

**FY 2018
Follow-up Federal Annual Monitoring Evaluation
(FAME) Report**

New Mexico Occupational Health and Safety Bureau (NMOHSB)



Evaluation Period: October 1, 2017 – September 30, 2018

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I. Executive Summary

This is an annual evaluation of the operation of the State of New Mexico Occupational Health and Safety Bureau (OHSB) under the 23(g) State Plan grant. This report was prepared under the direction of Eric S. Harbin, Acting Regional Administrator, Region VI, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and covers the period from October 1, 2017 to September 30, 2018.

The purpose of this report is to assess the OHSB activities for the Fiscal Year (FY) 2018 and its progress in resolving ongoing findings from the FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) 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.

During FY 2018, New Mexico continued to make progress in addressing the four findings and recommendations from the FY 2017 FAME. The recommendations included: case file documentation of employer knowledge, reducing citation lapse time, sampling, and high in-compliance rate. One observation, related to inconsistencies in employer interviews and the lack of related documentation, carried over from the FY 2017 FAME. OSHA monitors FAME findings and observations.

There are two new findings for this period. First, OHSB inspections declined significantly during the period covered by this report. In FY 2018, the New Mexico State Plan conducted 155 safety and 64 health inspections for a total of 219 (55%) of their projected goal of 400 inspections. The second finding was the percent of enforcement presence, which is 0.63%. This is significantly lower than the 0.92% in FY 2017. OHSB's low enforcement presence is attributed to not meeting inspection goals. Had OHSB met its goal of 400 inspections in FY 2018, its enforcement presence would have been 1.14. OSHA will continue to monitor enforcement presence with an emphasis on addressing the underlying issue of low inspection numbers reflected in Finding FY 2018-05.

A contributing factor to the new finding is OHSB has experienced greater than normal staff turnover throughout FY 2017 and 2018. The State Plan had an average vacancy rate of 35% among Compliance Officers (CO) during FY 2018. A focus for FY 2018 was to fill their vacancies and train new hires as soon as possible, so OHSB can continue to meet their benchmarks. OHSB has cited salary disparity between its staff and the private industry as one of the causes of high turnover, which is an impediment to recruiting and retention.

Additionally, OHSB received 48 whistleblower complaints. Of the whistleblower complaints received in FY 2018, 11 were docketed for investigation, eight were recommended for dismissal, two were settled and one is still pending.

OHSB continues to strengthen its cooperative programs. One of their Alliances is with the University of New Mexico (UNM) Medical School's Occupational Medicine. OHSB provides information on OSHA regulations to physicians completing a rotation in occupational medicine. Physicians also have the opportunity to participate in site visits as well as health and safety-related projects with OHSB. The Bureau worked with medical school administrators to facilitate 'hands-on' visits for medical students to New Mexico worksites.

II. State Plan Background

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 Cabinet Secretary of the New Mexico Environment Department is James C. Kenney, and the OHSB Bureau Chief is Robert Genoway. Secretary Kenney replaced Butch Tongate, who was Cabinet Secretary during the course of FY 2018, the time covered by this report.

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

The State Plan has a total work force of 631,900 private sector and 177,687 state and local government workers in 54,451 businesses and 4,107 public agencies throughout New Mexico. Mining, Oil, and Gas regained 6% of employment following a 23% decrease the previous year. The construction industry added more than 2,000 jobs in 2017 as compared to 2016. Healthcare added a modest number of jobs following gains of more than 3,000 private sector employees per year. (Source: New Mexico Department of Workforce Solutions [Quarterly Census of Employment & Wages](#) from 2017 – latest available)

The federal share of the initial FY 2018 23(g) grant was \$994,500, and the State Plan share was \$994,500, for a total program budget of \$1,989,000. The State Plan deobligated \$19,500 in federal funds during the period. The deobligation was due to staffing vacancies throughout FY 2018.

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 and 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.

The OHSB staff consists of the Bureau Chief; three Program Managers; seven Safety Compliance Officers (COs); three Health COs; two and a half Safety Consultants; two and a half Health Consultants; two Compliance Assistance Specialists (CAS); and six administrative staff members. OHSB currently has one safety CO vacancy and one CAS vacancy.

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

New Issues

Staffing

OHSB experienced greater than normal staff turnover throughout FY 2017 and 2018, with an average vacancy rate of 35% among COs during FY 2018. The State Plan lost six COs during FY

2017 and another four during FY 2018. A focus for FY 2018 was to fill their vacancies and train new hires as soon as possible so OHSB can continue to meet their benchmarks.

As of January 22, 2019, OHSB currently has one safety CO vacancy and one CAS vacancy, but is actively trying to fill both of these positions. The State Plan struggles with low salaries, particularly when compared to the private sector, which is an impediment to recruiting and retention.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

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

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

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

Each State Activity Mandated Measures (SAMM) Report has a further review level (FRL) that is either a single number or a range of numbers above and below the national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2018 State Activity Mandated Measures Report and includes the FRL for each measure.

B. Findings and Observations

OSHA identified six findings, of which two are new and four are continued from the FY 2017 Comprehensive FAME report. The State Plan made progress in addressing the previous four findings and one observation from the FY 2017 Comprehensive FAME report. This follow-up FAME report contains six findings (four continued, two new) and one observation (continued). Appendix A describes the new and continued findings and recommendations. Appendix B describes observation subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2017 recommendation in detail.

Continued Findings

Finding FY 2018-01 (FY 2017-01): In 20% (14/69) of the non-fatality case files reviewed during the FY 2017 Comprehensive FAME review, employees were not interviewed. 38% (26/69) of these case files lacked documentation of employee interviews.

Status: A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2020 comprehensive FAME and remains open; awaiting verification.

Finding FY 2018-02 (FY 2017-02): During FY 2018, SAMM 11 shows the average safety citation lapse time for OHSB is higher than the national average. OHSB has a lapse time of 56.26 for safety and 71.00 for health compared to the high end of the further review level range of 55.44 for safety and 67.87 for health.

Status: Open. OHSB implemented measures to aid staff in the timely closing of inspection files during FY 2018. 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 will continue to monitor this finding monthly and provide the State Plan with OIS reports monthly to assist them with monitoring citation lapse time.

As indicated in the table below, the average lapse time has fluctuated throughout the last five years. The State Plan has made progress in lowering the safety citation lapse time compared to the previous years, but health citation lapse times increased in FY 2018.

Average Lapse Time (SAMM 11)	FY 2018	FY 2017	FY 2016	FY 2015	FY 2014
Safety	56.26	67.25	73.07	72.8	70.5
Health	71.00	57.55	74.39	70.5	66.4

Finding FY 2018-03 (FY 2017-03): The State Plan conducted 64 health inspections according to the Sampling Scan Enforcement Report in OIS. 53 (83%) of these inspections contained no sampling.

Status: Open. OHSB should continue to implement a sampling strategy and provide its compliance officers with additional training in sampling techniques and identifying potential hazards through the use of sampling, when appropriate. OSHA will continue to monitor this finding monthly and provide the State Plan with OIS reports each month to assist them with monitoring their sampling.

Finding FY 2018-04 (FY 2017-04): The in-compliance rate of 54.07% for safety exceeded high end of the further review level range of 35.88.

Status: Open. The State Plan has conducted training for management and staff throughout FY 2018. OHSB has made progress in lowering their safety in-compliance rate, per the last

five years of data from the chart below. OSHA will continue to monitor and discuss this during the quarterly meetings.

Percent In-Compliance (SAMM 9)	FY 2018	FY 2017	FY 2016	FY 2015	FY 2014
Safety	54.07%	66.8%	62.5%	45.9%	65.6%
Health	36.84%	37.6%	49%	29.7%	52.6%

New FY 2018 Findings

Finding FY 2018-05: The State Plan inspection goals for FY 2018 were not met. During FY 2018, OHSB conducted 155 safety and 64 health for a total of 219 inspections statewide. This represents 55% of OHSB’s annual performance goal of 400 inspections during this period. (SAMM 7)

Status: New. OHSB should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach their inspection goals.

Finding FY 2018-06: Percent of enforcement presence is 0.63% is significantly lower than the 0.92% in FY 2017 and lower than the FRL of 0.93% to 1.55%. (SAMM 17)

Status: New. OHSB should continue efforts to understand and address its high turnover rate and fill staff vacancies.

OBSERVATIONS

Continued FY 2018 Observation

Observation FY 2018-OB-01 (2017-OB-01): Basic employee interview documentation should be consistently documented in the case file and narrowly used to explain what occurred during the inspection or why citations were or were not recommended, as required by the OHSB Field Operations Manual (FOM).

Status: Continued. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2020 comprehensive FAME and remains open.

C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM measure has an agreed upon further review level (FRL), which can be either a single number, or a range of numbers above and below the national average. If the State Plan’s SAMM data falls outside the FRL, it triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2018 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure. The State Plan was outside the FRL on the following SAMMs:

SAMM 5 - Average number of violations per inspection with violations by violation type.

Discussion of State Plan data and FRL: The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.18 for Serious, Willful, and/or Repeat (SWRU) violations and from 0.78 to 1.18 for Other than Serious (OTS) violations. The New Mexico State Plan’s average number of violations had an average of 1.78 serious/willful/repeat violations per inspection, which is within the FRL range of 1.46 to 2.18. However, OHSB had an average of .62 other-than-serious violations, slightly lower than the FRL range of .78 to 1.18.

Explanation: According to the SAMM report, OHSB Compliance Officers identified 302 violations. Of these, 211 were classified as serious, willful, repeat or unclassified and 78 were other-than-serious. This measure will continue to be discussed during quarterly meetings and does not rise to the level of an observation at this time.

SAMM 6 – Percent of total inspections in state and local government workplaces

Discussion of State Plan data and FRL: The FRL for SAMM 6, percent of total inspections in state and local government workplaces is +/- 5% of 5.00%, which is the number negotiated by OSHA and the State Plan through the grant application. Therefore, the FRL range is 4.75% to 5.25%. The State Plan’s percent of total inspections in state and local government workplaces (SAMM 6) is at 1.83%, which is below the further review level range.

Explanation: In the five years prior to FY 2018, the State Plan exceeded their goal for this measure. OSHA contributes this measure to the State Plan’s struggle with their staffing. OSHA will monitor the State Plan during FY 2019 to identify possible causes and to ensure state and local government workplace inspections are conducted.

SAMM 6	FY 2018	FY 2017	FY 2016	FY 2015	FY 2014	FY 2013
Percent of Total Inspections in State and Local Government Workplaces	1.83%	12.81%	5.26%	5.67%	7.06%	6.9%

SAMM 7 – Planned vs. actual inspections – safety/health

Discussion of State Plan data and FRL: The FRL for SAMM 7, planned vs. actual inspections, is +/- 5% of the goal negotiated in the grant of 280 for safety and 120 for health. Therefore, the FRL acceptable range is 266-294 for safety inspections and 114-126 for health inspections. During FY 2018, the State Plan conducted 155 safety and 64 health inspections for a total of 219 inspections statewide. This represents 55% of OHSB’s annual performance goal of conducting 400 inspections during this period.

Explanation: Since this is the second year the State Plan has not met their goal, OSHA considers this a new finding (FY 2018-05). Turnover and the need for compliance officer

training were cited as the primary factors contributing towards the lower than expected inspection numbers. Performance on this measure was discussed throughout the quarterly meetings.

Planned vs. Actual Inspections (SAMM 7)	FY 2018	FY 2017	FY 2016	FY 2015	FY 2014
Goal	400	400	400	400	390
Conducted	219	320	437	388	411
Differences	(181)	(80)	37	(12)	21

SAMM 8 – Average current serious penalty

Discussion of State Plan data and FRL: OHSB’s current penalty per serious violation in private sector (SAMM 8: 1-250+ workers) was \$1,909.40 in FY 2018. The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,952.49 to \$3,254.15.

Explanation: The State Plan was slightly below the FRL, but this does not rise to the level of an observation.

SAMM 9 – Percent in-compliance

Discussion of State Plan data and FRL: The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 29.90%, which equals a range of 23.92% to 35.88% for safety. The State Plan’s percent in-compliance for safety is 54.07%, which is substantially higher than the FRL and a cause for concern. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 36.10%, which equals a range of 28.88% to 43.32% for health. The State Plan’s percent in-compliance for health is 36.84%, which is within the FRL.

Explanation: OHSB’s high in-compliance rates for safety is attributed to two factors. First, the State Plan had a high staff turnover leading to a low number of experienced staff. Second, the State Plan does not follow the focused inspection guidance for construction. Inspections are conducted for all the contractors performing work at the site, resulting in a high number of in-compliance construction inspections. This issue is addressed as Finding 2018-04.

SAMM 11 – Average lapse time

Discussion of State Plan data and FRL: The FRL for average lapse time is +/-20% of the three-year national average of 46.20 for safety and 56.56 for health, which equals an acceptable range of 36.96 to 54.44 for safety and 45.25 to 67.87 for health. In FY 2018, OHSB’s average citation lapse time of 56.26 days for safety and 71.00 working days for health.

Explanation: High citation lapse time has been an issue for OHSB’s for several years. However, safety lapse time in FY 2018 is considerably lower compared to FY 2017 at 67.25. OHSB continues to address this issue through training and monitoring OIS reports weekly. Strategies to reduce citation lapse time will continue to be a topic of discussion at quarterly meetings in FY 2019. Finding FY 2018-02 remains open.

SAMM 12 – Percent Penalty Retained

Discussion of State Plan data and FRL: OHSB’s percent penalty retained (89.94%) was above the FRL of +/-15% of 66.81% (56.79% to 76.83%).

Explanation: The State Plan continues to retain a higher in penalty amount than the national average of 67.77%.

SAMM 14 – Percent of 11(c) investigations completed within 90 days

Discussion of State Plan data and FRL: The FRL for this metric was fixed at 100%. OHSB completed 70% of 11(c) investigations within 90 days.

Explanation: Although the State Plan was outside the FRL, this performance was higher than the national average of 35%. This result does not rise to the level of an observation, but will continue to be discussed at quarterly meetings.

SAMM 16 – Average number of calendar days to complete an 11(c) investigation

Discussion of State Plan data and FRL: The FRL for this metric was fixed at 90 days. OHSB’s average number of calendar days to complete an 11(c) investigation was 95 days.

Explanation: Although the State Plan was outside the FRL, this performance was better than the national average of 277 days. This result does not rise to the level of an observation but will continue to be discussed at quarterly meetings.

SAMM 17 – Percent of enforcement presence

Discussion of State Plan data and FRL: The FRL for percent of enforcement presence is +/- 25% of the three-year national average of 1.24%, which equals an acceptable range of 0.93% to 1.55%. This percentage is a ratio of the total number of inspections to the total number of establishments. It should be noted that for this SAMM measure, the total establishments do not include state and local government establishments or establishments in low hazard private sector industries.

Explanation: OHSB’s percent of enforcement presence is 0.63% and is significantly lower than the FRL of 0.93% to 1.55%. As shown in the chart below, OHSB has been decreasing in enforcement presence steadily over the past two years.

SAMM 17	FY	FY	FY	FY	FY	FY
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	2018	2017	2016	2015	2014	2013
Percent of Enforcement Presence	0.63%	0.92%	1.26%	1.13%	1.20%	1.10%

However, if OHSB had met its inspection goal of 400 inspections in FY 2018, its enforcement presence would have been 1.14%, which would be within the FRL range. OSHA will continue to monitor enforcement presence through Finding FY 2018-06, as well as addressing the underlying issue of low inspection numbers through Finding FY 2018-05.

Appendix A – New and Continued Findings and Recommendations

FY 2018 New Mexico Follow-up FAME Report

FY 2018-#	Finding	Recommendation	FY 2017-# or FY 2017-OB-#
FY 2018-01	In 20% (14/69) of the non-fatality case files reviewed in FY 2017, employees were not interviewed. 38% (26/69) of these case files lacked documentation of employee interviews.	OHSB should 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.	FY 2017-01
FY 2018-02	During FY 2018, SAMM 11 shows the average safety citation lapse time for OHSB is higher than the national average. OHSB has a lapse time of 56.26 for safety and 71.00 for health compared to the high end of the further review level range of 55.44 for safety and 67.87 for health.	OHSB should review processes and policies to identify roadblocks and inefficiencies causing high safety lapse times.	FY 2017-02
FY 2018-03	OHSB conducted 64 health inspections. According to the Sampling Scan Enforcement Report in OIS, 53 (83%) of these inspections contained no sampling.	OHSB should implement a comprehensive sampling strategy and provide its compliance officers with additional training in sampling techniques and identifying potential hazards through the use of sampling, when appropriate.	FY 2017-03
FY 2018-04	The in-compliance rate of 54.07% for safety exceeded high end of the further review level range of 35.88.	OHSB should determine the cause of the high in-compliance rate in safety, as indicated in SAMM 9, and implement corrective action that improves both their training and hazard identification efforts.	FY 2017-04
FY 2018-05	OHSB conducted 155 safety and 64 health for a total of 219 inspections. This represents 55% of OHSB's annual performance goal of conducting 400 inspections during this period. (SAMM 7)	OHSB should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach inspection goals.	New
FY 2018-06	Percent of enforcement presence is at 0.63% significantly lower than the 0.92% in FY 2017 and lower than the FRL of 0.93% to 1.55%.	OHSB should continue efforts to understand and address its high turnover rate and fill staff vacancies.	New

Appendix B – Observations and Federal Monitoring Plans

FY 2018 New Mexico Follow-up FAME Report

Observation # FY 2018-OB-#	Observation# FY 2017-OB-# or FY 2017-#	Observation	Federal Monitoring Plan	Current Status
FY 2018-OB-01	FY 2017-OB-01	Basic employee interview documentation should be consistently documented in the case file and narrowly used to explain what occurred during the inspection or why citations were or were not recommended, as required by the OHSB Field Operations Manual (FOM).	OSHA will continue to effectively monitor the OHSB's performance in this area during quarterly meetings and through case file review in FY 2019.	Continued

Appendix C - Status of FY 2017 Findings and Recommendations

FY 2018 New Mexico Follow-up FAME Report

FY 2017-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status and Date
2017-01	In 20% (14/69) of the non-fatality case files reviewed, employees were not interviewed. 38% (26/69) of these case files lacked documentation of employee interviews.	OHSB should 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.	In FY2019, OHSB completed the following corrective action: <ol style="list-style-type: none"> 1. Restructure its file review system. 2. Expand support staff allocation. 3. Upgrade interview recording. 4. Provide inspector training. 	July 1, 2019	Awaiting Verification July 1, 2019
2017-02	Average safety citation lapse time for New Mexico OHSB is significantly higher than the national average. New Mexico OHSB has a lapse time of 67.25 for safety, compared to the national two-year average of 45.29.	OHSB should review processes and policies to identify roadblocks and inefficiencies causing high safety lapse times.	During FY2018, OHSB has increased: report reviews; management of assignments; monthly analyses; staff performance reviews; and task prioritization.		Open July 1, 2019
2017-03	The State Plan conducted 88 health inspections. According to the Sampling Scan Enforcement Report in OIS, 74 (84%) of these inspections contained no sampling.	OHSB should implement a comprehensive sampling strategy and provide its compliance officers with additional training in sampling techniques and identifying potential	During FY2019, OHSB will review SEPs for sampling and provide health officer with training.		Open July 1, 2019

		hazards through the use of sampling, when appropriate.			
2017-04	The in-compliance rate of 66.8% for safety exceeded the national in-compliance rate of 29.53% for safety per SAMM 9. The safety cases are significantly above the further review level.	OHSB should determine the cause of the high in-compliance rate in safety, as indicated in SAMM 9, and implement corrective action that improves both their training and hazard identification efforts.	OHSB will work with OSHA Region VI during FY2019 to gather national and state data and will perform an analysis to determine causative factors for the state's high in-compliance rate.		Open July 1, 2019
FY 2017-OB-01	Basic employee interview documentation should be consistently in the case file and adequately documented using narrative to explain what occurred during the inspection or why citations were or were not recommended, as required by their FOM.	OSHA will continue to effectively monitor the State Plan's performance in this area during quarterly meetings throughout FY 2018.	In FY2019, OHSB will: <ol style="list-style-type: none"> 1. Restructure its file review system. 2. Expand support staff allocation. 3. Upgrade interview recording. 4. Provide inspector training. 		Continued

Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report
 FY 2018 New Mexico Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: New Mexico - OSHB			FY 2018	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	3.00	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.00	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	0.00	0	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.00	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	N/A – The State Plan did not receive any imminent danger complaints or referrals in FY 2018. The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.78	+/- 20% of SWRU: 1.82	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.18 for SWRU and from 0.78 to 1.18 for OTS.
		Other: 0.62	+/- 20% of Other: 0.98	
6	Percent of total inspections in state and local government workplaces	1.83%	+/- 5% of 5.00%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from

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				4.75% to 5.25%.
7	Planned v. actual inspections – safety/health	S: 155	+/- 5% of S: 280	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 266 to 294 for safety and from 114 to 126 for health.
		H: 64	+/- 5% of H: 120	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,909.40	+/- 25% of \$2,603.32	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,952.49 to \$3,254.15.
	a. Average current serious penalty in private sector (1-25 workers)	\$925.00	+/- 25% of \$1,765.19	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,323.89 to \$2,206.49.
	b. Average current serious penalty in private sector (26-100 workers)	\$2,684.21	+/- 25% of \$3,005.17	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,253.88 to \$3,756.46.
	c. Average current serious penalty in private sector (101-250 workers)	\$3,026.00	+/- 25% of \$4,203.40	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,152.55 to \$5,254.25.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,485.38	+/- 25% of \$5,272.40	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,954.30 to \$6,590.50.
9	Percent in compliance	S: 54.07%	+/- 20% of S: 29.90%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 23.92% to 35.88% for safety and from 28.88% to 43.32% for health.
		H: 36.84%	+/- 20% of H: 36.10%	

Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

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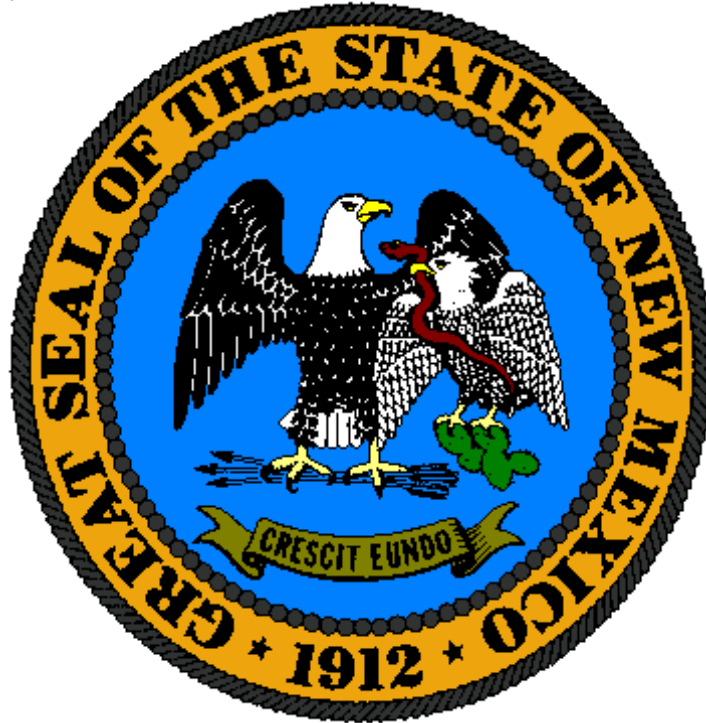
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 56.26	+/- 20% of S: 46.20	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 36.96 to 55.44 for safety and from 45.25 to 67.87 for health.
		H: 71.00	+/- 20% of H: 56.56	
12	Percent penalty retained	89.94%	+/- 15% of 66.81%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.79% to 76.83%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.09%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	70%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	20%	+/- 20% of 24%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 19.20% to 28.80%.
16	Average number of calendar days to complete an 11(c) investigation	95	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	0.63%	+/- 25% of 1.24%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.93% to 1.55%.

NOTE: Fiscal Year 2018 is the third 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). Therefore, the national averages on this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 13, 2018, as part of OSHA’s official end-of-year data run.

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

State OSHA Annual Report



Fiscal Year 2018

October 1, 2017 – September 30, 2018

Susana Martinez, Governor
Butch Tongate, Cabinet Secretary
Robert Genoway, Bureau Chief

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I. Executive Summary

In the fiscal year 2018, the New Mexico Occupational Health and Safety Bureau (“OHSB” or “the Bureau”) continued to focus on its mission to assure every employee safe and healthful working conditions. Through targeted enforcement, cooperative assistance, and outreach efforts, the OHSB used a broad approach to reach industries most in need of reductions in injuries and illnesses. New Mexico continued activities in its State Emphasis Programs (SEPs) and engaged in applicable National Emphasis Programs (NEPs).

New Mexico continued to engage in activities for SEPs within the industries of construction, primary and fabricated metals, oil and gas well drilling and servicing, and hospitals and nursing care during FY2018. The Bureau continued its SEP for silica exposure in the construction and earth products manufacturing industries. OHSB also participated in several OSHA NEPs including Primary Metals, Hexavalent Chromium and Process Safety Management in Chemical Processing Facilities.

The State continues to make progress in strengthening its cooperative programs in both OHSB Strategic Partnership for Construction (OSPC) programs and Alliance Agreements. The OHSB and the Construction Health and Safety Council of New Mexico, which became the New Mexico Construction Safety Coalition (CSC) in FY2017, continued to improve partnership processes in the construction industry and promoted inter-partnership sharing of information and ideas in addition to the intra-partnership sharing that had previously existed within each of the individual partnerships. The CSC is comprised of OHSB, the Associated Building Contractors (ABC), Associated Contractors of New Mexico (ACNM), Associated General Contractors (AGC), American Subcontractors Association of New Mexico, Mechanical Contractors Association of New Mexico, and the New Mexico Utilities Contractors Association (NMUCA). The OHSB continued work with established Alliances including the New Mexico Chapter of the American Society of Safety Engineers, the Southeast New Mexico Service, Transmission, Exploration, and Production Safety Network, the New Mexico Oil and Gas Association, and the Consulate of Mexico in Albuquerque, New Mexico.

The OHSB continued to experience significant staff turnover throughout 2018, with an average vacancy rate of 35% among compliance officers. A focus for 2018 was to fill vacancies so OHSB can meet benchmarks. The compliance officer vacancy rate was reduced to 10% by the end of the fiscal year and in 2019 OHSB will ensure new staff are provided training needed to meet inspection goals.

II. Progress toward Strategic Plan Accomplishment

Through strategic planning and regular meetings among management, compliance, and compliance assistance staff, OHSB coordinated efforts to reach industries and employees where the greatest potential for injuries and illness exist. The Bureau’s performance plan for FY2018 focused on two major strategic areas that included activities for affecting reductions in injuries, illnesses and fatalities. The OHSB also focused on plan areas to improve the

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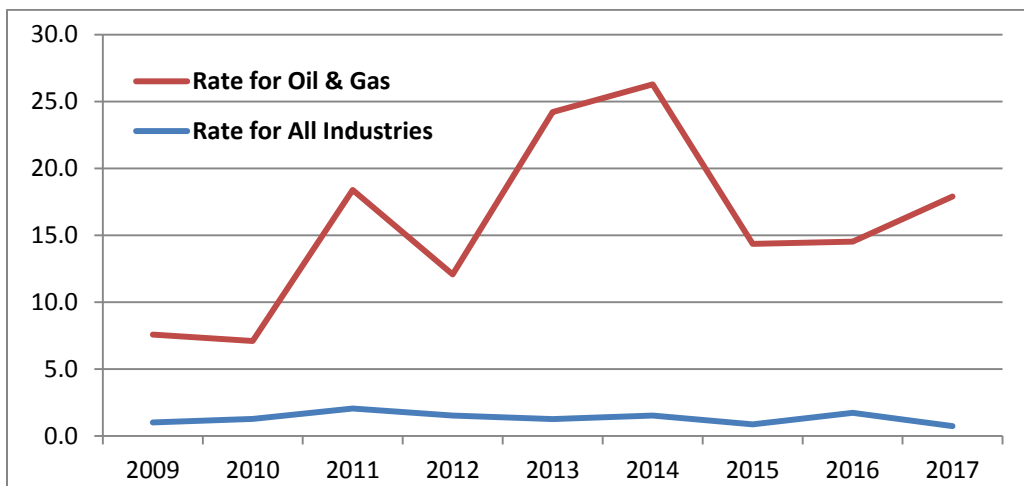
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quality of cooperative programs and to provide educational outreach to employers and employees.

A. Enforcement Activities

The OHSB continued to implement state emphasis programs for fabricated metal products, oil and gas well drilling and servicing operations, construction, exposure to silica, waste management, hospitals and nursing care facilities. The Bureau also engaged in enforcement at facilities with hazards involving primary metals processing and use of hexavalent chromium through the adoption of national emphasis programs. The state used SEPs to target industries with high injury and fatality rates. Fatal workplace accidents in New Mexico continued to decrease as a long-term trend, with 9 fatalities in FY2018 compared to the 5-year average of 9.4 from FY2013 through FY2017.

New Mexico continued to place significant enforcement emphasis in the construction and oil and gas industries. The number of fatal accidents in both these industry sectors represent a large proportion of occupational fatalities in the state as a long-term trend. Fatal accidents in the oil and gas industry continued to represent the highest among all sectors. OHSB focused resources toward enforcement in the oil and gas industry in FY2018 based on the continuing high rate of fatalities within the industry as compared to rates in all industry within the Bureau's jurisdiction.



Rate of oil & gas fatalities in OHSB jurisdiction compared to all industries (per 100,00 workers).

New Mexico Senate Bill 229 (SB 229), signed into law on April 6, 2017, amended the state Occupational Health and Safety Act, 50-9 NMSA 1978, to adjust maximum and minimum penalties in conformance with federal law. The legislation adopted the equivalent federal maximum and minimum penalty levels and authorized the NMED Cabinet Secretary to increase levels annually to account for inflation. OHSB subsequently amended its policies to increase assessed penalties. Among the

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differences between federal and state policy, New Mexico records inspection activity for construction companies that follow regulatory requirements. This ensures those companies receive recognition of their safety efforts and qualify for future good history penalty reductions. While the policy results in an “in-compliance” rate greater than the nationwide average for inspections, OHSB believes compliant employers should receive appropriate recognition and benefits for maintaining safe workplaces.

B. Whistleblower Protection

The OHSB continued to build upon the success of its whistleblower discrimination investigation program. In FY2018, the Bureau received 48 discrimination complaints, opened 10 investigations, made 10 determinations, and found merit in 2 cases. The Bureau facilitated settlement of both merit cases during the year.

C. Cooperative Program Activities

1. Zia Star Voluntary Protection Program (VPP)

The OHSB continued to focus efforts on strengthening program quality and reviewing current VPP participants during the year. The Bureau conducted three recertification evaluations but also lost one participant.

2. OHSB Strategic Partnership in Construction (OSPC) Program

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



In FY2018, the New Mexico Chapter of the American Subcontractors Association (ASA) received the national ASA Innovation award for health and safety programs.

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The New Mexico Construction Safety Coalition held quarterly meetings in FY2018. The Coalition is composed of OHSB representatives and representatives of all six OSPC partnership associations.

3. Compliance Assistance and Outreach

The OHSB increased outreach activities to public and private sector solid waste employers and organizations in 2018. In addition to presenting safety and health information for the New Mexico Environment Department’s Transfer Station, Landfill, and Recycling Facility Operator Certification Courses, OHSB presented information to permanent and temporary employees.

During the New Mexico Chapter of the American Society of Safety Engineers (NM ASSE) Annual Professional Development Conference (PDC), OHSB provided technical materials and presentations on silica in construction and process safety management. OHSB continued its alliance agreement with all three state ASSE sections including the Los Alamos, Pecos and Zia sections. This alliance provides New Mexico employees and employers with guidance, access to information and training resources, industry-specific hazard prevention.

The OHSB continued its participation in the University of New Mexico (UNM) Medical School’s Occupational Medicine Rotation in FY2018. The purpose of this program is for physicians completing a rotation in occupational medicine to receive information about OSHA regulations, including recordkeeping and reporting requirements, and the State Emphasis Program for Hospitals, Nursing and Residential Care Facilities. Additionally, physicians had the opportunity to participate in site visits as well as health and safety-related projects with OHSB. The Bureau worked with medical school administrators to facilitate ‘hands-on’ visits for medical students to New Mexico worksites. Under the program, UNM medical residents accompany OHSB representatives during onsite reviews to gain practical knowledge of occupational hazards affecting the State’s workforce. The Bureau provides as many as 14 onsite activities each year as part of this collaborative program.

4. Public Sector Consultation

The OHSB Consultation Program conducted 13 visits in the public sector during FY2018 and ensured the timely correction of all 35 serious hazards identified.

D. Administrative Activities

The Bureau’s Administration Section continues to provide necessary support functions including financial, information systems, and labor statistics management. Financial staff meets regularly with management to ensure budgets are properly projected and funds

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appropriately expended. OHSB continues to use the OSHA Information System (OIS) for all enforcement and compliance assistance data. Labor statistics staff continues to excel at injury, illness, and fatality data collection.

III. Progress on Federal Annual Monitoring Evaluation (FAME) Recommendations

Federal OSHA conducts an annual review of OHSB programs through the Federal Annual Monitoring Evaluation (FAME). As part of the FY2017 FAME, OSHA made several recommendations for improvement of the New Mexico state plan. The following summarize OHSB progress toward implementing the federal recommendations during FY2018.

A. Recommendation 17-1:

New Mexico OHSB should 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.

In FY2018, OHSB continued to work with compliance staff to enhance documentation of employer knowledge when establishing violations. OHSB developed the following strategies to further enhance documentation of violations:

1. OHSB initiated a restructuring of its internal file review system to consolidate enforcement supervisory staff within the Santa Fe office. The consolidation plan was submitted on September 4, 2018 and approved by the New Mexico State Personnel Office (SPO) early in FY2019.
2. OHSB expanded its enforcement support staff allocation to include additional resources in OIS report tracking and tracking of state internal evaluation program (SIEP) activities. A request for expansion of position tasks, which included an increase from 52 to 80 hours per week for enforcement support positions, was submitted on September 21, 2018 and approved by SPO early in FY2019.
3. In September 2018 OHSB upgraded its inspection interview recording capabilities to ensure employee and employer discussions and interviews are captured in support of violations.
4. OHSB is currently developing a compliance officer training plan for FY2019 that addresses specific FAME recommendations. The plan will be completed on or before March 1, 2019 and training will be completed by July 1, 2019. The training will include a minimum 16 hours training in the documentation of employee/employer discussions and interviews.

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B. Recommendation 17-2:

NM OHSB should 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 to minimize delays in citation issuance. During FY2018, 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 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. The FY2018 lapse time for safety violation in New Mexico was 56.3 days, 17% above the nationwide average of 48 days and within the standard for further review.

C. Recommendation 17-3:

OHSB should implement a comprehensive sampling strategy and provide its compliance officers with additional training in sampling techniques and identifying potential hazards through the use of sampling, when appropriate.

In FY2019, OHSB will review its health-related state emphasis programs to determine where strategic sampling guidance may be enhanced to aid industrial hygiene staff in identifying sampling opportunities. OHSB will also provide training to health compliance officers to ensure that when potential overexposure to noise and airborne contaminants (chemical, radiological, etc.) have been identified, sampling is conducted to determine exposure levels. The training will be completed on or before July 1, 2019.

D. Recommendation 17-4:

OHSB should determine the cause of the high in-compliance rate in safety, as indicated in SAMM 9, and implement corrective action that improves both their training and hazard identification efforts.

OHSB will work with OSHA Region VI during FY2019 to gather national and state data and will perform an analysis to determine causative factors for the state's high

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in-compliance rate.

IV. Conclusion

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

New Mexico continues to experience reductions in Days Away, Restricted, or Transferred (DART) rates. DART rates dropped nineteen percent from 2016 to 2017 (from a rate of 1.6 to 1.3 per 100,000 workers). The New Mexico DART rate in 2017 was also nineteen percent below the nationwide average of 1.6 and long-term rate reductions continue to reflect the positive influence of OHSB programs.

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Appendix A – Summary of FY2018 Performance Plan Results

The following tables summarize the Annual Performance Plan results for the Compliance and Cooperative Program activities of the New Mexico Occupational Health and Safety Bureau for fiscal year 2018. The referenced goals were established prior to the start of the fiscal year. Goals associated with consultation activities (Goal 1.3) are not described in this report.

5 Year Strategic Goal 1.1: Reduce the total New Mexico injury and illness DART rates by 5% through 2019 by focusing on targeted safety and health hazards.			
FY2018 Performance Goal 1.1: Experience a total injury and illness DART rate of less than 1.6 for CY2018 by conducting 400 enforcement inspections and 250 consultation visits, 50 21d outreach activities, and 100 compliance assistance activities (including VPP, alliances, and Partnership activities).			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Number of enforcement inspections • Number of consultation visits • Number of 23g compliance assistance activities • Number of 21d outreach activities 	OHSB conducted 222 inspections in FY2018	OHSB had a compliance vacancy rate of 35%.
Primary Outcome Measure	Injury and illness DART rate of less than 1.6 for CY2018	The New Mexico DART rate was 1.3 for 2017	BLS rates for 2018 are not currently available

5 Year Strategic Goal 1.2: Reduce the 5-year average of OHSB investigated workplace fatalities by 5% through scheduled inspections and visits at workplaces in targeted industries.			
FY2018 Performance Goal 1.2: Experience fewer than 11 workplace fatalities requiring OHSB investigations in FY2018.			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<ul style="list-style-type: none"> • Number of enforcement inspections in Oil & Gas • Number of enforcement inspections in Construction • Number of fatalities in Oil & Gas 	<ul style="list-style-type: none"> • 29 oil & gas industry inspections • 65 construction inspections • 1 oil & gas industry fatality 	

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	<ul style="list-style-type: none"> • Number of fatalities in Construction • Number of 23g compliance assistance activities in the SEPs 	<ul style="list-style-type: none"> • 1 construction fatality • 10 compliance assistance activities 	
Primary Outcome Measures	Record fewer than 11 NM OSHA investigated fatalities in FY2018	OHSB investigated 9 fatal accidents in FY2018.	

5 Year Strategic Goal 1.3: Increase the number of new participants in SHARP by 5.

FY2018 Performance Goal 1.3*: Increase the number of new participants in SHARP by 1 employer.

*Goal 1.3 applies to 21(d) Consultation. The FY2018 CAPR reviews this goal.

5 Year Strategic Goal 1.4: Improve the quality of participant health and safety programs by reducing top-level member DART rates by 10% through 2019.

FY2018 Performance Goal 1.4: Reduce DART rates for top-level members by 2%.

Performance Indicator Type	Indicator	Results	Comments
Activity Measures	Verification activities for partnership members	35 verification activities	
Primary Outcome Measures	DART rate for ABC members DART rate for ACNM members DART rate for AGC members DART rate for ASA members DART rate for MCA members DART rate for NUCA members	Not available	Data is currently unavailable for this measure. 2018 data will be collected and analyzed during 2019.

5 Year Strategic Goal 1.5: Increase the number of VPP participants by 5.

FY2018 Performance Goal 1.5: Increase the number of VPP participants from 12 to 15.

Performance Indicator Type	Indicator	Results	Comments
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Activity Measures	Number of candidates for VPP	OHSB received no new applications and lost one VPP site in FY2018	The OHSB VPP coordinator position was vacant in 2018
Intermediate Outcome Measures	Number of new VPP members	There were no new VPP members added in 2018	
Primary Outcome Measures	Have 15 VPP participants	New Mexico had 11 VPP participant worksites at the end of FY2018	

5 Year Strategic Goal 2.1: Initiate inspections for reported fatalities within 1 working day 100% of the time.			
FY2018 Performance Goal 2.1: Initiate inspections for reported fatalities within 1 working day 100% of the time.			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	Number of fatality reports in fiscal year.	There were 14 fatal accidents reported in FY2018	
Intermediate Outcome Measures	Number of fatality reports under OHSB jurisdiction in fiscal year. Number of fatality reports under OHSB jurisdiction responded to within 1 workday	There were 9 fatal accidents under OHSB jurisdiction in FY2018 OHSB responded to all 9 fatal accidents within 1 working day.	
Primary Outcome Measures	Percent of responses to fatality reports under OHSB jurisdiction initiated within 1 working day	OHSB initiated 100% of fatality investigations within 1 working day.	

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5 Year Strategic Goal 2.2: Conduct investigations for referrals alleging serious hazards within 10 working days 95% of the time.			
FY2018 Performance Goal 2.2: Conduct investigations for referrals alleging serious hazards within 10 working days 95% of the time.			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	<p>Number of referrals alleging serious hazards responded to during the year.</p> <p>Number of investigations for these referrals responded to within 10 days.</p>	NA	OHSB discontinued tracking of this measure in 2018 following changes to state legislative tracking for NMED
Primary Outcome Measures	Percent of investigations conducted within 10 working days.	NA	

5 Year Strategic Goal 2.3: Complete discrimination investigations within 60 days 95% of the time.			
FY2018 Performance Goal 2.3: Complete discrimination investigations within 60 days 95% of the time.			
Performance Indicator Type	Indicator	Results	Comments
Activity Measures	Number of discrimination cases opened.	OHSB opened 10 discrimination cases in FY2018.	
Primary Outcome Measures	Percent of discrimination cases completed within 60 days.	OHSB completed 70% of FY2018 cases within 60 days.	OHSB completed 7 of 10 total cases within 60 days.