

**FY 2016 Follow-up Federal Annual Monitoring and Evaluation  
(FAME) Report**

**New Mexico Occupational Health and Safety Bureau (NMOHSB)**



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## Contents

<b>I. Executive Summary .....</b>	<b>2</b>
A. State Plan Activities, Trends, and Progress .....	2
B. State Plan Introduction.....	3
C. Data and Methodology.....	4
D. Findings and Observations.....	5
<b>II. Assessment of State Plan Performance.....</b>	<b>5</b>
A. Major New Issues .....	5
B. Assessment of State Plan Progress in Achieving Annual Performance Goal.....	6
C. Highlights from the State Activity Mandated Measures (SAMM).....	8
<b>III. Assessment of State Plan Corrective Actions .....</b>	<b>9</b>

## Appendices

Appendix A – New and Continued Findings and Recommendations .....	A-1
Appendix B – Observations Subject to New and Continued Monitoring.....	B-1
Appendix C – Status of FY 2015 Findings and Recommendations .....	C-1
Appendix D – FY 2016 State Activity Mandated Measures (SAMM) Report.....	D-1

# **I. Executive Summary**

## **A. State Plan Activities, Trends, and Progress**

This is an annual evaluation of the operation of the State of New Mexico Occupational Health and Safety Bureau (OHSB) under the 23(g) State Plan grant. This report was prepared under the direction of Kelly C. Knighton, Regional Administrator, Region VI, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and covers the period from October 1, 2015, to September 30, 2016.

The purpose of this report is to assess the OHSB activities for the Fiscal Year (FY) 2016 and its progress in resolving ongoing findings from the FY 2015 report.

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.

The Compliance Section conducted 437 inspections, which was slightly higher than their goal of 400 for the year. They conducted 25 inspections in state and local government, but they were short of their goal of 45. The State Plan met all but one of their State Emphasis Programs (SEPs) goals for inspections in targeted industries and responded timely to all unprogrammed activity.

During FY 2016, New Mexico continued to make progress in addressing the four findings and recommendations from the FY 2015 FAME. The recommendations include: continuing improvements on case file documentation of employer knowledge, reducing citation lapse time, ensuring effective administration of the whistleblower program and providing next of kin notification. In the last several years, the State Plan has built a solid foundation for their whistleblower program and this recommendation is now completed.

There are two new observations for this period. One is related to the high in compliance rate and the other is related to the low health sampling rate.

The State Plan conducted 121 health inspections, but 114 (94%) of these inspections contained no sampling. The in-compliance rate of all inspections was 63% for safety and 49% for health, compared to the national average of 29% for safety and 36% for health. (Further review levels are +/- 20% of the national average for each.)

The FAME findings are being monitored by OSHA and will be reviewed during the onsite case file review as part of the next comprehensive FAME evaluation period for FY 2017. The recommendations are addressed throughout the report, listed in Section III below, and included as Appendix A.

New Mexico will include all of these issues in their FY 2017 State Internal Evaluation Program (SIEP). The Region is addressing them on a continual basis during the quarterly meetings, and will follow up on each issue during the FY 2017 Comprehensive FAME.

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.

On April 17, 2017, New Mexico passed SB 229, a bill that increases OSHB penalties to match those of federal levels. The legislation also adjusts their penalties on an annual basis to account for inflation. More details of the legislation are provided in Section IIA of this report.

The OHSB continues to maintain a core staff of trained management and technical personnel through a continuing period of budget challenges. The State Plan has a competent enforcement section strategically positioned in field offices across the state at locations including Albuquerque, Las Cruces, Roswell and Santa Fe.

As part of their cooperative programs efforts, OHSB engaged in a variety of outreach, assistance and alliance activities in FY 2016. The State Plan strengthened its cooperative programs within both the Zia Star Voluntary Protection Program (VPP) and the OHSB Strategic Partnership for Construction (OSPC) program. The OHSB and the Construction Health and Safety Council of New Mexico continued to improve partnership processes with the construction industry through the OSPC. 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 2016, the council organized training events designed to drive down injuries and illnesses within the industry.

## **B. State Plan Introduction**

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 Butch Tongate, and the OHSB Bureau Chief is Robert Genoway.

The New Mexico Environment Department first indicated interest in seeking final State Plan approval (18(e) determination) in 1999. The process started with OSHA and OHSB working together to review the criteria and indices of effectiveness set forth in 29 CFR 1902, and working to compile the outline for the final approval package. The outline was provided to the State Plan for input and the former Bureau Chief had begun working on the State Plan response to address how the State Plan would meet the remaining requirements. Since that time, however, the State Plan's effort to achieve final approval has stalled.

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 by the State Plan. The State Plan covers a total work force of 643,100 private sector and 243,800 state and local government workers working for 57,422 businesses and public agencies throughout the state. Construction experienced a moderate growth (1.9%) after three years of reductions, while the Oil and Gas industry lost 9% of employment after several years of growth.

Healthcare continues to add approximately 3,000 private sector employees a year. Approximately 88% of the businesses within the State Plan employ 19 or fewer workers.

The federal share of the initial FY 2016 23(g) grant was \$994,500, and the State Plan share was \$994,500, for a total program budget of \$1,989,000. They received an additional \$14,300 in federal funds and matched it with an additional \$14,300 in state funds for a total of \$2,017,600. At the end of FY 2016, the State Plan returned \$10,728.59 in federal funds and \$10,728.58 in state matching funds because of personnel vacancies.

**Five Year Funding Comparison**

<b>Fiscal Year</b>	<b>Federal Award (\$)</b>	<b>State Plan Match (\$)</b>	<b>Total Funding (\$)</b>	<b>One Time Funding</b>	<b>Deobligated back to OSHA</b>
2016	994,500	994,500	1,989,000	14,300.00	10,728.59
2015	990,100	990,100	1,980,200	4,400	7,226.03
2014	967,300	967,300	1,934,600	22,800	25,870.71
2013	1,027,300	1,027,300	2,054,600	0	2,531
2012	1,027,300	1,027,300	2,054,600	0	147,255

The OHSB staff consists of the Bureau Chief; three (3) Program Managers for Compliance, Consultation, and Administration; seven (7) Safety Compliance Officers; three (3) Health Compliance Officers; two (2) Safety Consultants; two (2) Health Consultants; two (2) Compliance Assistance Specialists (CAS); and seven (7) administrative staff members. They currently have the following vacant positions: one (1) Health Compliance Officer, two (2) Safety Compliance Officers, (1) Whistleblower Investigator , and one (1) CAS, and they are actively trying to fill these positions.

New Mexico administers a combined onsite consultation program under 21(d) and 23(g) funding. OHSB’s five consultant positions are funded from a variety of sources, including the 21(d) and 23(g) grants, as well as state money. Private sector consultation is provided by the Bureau under a 21(d) Cooperative Agreement, while state and local government agencies consultation is provided under the 23(g) grant.

Most of the staff members work out of the Santa Fe or Albuquerque offices, with one (1) compliance officer stationed in Las Cruces and one (1) compliance officer stationed in Roswell. This has allowed the OHSB to provide more rapid responses 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 a 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.

Information and data referenced in this report were derived from the State Activity Mandated Measures (SAMMs), OSHA Information Systems (OIS), New Mexico's FY 2016 State OSHA Annual Report, the Bureau of Labor Statistics data, the FY 2016 23(g) grant, Complaint About State Program Administration investigations, and State Indicators Report (SIR). The review of the State Plan included information from the four quarterly meetings with the state during the period of review. In addition, the Annual Performance Plan and Five-year Strategic Plan were referenced.

In addition to our ongoing monitoring and quarterly meetings, during the week of January 11, 2017, two Whistleblower investigators from Region VI reviewed 12 (which is 15% of total Whistleblower cases) randomly selected 11(c) cases that were closed during FY 2016 to verify if the State Plan has made progress on addressing the one finding related to whistleblower casefiles (Finding FY 2015-01).

## **D. Findings and Observations**

This FAME Report contains three continued findings from the FY 2015 FAME and two new observations. The three findings and recommendations focus on reducing citation lapse time, improving case file documentation, and ensuring next of kin notification. The two new observations are related to health sampling and the in compliance rate.

FY 2016-OB-01: The State Plan conducted 121 health inspections, but according to OIS 114 (94%) of these inspections contained no sampling.

FY 2016-OB-02: The in compliance rate of all inspections was 63% for safety and 49% for health, compared to the further review levels of 34.8% and 43.2% (+20% of the national average, which is 29% for safety and 36% for health.) (SAMM 9).

Details on the findings and observations are provided in other parts of this report.

Appendix A describes new and continued findings and recommendations, and any observations that have been converted from observations to findings from the previous year's FAME. Appendix B includes any new observations and all observations from the previous year's FAME. Appendix C reflects the most up-to-date information on the status of FY 2015 findings, derived from the State Plan's most recent Corrective Action Plan.

## **II. Assessment of State Plan Performance**

### **A. Major New Issues**

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase penalties according to the Consumer Price Index (CPI) each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting

ALAE analysis of State Plan penalty structures, to include evaluation of average current penalty per serious violation data.

Governor Martinez signed SB 229, the NM OSHA penalty increase bill on April 7, 2017. The statute is effective immediately. Maximum and minimum penalties in the State Plan are currently identical to federal levels. The State Plan will adjust their penalties on an annual basis to account for inflation. Penalties will be increased by the same percentage as the consumer price index increased for all urban consumers during the preceding calendar year.

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

New Mexico made progress on their FY 2016 Annual Performance Plan goals, as discussed in the New Mexico FY 2016 State OSHA Annual Report (SOAR) and below. OSHB's Five-Year Strategic Plan covers the period of FY 2014—FY 2019.

Details of the state's performance in relation to the FY 2016 Annual Performance Plan are highlighted below:

**Strategic Goal #1:** Reduce injuries, illnesses, and fatalities by working with employers to reduce occupational hazards and exposures.

**Five-year Performance Goal 1.1:** The five year strategic goal is to reduce the total injury and illness DART rate by 5% through 2019 by focusing on targeted safety and health hazards. However, the 2015 overall DART rate of 1.5 is a decrease of 14% from the 2007 baseline rate. The DART rates for 2016 are currently not available.

**FY 2016 Performance goal 1.1:** Reduce the total injury and illness DART rate to less than 2.0 for CY2016 by conducting 400 enforcement inspections and 250 consultation visits.

**Result:** The State Plan partially met this goal. New Mexico exceeded the goal for enforcement inspections by completing 437, but fell short for consultation visits by completing only 160.

**Five-year Performance Goal 1.2:** The New Mexico five year strategic goal is to reduce the 5-year average of OHSB investigated workplace fatalities by 5% through scheduled inspections and visits at workplaces in targeted industries.

**FY 2016 Performance goal 1.2:** Experience fewer than eleven workplace fatalities requiring OHSB investigations.

**Result:** The State Plan met this goal. In FY 2016, New Mexico experienced only ten fatalities.

**Five-year Performance Goal 1.3:** Goal was deleted during FY 2011.

**Five-year Performance Goal 1.4:** The five year Strategic Goal is to improve the quality of participant health and safety programs by reducing top-level partnership member DART rates by 10% through 2019.

**FY 2016 Performance Goal 1.4:** Reduce the DART rates for top-level partnerships by 2%.

**Result:** Data is currently unavailable for this measure. The 2016 data is not available at the time of the report.

**Five-year Performance Goal 1.5:** Increase the number of VPP Participants by 5.

**FY 2016 Performance Goal 1.5:** The goal is to increase VPP from 12 to 14 approved VPP members by the end of FY 2016.

**Result:** The State Plan did not meet this goal. OHSB received no new applications for VPP in FY 2016. New Mexico had 12 VPP worksites as of the end of FY 2016.

**Five-year Strategic Goal 1.6:** Goal was deleted during FY 2015.

**Strategic Goal #2:** Maximize OHSB effectiveness by striving for continuous improvement in all areas of service delivery.

**Five-year Strategic Goal 2.1:** To respond to 100% of workplace fatalities within one working day of notification.

**2016 Performance Goal 2.1:** To respond to 100% of workplace fatalities within one working day of notification.

**Result:** In FY 2016, New Mexico met this goal by responding to 10 of 10 (100%) incidents of workplace fatalities within one working day of notification.

**Five-year Strategic Goal 2.2:** To respond to 95% of referrals alleging serious hazards within 10 working days.

**FY 2016 Performance Goal 2.2:** To respond to 95% of referrals alleging serious hazards within 10 working days.

**Result:** New Mexico met this goal by responding to 98% (514/526) within this time frame. An investigation may include an onsite inspection or inquiry by phone, fax or letter.

**Five-year Strategic Goal 2.3:** To complete 95% of discrimination investigations within 60 days. (This is a more ambitious goal than that established in State Activity Mandated Measure SAMM 14, which is to complete 100% of discrimination investigations with 90 days.)



**FY 2016 Performance Goal 2.3:** To complete 95% of discrimination investigations within 60 days.

**Result:** New Mexico did not meet this goal and completed only 54% (7/13) of discrimination complaint investigations within 60 days.

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

In several areas of the mandated activities reported in the SAMM, New Mexico has done well compared to the national average and further review levels. In particular, OHSB penalty retention (SAMM 12) is 81% compared to the national average of 70%. The state conducted 437 inspections in the private sector and 25 inspections in state and local government, which resulted in an average of 2.47 violations (serious/willful/repeat) per inspection. New Mexico exceeded its goal of 400 inspections established in its grant application (SAMM 7) but did not meet their goal of 45 inspections for state and local government (SAMM 6). This was due to a scheduling error in the fourth quarter; OSHA will continue to monitor this through our quarterly meetings.

The three mandated activity measures that were observed to fall outside the further review levels during FY 2016 are: the average current penalty per serious violation (SAMM 8); percent in-compliance (SAMM 9); and average lapse time (SAMM 11).

**Average Current Penalty Per Serious Violation (SAMM 8)**

OHSB average current penalty per serious violation in the private sector (SAMM 8: 1-250+ workers) was \$1,019.29 in FY 2016. The Further Review Level (FRL) is -25% of the National Average (\$2,279.03) which equals \$1,709.27. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are “at least as effective” (ALAE) as those contained in OSHA’s FOM, which was revised on August 2, 2016, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection. OSHA will continue to explore ALAE analysis of State Plan penalty structures to include evaluation of average current penalty per serious violation data.

As noted earlier, New Mexico has passed legislation to increase penalty levels, and these levels are expected to increase during FY 2017. The following table presents OHSB’s historic five-year average penalty issuance. See Appendix D for more detail.

**Average penalty assessed per serious violation (SAMM 8)**

FY 2016	FY 2015	FY 2014	FY 2013	FY 2012
\$1,019.29	\$853.23	\$718.94	\$778.39	\$836.59

**Percent In compliance (SAMM 9)**

The State Plan continued to have a high percentage of in compliance inspections: 63% (150/240) for safety inspections, and 49% (51/104) for health inspections (SAMM 9). These are both well beyond the further review levels of 34.62% for safety and 42.82% for health (+20% of the national averages of 28.85% for safety and 35.68% for health.) As shown in the chart below, the safety in compliance rate has risen steadily since 2013.

**In compliance Rates (SAMM 9)**

<b>In-compliance Rate</b>	<b>FY 2016</b>	<b>FY 2015</b>	<b>FY 2014</b>	<b>FY 2013</b>
Safety	62.50	45.98	65.66	57.95
Health	49.04	29.73	52.63	72.06

One contributing factor is OHSB did not adopt OSHA’s focused construction inspection policy. New Mexico Compliance Officers complete an OSHA-1 Inspection for every contractor inspected at a construction site; many of these are in compliance inspections. 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.

This issue will be monitored by OSHA through a new observation, 2016-2.:

OSHA will continue to monitor the high in-compliance rate through quarterly monitoring visits and work with OHSB to ensure training needs are met for compliance officers in the recognition of violations and documentation of violations.

**Average Lapse Time (SAMM 11)**

According to SAMM 11, OHSB routinely has a higher average lapse time compared to national data and is significantly higher than the further review level. New Mexico OHSB has a lapse time of 73.07 for safety and 74.39 for health, compared to the further review levels of 54.19 for safety and 68.74 for health (+20% of the national averages, which are 45.16 for safety and 57.28 for health.) According to SAMM reports, OHSB’s average lapse time (in working days from opening conference to citation issuance) is identified in the below table:

<b>Average Lapse Time (SAMM 11)</b>						
<b>Average Lapse Time</b>	<b>FY 2016</b>	<b>FY 2015</b>	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>National Average</b>
Safety	73.07	72.8	70.5	59.4	59.2	45.16
Health	74.39	70.5	66.4	88.4	99.0	57.28

Reducing citation lapse time has been a focus of OHSB’s efforts for several years. OHSB continues to take steps to address this issue; these are described in the documentation of each quarterly meeting. This issue is the subject of a continued finding (FY 2016-02).

**III. Assessment of State Plan Corrective Actions**

**Finding 15-1:**

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

**Recommendation 15-1:**

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

**Status: Completed.** During the week of January 23, 2017, two whistleblower investigators from the Dallas Regional Office conducted a case file review of the New Mexico discrimination program. They reviewed approximately 15% of the State Plan's FY 2016 case files. Specifically, twelve (12) case files were reviewed.

Each complaint was well documented, the complainant was advised of their right to dual file and an initial intake interview was conducted in 100% of the whistleblower complaints received. The State Plan followed the requirements of the FOM by receiving the complaints, conducting an initial intake interview, and then sending the complainant a whistleblower complaint form that the complainant is required to sign and return to satisfy the written complaint requirement specified in the statute. For complaints with full standing, the State Plan properly docket the case, conducts an investigative interview in accordance with their FOM, and then provides copies of the complaint notification letters to the parties, with return receipt requested. Once the position statement is secured, the investigator conducts a rebuttal interview to test the allegation and defense. Proper investigative leads are pursued and a recommendation, based on the evidence, is rendered. The draft findings are reviewed by the supervisor and then sent to the parties to allow them to appeal if they do not agree with the determination. The findings are sent return receipt requested. Once final disposition has been made, the case is properly documented in WebIMIS and the case file is organized in accordance with the Field Operations Manual (FOM).

In the last several years, the State Plan has built a solid foundation for their whistleblower program. Based on the results of the case file review, the finding is considered completed. Additionally, advanced training is recommended to continue to challenge the investigator as she assumes more complex investigations.

**Finding 16-1 (formerly 15-2):**

Case files reviewed were not always fully and accurately documented.

**Recommendation 16-1:**

New Mexico OHSB must ensure that employer knowledge is documented for all violations, including documentation of employee discussions relative to violations or complaint items. Evidence of employee exposure to hazards should also be included.

**Status – Awaiting Verification:**

OHSB continued to work with compliance staff to improve documenting employer knowledge when establishing violations. To drive continuous improvement, supervisors reviewed case files to ensure the adequacy of documentation on an on-going basis. This item was not reviewed during this follow-up FAME cycle. In FY 2018, a comprehensive case file review will be conducted and correction of this finding will be verified.

**Finding 16-2 (Formerly 15-3):**

Average citation lapse time for New Mexico OHSB is significantly higher than the national average. New Mexico OHSB has a lapse time of 73.07 for safety and 74.39 for health compared to the further review levels of 54.19 for safety and 68.74 for health.

**Recommendation 16-2:**

NM OHSB should review processes and policies to identify roadblocks and inefficiencies causing high lapse times.

**Status: Open.** OHSB instituted several measures to aid staff in the timely closing of inspection files. They continue to utilize OIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. The Compliance Program Manager reviews assignment reports to compare with open inspection reports weekly. OSHA monitors this finding monthly and provides the State Plan with several OIS reports to assist them with monitoring citation lapse time.

**Finding 16-3 (Formerly 15-4):**

Fatality case files closed in FY 2015 did not include documentation regarding contact with victims' family members. Seven of the ten (70%) did not make initial contact with the family, and four (40%) did not receive final notification of the results of the inspection.

**Recommendation 16-3:**

New Mexico OHSB should ensure that family members are contacted early on and at appropriate times during fatality investigations, as provided in the New Mexico Field Operations Manual (NM FOM), and that these contacts are documented in the case files.

**Status: Awaiting Verification.** Immediately following the FAME review, OHSB instituted a new system, including file tracking sheets, to ensure letters are sent to family members and phone contact is documented during fatality investigations. This item was not reviewed during this follow-up FAME cycle. As part of the FY 2017 comprehensive FAME, a case file review will be conducted and OSHA will verify that this issue is corrected.

**Observation 16-1 (New):**

The State Plan conducted 121 health inspections. According to the Health No Sampling and Sampling Scan Enforcement report in OIS, 114 (94%) of these inspections contained no sampling.

**Federal Monitoring Plan 16-2:**

In FY 2018, a comprehensive case file review will be conducted and include this element to determine if the case files continue to lack evidence of sampling and if this problem continues to trend. OSHA will continue to monitor sampling through quarterly monitoring visits.

**Observation 16-2 (New):**

The in compliance rate of all inspections was 63% for safety and 49% for health, which are well beyond the further review levels of 34.62% for safety and 42.82% for health.

**Federal Monitoring Plan 16-2:**

OSHA will continue to monitor the high in compliance rate through quarterly monitoring visits and work with OHSB to ensure training needs are met for compliance officers in the recognition of violations and documentation of violations.

## Appendix A – New and Continued Findings and Recommendations

### FY 2016 New Mexico Follow-up FAME Report

FY 2016-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
2016-1	Case files reviewed were not always fully and accurately documented.	New Mexico OHSB must ensure that employer knowledge is documented for all violations, including documentation of employee discussions relative to violations or complaint items. Evidence of employee exposure to hazards should also be included. <i>Corrective action complete, awaiting verification.</i>	2015-2
2016-2	Average citation lapse time for New Mexico OHSB is significantly higher than the national average. New Mexico OHSB has a lapse time of 73.07 for safety and 74.39 for health, compared to the further review levels of 54.19 for safety and 68.74 for health.	New Mexico OHSB must review processes and policies to identify roadblocks and inefficiencies causing high lapse times.	2015-3
2016-3	Fatality case files closed in FY 2015 did not include documentation regarding contact with victims' family members. Seven of the ten (70%) did not make initial contact with the family, and four (40%) did not receive final notification of the results of the inspection.	New Mexico OHSB must ensure that family members are contacted early on and at appropriate times during fatality investigations, as provided in the New Mexico Field Operations Manual (NM FOM), and ensure that these contacts are documented in the case files. <i>Correction action complete, awaiting verification.</i>	2015-4

## Appendix B – Observations Subject to New and Continued Monitoring

FY 2016 New Mexico Follow-up FAME Report

Observation # FY 20XX-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-1		The State Plan conducted 121 health inspections. According to the Health No Sampling and Sampling Scan Enforcement report in OIS, 114 (94%) of these inspections contained no sampling.	OSHA will continue to monitor sampling through quarterly monitoring visits.	New
FY 2016-OB-2		The in-compliance rate of all inspections was 63% for safety and 49% for health, compared to the national average of 29% for safety and 36% for health.	OSHA will continue to monitor the high in-compliance rate through quarterly monitoring visits.	New

## Appendix C - Status of FY 2015 Findings and Recommendations

### FY 2016 New Mexico Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
2015-1	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 must ensure that the OHS Act, OHS regulations, and New Mexico FOM Chapter 13 are followed for all whistleblower investigations.	OHSB has provided a full curriculum of training for whistleblower investigations staff and has significantly reduced its prior backlog of cases. OHSB continues to improve its program by providing additional training as it becomes available through the OSHA Training Institute, by allocating additional staff resources including administrative assistance, and by working with the NMED Office of General Counsel to streamline investigation and settlement processes.	January 27, 2017	Completed
2015-2	Case files reviewed were not always fully and accurately documented.	New Mexico OHSB must ensure that employer knowledge is documented for all violations, including Documentation of employee discussions relative to violations or complaint items. Evidence of employee exposure to hazards should	In FY 2015 and FY 2016 OHSB continued to work with compliance staff to improve documenting employer knowledge when establishing violations. To drive continuous improvement, supervisors reviewed case files to ensure the adequacy of documentation on an on-going basis. Management reviewed violation documentation periodically during internal Compliance Officer (CO) training sessions and employee evaluations. With the conversion to	September 30, 2016	Awaiting Verification



## Appendix C - Status of FY 2015 Findings and Recommendations

### FY 2016 New Mexico Follow-up FAME Report

		also be included.	the OSHA Information System (OIS), OHSB modified its procedure for documenting employer knowledge to capture information on OIS documents. Following a review of files completed using OIS during FY 2015; OHSB has developed additional forms to augment identified limitations of the OIS system for documenting violations.		
2015-3	Average citation lapse time for New Mexico OHSB is significantly higher than the national average. New Mexico OHSB has a lapse time of 72.84 for safety and 70.58 for health compared to the national average of 42.78 safety and 53.48 health.	New Mexico OHSB must review processes and policies to identify roadblocks and inefficiencies causing high lapse times.	As part of an ongoing effort to reduce citation lapse times, OHSB instituted several internal measures to aid staff in timely closing inspection files. OHSB used OIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. During FY 2015 and FY 2016, management closely monitored inspection assignments to ensure caseloads were reasonable. Supervisors reviewed assignment data to compare with inspection reports weekly. OHSB also more closely reviewed referrals, including those received as part of new employer injury reporting requirements, to identify those where an initial investigation by inquiry was appropriate. OHSB is performing	September 30, 2016	Open

## Appendix C - Status of FY 2015 Findings and Recommendations

### FY 2016 New Mexico Follow-up FAME Report

			monthly analysis of lapse times for individual Compliance Officers and includes lapse times as a major element of employee performance evaluations. Performance reviews include an analysis of task prioritization to identify potential improvements, and supervisors work closely with Compliance Officers on task prioritization.		
2015-4	Fatality case files closed in FY 2015 did not include documentation regarding contact with victims' family members. Seven of the ten (70%) did not make initial contact with the family, and four (40%) did not receive final notification of the results of the inspection.	New Mexico OHSB must ensure that family members are contacted early on and at appropriate times during fatality investigations, as provided in the New Mexico Field Operations Manual (NM FOM), and ensure that these contacts are documented in the case files.	Immediately following the FAME review OHSB instituted a system, including file tracking sheets, to ensure letters are sent to family members and phone contact is documented during fatality investigations.		Awaiting Verification

## Appendix D

### FY 2016 State Activity Mandated Measures (SAMM) Report

#### FY 2016 New Mexico Follow-up FAME Report

Fiscal Year 2016 is the first year since the transition from the NCR (OSHA's legacy data system) began that all State Plan enforcement data has been captured in OSHA's Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA's WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA's official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: <b>New Mexico - OSHB</b>			FY 2016	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	3.00	5	Further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	2.00	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.00	0	Further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.00	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	Further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not	0	0	Further review level is fixed for

## Appendix D

### FY 2016 State Activity Mandated Measures (SAMM) Report

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	obtained			all State Plans.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.88	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 0.59	+/- 20% of Other: .99	
<b>6</b>	Percent of total inspections in state and local government workplaces	5.26%	+/- 5% of 11.25%	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
<b>7</b>	Planned v. actual inspections – safety/health	S: 316	+/- 5% of S: 300	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 121	+/- 5% of H: 100	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,019.29	+/- 25% of \$2,279.03	Further review level is based on a one-year national rate.
	a. Average current serious penalty in private sector (1-25 workers)	\$679.31	+/- 25% of \$1,558.96	Further review level is based on a one-year national rate.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,068.24	+/- 25% of \$2,549.14	Further review level is based on a one-year national rate.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,240.63	+/- 25% of \$3,494.20	Further review level is based on a one-year national rate.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,207.81	+/- 25% of \$4,436.04	Further review level is based on a one-year national rate.

## Appendix D

### FY 2016 State Activity Mandated Measures (SAMM) Report

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<b>9</b>	Percent in compliance	S: 62.50%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 49.04%	+/- 20% of H: 35.68%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	100%	100%	Further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 73.07	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 74.39	+/- 20% of H: 57.28	
<b>12</b>	Percent penalty retained	80.94%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	Further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	54%	100%	Further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	15%	+/- 20% of 24%	Further review level is based on a three-year national average.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	201	90	Further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.26%	+/- 25% of 1.26%	Further review level is based on a one-year national rate.