FY12-14.
- e. Measures 18a-e will use State Plan data for FY14 as captured in NCR. Any data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR. Much like FY13, no national data will be available for comparison.
- f. Measure 22 will be excluded from the report (other than as a placeholder to demonstrate that it is one of the agreed upon metrics, but not one we can currently generate).
- g. Measure 4 will use State Plan data for FY 14 as captured in NCR.

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

State Plan: New Mexico			FY 2014	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	6.85	5 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.

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2	Average number of work days to initiate complaint investigations	0	0 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100.0%	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 and Open Inspection OIS report.
9a	Average number of violations per inspection with violations by violation type	2.07	SWR: 1.99	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2012-2014.
9b	Average number of violations per inspection with violations by violation type	0.79	Other: 1.22	
11	Percent of total inspections in the public sector	7.06%	5.25%	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS. The reference/standard is derived from the FY 14 grant application.
13	Percent of 11c Investigations completed within 90 calendar days	40%	100%	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from WebIMIS for FY 2012-2014.

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14	Percent of 11c complaints that are meritorious	20	24.8% meritorious	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from WebIMIS for FY 2012-2014.
16	Average number of calendar days to complete an 11c investigation	155.8	90 Days	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from WebIMIS for FY 2012-2014.
17	Planned vs. actual inspections - safety/health	320/91	295/86	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; the reference standard number is taken from the FY 2014 grant application. The reference/standard is a negotiated number for each State Plan.
18a	Average current serious penalty - 1 -25 Employees	459.45		State Plan data taken directly from SAMM report generated through IMIS.
18b	Average current serious penalty - 26-100 Employees	707.91		
18c	Average current serious penalty - 101-250 Employees	2176.92		
18d	Average current serious penalty - 251+ Employees	1234.45		
18e	Average current serious penalty - Total 1 - 250+ Employees	718.94		

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19	Percent of enforcement presence	1.20%	National Average 1.51%	Data is pulled and manually calculated based on FY 2014 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	65.66	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 2014 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	52.63	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	83%	100%	State Plan data is manually pulled directly from IMIS for FY 2013.
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	n/a		Data not available.
23a	Average Lapse Time - Safety	70.58	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 federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	66.44	57.05	
24	Percent penalty retained	90.19	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

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				experience of State Plans and federal OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100	100%	State Plan data taken from SAMM report generated through IMIS and the Inspection where Workers Involved report generated in OIS.