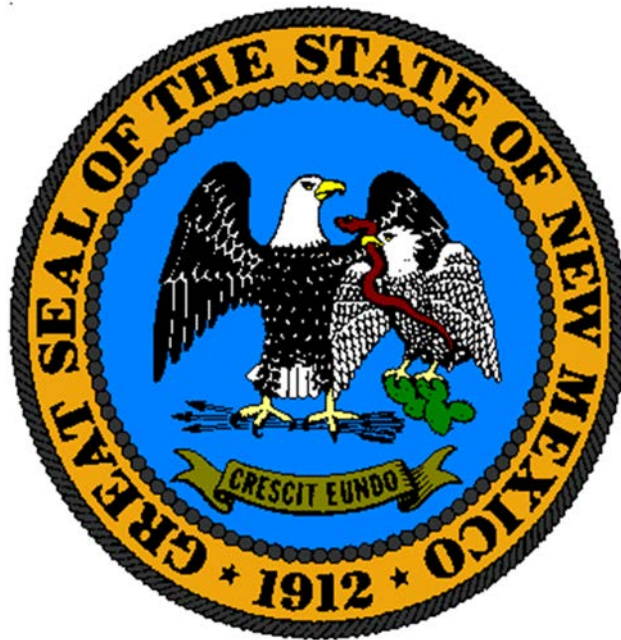


**FY 2015 Comprehensive
Federal Annual Monitoring and Evaluation (FAME) Report**

New Mexico Occupational Health and Safety Bureau (NMOHSB)



Evaluation Period: October 1, 2014 – September 30, 2015

Initial Approval Date: December 10, 1975
State Plan Certification Date: December 4, 1984
Final Approval: None

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



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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's (OHSB) State Plan under the 23(g) State Plan grant. This report was prepared under the direction of Kelly C. Knighton, Acting Regional Administrator, Region VI, Occupational Safety and Health Administration, U.S. Department of Labor, and covers the period from October 1, 2014, to September 30, 2015.

The purpose of this report is to assess the OHSB activities for the Fiscal Year (FY) 2015 and its progress in resolving ongoing findings. This report also reviews recommendations from the FY 2014 Follow-Up Federal Annual Monitoring and Evaluation (FAME) Report focusing on the status of corrective activities.

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

The Compliance Section conducted 388 inspections, which was slightly below their goal of 400 for the year. 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.

Fatal accidents in the oil and gas industry continued to represent the highest among all sectors. New Mexico is focusing substantial resources in this industry, including both enforcement and cooperative programs.

The DART and TCIR for Private Industry was flat for the last two years. For the last two years there was an increase in Construction of 31% for the TCIR and 13% for DART. Manufacturing showed an increase of 66% in the TCIR and 74% in the DART rate. There was a slight increase in the TCIR and decrease of 13% in the DART rate for state and local government.

It is notable that the rates for the Construction Industry have continued to decrease and resulted in an overall five-year reduction of 13% for TCIR and 19% for the DART rates. Likewise, the dip in TCIR rate in Private Industry within five years to 14% is worth of mention. This achievement may be attributed to New Mexico's emphasis to increase enforcement presence in high hazard industries.

During FY 2015, New Mexico continued to make progress in addressing the four findings and recommendations from the FY 2014 FAME. There were three recommendations carried over from the FY 2014 FAME to this year's report.

The recommendations include continuing improvements on case file documentation of employer knowledge, documentation of employee discussions relative to violations or complaint items is included in all case files, employee exposure to hazards is documented, reducing citation lapse time, and ensuring effective administration of the discrimination program. 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 2016 State Internal Evaluation Program (SIEP). The Region is addressing them on a continuing basis during the quarterly meetings, and will follow up on each issue during the FY 2016 FAME.

As part of their cooperative programs efforts, OHSB engaged in a variety of outreach, assistance and alliance activities in FY2015, including:

On July 15, 2015, OHSB, the New Mexico Oil and Gas Association (NMOGA), and the Southeast New Mexico Service, Transmission, Exploration & Production Safety (SENM STEPS) Network joined together to promote safety and health within the oil and gas industry by coordinating the Southeast New Mexico Oil and Gas Safety Summit. More than 100 oil and gas operators, contractors, vendors, educational institutions and regulatory entities attended the event.

OHSB participated in the 2015 International Laser Safety Conference held in Albuquerque from March 23 to March 26, 2015. The four-day conference covered all aspects of laser safety and hazard control. Presentations addressed developments in regulatory and voluntary safety standards for laser products and for laser use. The use of lasers has become widespread across many industries including manufacturing and medicine. Laser safety experts from all over the world were present to discuss the latest research, programs and standards. Bureau staff provided information and answered questions on the regulatory and inspection process, and distributed materials on OSHA services available in New Mexico and nationwide.

OHSB presented information on worker safety to 32 employer participants at the New Mexico Environment Department, Solid Waste Bureau's (SWB) Transfer Station Operator Certification Course on June 17, 2015. In response to a history of fatalities and high injury rates within the industry, SWB and OHSB initiated collaborative efforts, including training, to reduce injuries and fatalities. The training focuses on the need for safety in the industry and the consequences of safety system failures. Nationwide, worker injury rates within the solid waste industry have been significantly higher than other industries. However, in New Mexico, rates have steadily fallen since 2008 to levels more than 30 percent lower than the national average.

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 Ryan Flynn, and the Occupational Health and Safety (OHS) Bureau Chief is Robert Genoway.

The New Mexico program covers all private sector industries within the state, except maritime (longshoring, ship building, and ship breaking) workers and federal civilian workers, who are under OSHA jurisdiction for enforcement. State and local government workers are also covered. The New Mexico FY 2015 Annual Performance Plan notes that New Mexico has a total work force of 631,431 private sector and 172,660 public sector workers working for 57,041 businesses and public agencies throughout the state. Approximately 88% of the businesses within the State Plan employ 19 or fewer workers.

New Mexico administers a combined onsite consultation program under 21(d) and 23(g) funding. OHSB’s five consultant positions are a combination of 21(d), 23(g), and state funded. These consultants provide services to both state and local government and private employers.

The federal share of the initial FY 2015 23(g) grant was \$994,500, and the State Plan share was \$994,500, for a total program budget of \$1,989,000, but OHSB deobligated \$7,226.03 back to OSHA. Private sector consultation is provided by the Bureau under a 21(d) Cooperative Agreement, while public sector consultation is provided under the 23(g) grant.

Five Year Funding Comparison

Fiscal Year	Federal Award (\$)	State Plan Match (\$)	Total Funding (\$)	One Time Funding	Deobligated back to Federal OSHA
2015	994,500	994,500	1,989,000		7,226.03
2014	967,300	967,300	1,934,600	0	0
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
2011	998,300	998,300	1,996,600	0	58,295

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

C. Data and Methodology

This report is based on several data sources, including State Activity Mandated Measures (SAMM) Reports, OSHA Information System (OIS) Reports State Indicators Report

(SIR), case file reviews, Occupational Health and Safety Review Commission (OHSRC) decisions, Automated Tracking System (ATS) Logs, review of state-transmitted documentation in response to Federal Program Changes, federally-initiated standards, state-initiated plan changes, and ongoing communication regarding legislative, regulatory, and other issues.

In addition to our ongoing monitoring and quarterly meetings, during the week of January 11-15, 2016 a team of seven Dallas Regional Office staff members conducted an onsite review of the New Mexico State Plan operations. The team reviewed 70 enforcement files, 44 discrimination files, 12 Voluntary Protection Program (VPP) files, 6 Partnerships, and 3 Alliances, as well as reviewing enforcement activity management through use of OSHA Information System (OIS) reports.

All case files were reviewed to evaluate documentation quality, violation classification, penalty calculations, abatement verification, settlement and other relevant factors. The selected case files were randomly chosen using a random number chart.

D. Findings and Observations

This FY 2015 FAME Report contains one new, one modified and three continued findings and observations from FY 2014 FAME.

The recommendations include reducing citation lapse time, ensuring effective administration of the discrimination program, case file documentation, and next of kin notification. Finding 15-2 regarding case file documentation was modified to include documentation of employee discussions relative to violations or complaint items are included in all case files and employee exposure to hazards is documented. Details on the findings are provided in Section III of this report.

Appendix A describes new and continued findings and recommendations. Appendix B describes new findings subject to continued monitoring. Appendix C describes the status of each of the FY 2014 findings in detail.

II. Major New Issues

None

III. Assessment of State Plan Performance

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

New Mexico (OHSB) conducted a total of 388 inspections in FY 2015. Of those, 302 (78%) were safety and 86 (22%) were health. Construction accounted for 189 (48%) of the total 388 inspections.

A. STATE PLAN ADMINISTRATION

1) Training

New Mexico transmitted a plan supplement in response to OSHA Instruction TED 01-00-019, Initial Training Program for Compliance Officers, on September 18, 2014. New Mexico's plan differs somewhat from the OSHA Instruction. These differences were detailed in the state's transmittal letter. The region has requested the OSHA Training Institute (OTI) evaluate New Mexico's Plan to ensure it meets the requirements for equivalency.

The State Plan has sent numerous Compliance Officers to OTI during FY 2014 and 2015 to attend the following courses: Initial Compliance #1000, Inspection Techniques and Legal Aspects #1410, Accident Investigation #1230, Respiratory Protection #2225, Fall Protection #3110, Whistleblower Investigations #1420, Introduction to On-Site Consultation #1500, Industrial Noise #2200, Evaluation of Safety and Health Management Systems #2450. In addition, State Plan personnel attended 19 classes at the University of Texas OSHA Education Center and numerous Webinars.

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

2) Funding

A review of New Mexico's 23(g) financial grant was conducted on August 11-15, 2014, and there were no significant findings.

The federal share of the initial FY 2015 23(g) grant was \$994,500, and the State Plan share was \$994,500, for a total program budget of \$1,989,000, but OHSB deobligated \$7,226.03 back to OSHA. This was a slight increase compared to FY 2014, the federal share of the grant \$967,300 and the state share was \$967,300 for a total of \$1,934,600.

Private sector consultation is provided by the Bureau under a 21(d) Cooperative Agreement, while public sector consultation is provided under the 23(g) grant. New Mexico abides by the exemptions and limitations on OSHA appropriations, and no inspections were conducted outside of those guidelines.

3) Staffing

As of February 22, 2016, the Bureau was fully staffed. The 23(g) grant covers the salaries of the Compliance Program Manager, Health Compliance Officer, and 10% of the Consultation Program Manager.

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

The state is currently under a hiring freeze.

4) OSHA Information System (OIS)

OHSB's enforcement program transitioned from the OSHA Integrated Management Information System (IMIS) to the OSHA Information System (OIS) in October 2015.

New Mexico uses all of the reports appropriate to the program to manage enforcement activities. The enforcement reports are run weekly and are printed on Monday. The Compliance Program Manager is appropriately using the reports to manage the enforcement program.

New Mexico Compliance Officers, Compliance Assistance Specialists, and administrative staff members enter data in a timely and accurate manner, with few exceptions. The Compliance Program Manager continues to follow up on data entry errors since they transitioned to OIS.

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

5) State Internal Evaluation Program (SIEP) Report

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

OHSB did not conduct the SIEP in FY 2014 or 2015 due to staffing and financial constraints. They intend to continue the program in FY 2016.

B. ENFORCEMENT

1) Complaints

New Mexico has interpreted the State Plan OHS Act to define complaints as only those signed notices of alleged hazards filed by current workers or their representatives. All other notices of alleged hazards, including those from former workers and unsigned notices from current workers or employee representatives, are classified as referrals. All complaints are responded to by inspection in accordance with the New Mexico OHS Act and regulations. Referrals may be

handled by phone/fax, letter, or inspection, as determined by the Compliance Program Manager. Appendix D shows that there were seven complaint inspections conducted in New Mexico in FY 2015, accounting for 1.8% of inspection activity. Referral inspections accounted for 31.4% (122/388) of inspection activity.

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

SAMM 1 shows that New Mexico averaged 2.86 working days to respond to all serious and/or other than serious complaints by inspection; the goal is no more than five working days. This represents an improvement over last year's measure of 6.85.

The goal for SAMM 3 shows that 100% (2/2) of the imminent danger complaints and referrals responded to during the period were inspected within one working day, matching last year's performance in this area.

Because the New Mexico Act so narrowly defines complaints, the State Plan's response to referrals alleging serious hazards has historically been reviewed at quarterly monitoring meetings. OHSB has an internal strategic goal of responding to 95% of referrals alleging serious hazards within 10 working days. New Mexico responded to 413 of 418 (98.8%) referrals alleging serious hazards within 10 working days. An investigation may include an onsite inspection or inquiry by phone, fax or letter.

Complaints (SAMM 1, 2, 3, 4)

SAMM	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011	Goal
Average number of work days to initiate complaint inspections (SAMM 1)	2.86	6.85	3.40	3.53	3.87	5
Time to initiate complaint investigations State formula (Average number of work days to initiate complainant investigations (SAMM 2)	.50	0	0	0	0	1
Timely response to imminent danger complaints and referrals (percent of	100%	100%	100%	100%	100%	100%

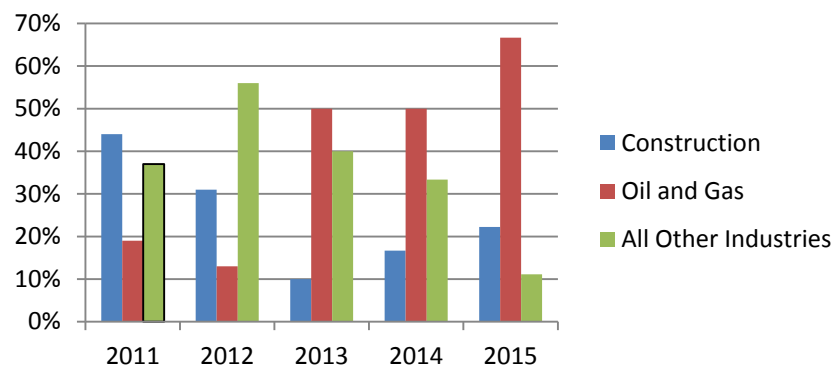
complaints and referrals of imminent danger responded to within 1 day) (SAMM 3)						
Number of denials where entry not obtained (SAMM 4)	0	0	0	0	0	0

2) Fatalities

The Weekly Fatality Report for New Mexico shows that 23 fatalities were reported to the Occupational Health and Safety Bureau (OHSB) in FY 2015. Two were heart attacks; four were auto accidents; one stroke; one suicide; one officer shooting; and one was natural causes. This resulted in nine deaths under the jurisdiction of OHSB.

All nine fatality inspections (100%) were initiated within one day. Six of the nine deaths were in the oil and gas well drilling and servicing industry and two were in construction.

New Mexico continued to place significant enforcement emphasis on the construction and oil and gas industries. The number of fatal accidents in both these sectors continues to represent a large proportion of occupational fatalities in the state, with the oil and gas industry representing the highest among all sectors. Following the OHSB internal review of SEPs during FY 2014, the Bureau doubled its goal for enforcement inspections of oil and gas well drilling and servicing operations in New Mexico during FY 2015.



We reviewed 10 fatality case files closed in FY 2015. The documentation in the files included interview statements, photographs, and thorough investigation summaries. However, documentation regarding contact with victims' family members was not found in 7 of 10 files. OHSB explained that contact did take place in several cases, but this was not documented in the files.

When the federal policy on contacting victims' families was reissued (OSHA Instruction CPL 02-00-137 dated April 14, 2005), State Plans were not required to adopt the directive, and New Mexico chose not to adopt it. The revised federal FOM incorporated some of the directive's provisions in Chapter 11, to which State Plans were required to respond. The revised New Mexico FOM was transmitted to the Regional Administrator on November 2, 2009. It contains identical provisions regarding contact with victims' families.

Finding 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 15-4:

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.

Bureau of Labor Statistics (BLS) Rates

An overview of New Mexico's private industry Total Case Incident Rate (TCIR) and Days Away, Restricted or Transferred (DART) rates for the calendar years 2010 through 2014, as well as for industries, is provided in the table below. At the closing of this monitoring period, 2014 was the most recent year for which data was available. (Data source: www.bls.gov)

Five-Year Trend for Rates						
Industry	CY 2010	CY 2011	CY 2012	CY 2013	CY 2014	% Change, 10-14
Private Industry						
TCIR	3.7	4.2	3.9	3.2	3.2	-14%
DART	1.9	2.1	1.9	1.5	1.5	-21%
Construction						
TCIR	3.9	5.3	3.2	2.6	3.4	-13%
DART	2.1	2.8	1.9	1.5	1.7	-19%
Manufacturing						
TCIR	4.5	4.9	4.3	3.2	5.3	18%
DART	2.4	2.9	2.4	1.9	3.3	38%
State and Local Government						
TCIR	6.6	6.4	6.1	5.0	5.7	-14%

DART	2.7	2.6	2.3	2.3	2.0	-26%
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The data for the last five years shows an overall downward trend ranging from a decrease of TCIR of 13% in the Construction Industry to a decrease of 14% for state and local governments. The DART data shows an overall decline as well from 2010 and 2014 for Private Industry, Construction, Manufacturing and State and Local Government.

The DART and TCIR for Private Industry was flat for the last two years. For the last two years there was an increase in Construction of 31% for the TCIR and 13% for DART. Manufacturing showed an increase of 66% in the TCIR and 74% in the DART rate. There was a slight increase in the TCIR and decrease of 13% in the DART rate for state and local government.

Notably, the rates for the Construction Industry have continued to decrease and resulted in an overall five-year reduction of 13% for TCIR and 19% for the DART rates. Likewise, the dip in TCIR rate in Private Industry within five years to 14% is notable. This achievement may be attributed to New Mexico's emphasis to increase enforcement presence in high hazard industries.

Based on these data points, it appears New Mexico's efforts are contributing to rate reductions in the targeted industries.

3) Targeting and Programmed Inspections

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

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

The OSHB continued to implement local emphasis programs for fabricated metal products, oil and gas well drilling and servicing operations, construction, exposure to silica, waste management, nursing and long-term care. The Bureau also continued activities at PSM-covered facilities, and at facilities with hazards involving primary metals processing and use of hexavalent chromium through the adoption of national emphasis programs. During FY 2015, OHSB assigned a

Compliance Officer with training to the team leader level, as the Bureau PSM Coordinator.

The Bureau uses BLS and New Mexico Department of Health data on health related exposures when developing SEPs.

The Bureau also continued activities at PSM covered facilities, and at facilities with hazards involving primary metals processing and use of hexavalent chromium through the adoption of national emphasis programs. The OSHB adopted an additional National Emphasis Program for exposure to isocyanates during the fiscal year as well.

During FY 2015, New Mexico conducted 310 safety and 90 health inspections, for a total of 388 inspections. This represents 97% of the State Plan’s annual performance goal of 400 inspections during FY 2015.

Inspections Conducted FY 2011 – 2015 (SAMM 7)

Inspections	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011
Goal	400	390	505	425	482
Conducted	388	411	290	382	543
Differences	(12)	21	(215)	(43)	61

The FY 2015 Inspection Summary report shows that 43.1% (175/406) of New Mexico’s inspections were programmed. The table below shows the number of programmed inspections with violations.

Programmed Inspections

SIR Measures	Safety	Health
SIR 2A Percent of private sector programmed inspections that currently have violations	54% (36/66)	70% (22/31)
SIR 2B Percent of private sector programmed inspections with violations as issued	55% (37/67)	70% (22/31)
SIR 2C Percent of not in compliance (NIC) private sector programmed inspections that currently have serious, willful, repeat, and unclassified (SWRU) violations	58% (21/36)	81% (18/22)
SIR 2D Percent of NIC private sector programmed inspections with SWRU violations as issued	67% (25/37)	90% (20/22)

Targeting programs are developed through the state’s annual performance planning. The process is initiated early during the prior fiscal year through

Bureau staff meetings, assignment of staff to individual areas of the performance plan, and finalization of the plan by Bureau management. Performance planning includes review of existing SEPs and potential SEPs based on industry information such as BLS rates.

New Mexico continued to engage in activities for State Emphasis Program (SEP) within the industries of construction, fabricated metals, refineries, oil & gas, nursing and long-term care facilities, and waste management during FY 2015. The Bureau met or exceeded performance plan goals in target industries including fabricated metal, construction, silica, waste management and nursing and long-term care facilities, but fell eight inspections short in oil and gas. 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.

State Emphasis Program	NAICS	Goal	Actual
Fabricated Metal	331,332,333,335,336	15	31
Oil & Gas	211,213	40	32
All Construction	236, 237, 238	160	195
Silica	236,237,238,327	5	10
Waste Mgmt.	562	5	10
Nursing	622110,62311,623311	5	5

New Mexico inspects 31% (122/388) of referrals with alleged serious or imminent danger hazards. Many of these are in industries that are included in the high hazard listing, a SEP, or a NEP.

In-compliance inspections rates during FY 2015 are significantly lower compared to previous years. SAMM 9 shows the State Plan in-compliance rates were 45.9% (103/224) for safety and 29.7% (22/74) for Health; compared to the national data of 28.4% safety and 33.5% for health. These rates have been higher than the further review level of +/- 20% of national rates.

Percent In-Compliance (SAMM 9)

Percent In-Compliance	FY 2015	FY 2014	FY 2013	FY 2012
Safety	45.9%	65.6%	57.9%	62.3%
Health	29.7%	52.6%	72.0%	49.2%

Most of the in-compliance safety inspections are in construction. One factor is that OHSB did not adopt OSHA’s focused construction inspection policy. New Mexico Compliance Officers complete an Inspection Report (formerly an OSHA-1) for every contractor inspected at a construction site, and many of these are in-compliance.

The construction partnerships and alliances that have existed in New Mexico for several years also affect the construction in-compliance rate. The Total Case Incident Rate (TCIR) rate of 3.4 and Days Away, Restricted, or Transferred (DART) rate of 1.7 for construction, reflect the Bureau’s efforts in this area.

However, two of the nine (22%) fatalities inspected in FY 2015 occurred in the construction industry, which indicates the need to continue the All Construction State Emphasis Programs (SEPs).

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

4) Citations and Penalties

The New Mexico Occupational Health and Safety Bureau Compliance Section cited a total of 659 violations according to the Case Related Summary report in FY 2015. Of those violations 13.2% were in the public sector and 86.8% in the private sector, with 13.5% (89) of the violations contested.

The SAMM Report for FY 2015 shows New Mexico average citation lapse times of 72.84 working days for safety and 70.58 working days for health.

Average Lapse Time (SAMM 11)

Average Lapse Time	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011
Safety	72.8	70.5	59.4	59.2	72.2
Health	70.5	66.4	88.4	99.0	89.0

Reducing citation lapse time has been a focus of OHSB’s efforts for several years. OHSB has taken several steps to address this issue; these are described in the documentation of each quarterly meeting. Strategies to reduce health citation lapse time will continue to be a topic of discussion at quarterly meetings in FY 2016.

As part of an ongoing effort to reduce citation lapse times, OHSB instituted several measures to aid staff in timely closing inspection files. OHSB continues to utilize OIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. During FY 2015, management closely monitored inspection assignments to ensure caseloads were reasonable. The Compliance Program Manager reviewed assignment reports to compare with open inspection reports weekly. OHSB also reviewed referrals alleging serious hazards to identify those where an initial investigation by inquiry was appropriate. OHSB performed a monthly analysis of lapse times for individual Compliance Officers and used lapse times as a major factor during employee

performance evaluations. Performance reviews included an analysis of task prioritization to identify potential improvements, and supervisors coached Compliance Officers on task prioritization. The Compliance Program Manager reviewed file progress weekly and met with Compliance Officers at least monthly on open cases.

Finding 15-3 (Formerly 14-3)

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 for safety and 53.48 for health.

Recommendation 15-3:

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

SAMM 5 shows that the average number of violations per inspection with violations was 3.22 in New Mexico and 2.79 nationwide. New Mexico identified 2.15 serious violations per inspection with violations, the nationwide average was 1.92. In FY 2014, New Mexico was 2.86 and nationwide was 3.3.

The Inspection Summary Report for FY 2015 shows that New Mexico Compliance Officers identified a total of 448 violations. Of these, 267 (59.6%) were serious; 1 (0.22%) was willful; 8 (1.79%) repeat; and 172 (38.39%) were other-than-serious.

New Mexico's current penalty per serious violation in private sector (SAMM 8: 1-250+ workers) was \$853.23 in FY 2015. The Further Review Level (FRL) is - 25% of the National Average (\$2,002.86), which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and State Plans are therefore required to adopt penalty policies and procedures that are "at least as effective as" (ALAE) those contained in the FOM, which was revised on October 1, 2015 to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection.

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.

The State Plan initial penalties per serious violation remained virtually the same when compared to FY 2012 where the average penalty amount was \$836.59. The following table presents NMOHSB’s five-year average penalty issuance. The case file reviewed showed the State Plan properly calculated all penalties. See Appendix D for more detail.

Average penalty assessed per serious violation (SAMM 8)

FY 2015	FY 2014	FY 2013	FY 2012	FY 2011
\$853.23	\$718.94	\$778.39	\$836.59	\$1,007.12

SAMM 12, Penalty Retention Percent Penalty Retained shows New Mexico retains 94.96%, which is 31% higher than nationwide.

The OHSB engaged in significant enforcement action against a public sector water authority in FY 2015. During a thorough inspection conducted from November 2014 through May 2015, the Bureau investigated concerns of employee exposure to ozone and other hazards at the water authority. The OHSB issued willful, repeat and serious citations totaling \$144,600 in penalties.

Another significant case was conducted at Diversified Field Services, Inc. located in Artesia, NM, beginning July 31, 2014. On January 30, 2015, this employer received serious citations totaling \$49,000 in penalties.

5) Abatement

Available procedures and inspection data indicate that New Mexico obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. The Enforcement Manager runs appropriate reports that is shared with supervisors and is sorted by CSHO’s.

The majority of case files reviewed contained written documentation, photos, work orders, or employer’s certification of abatement. Petitions for Modification (PMA) of Abatement were appropriately provided when the employer requested an extension for their corrective action timeframe. OHSB conducted follow-up inspections according to their policy and procedures.

Case file review showed 81% (31/38) of the case files had adequate evidence to support all violations included in the file of those case files and 85% were classified correctly.

In FY 2015 OHSB continued to stress to compliance staff the importance of documenting employer knowledge when establishing violations. To drive

continuous improvement, the Compliance Program Manager reviews case files to check the adequacy of documentation on an on-going basis. Management reviews violation documentation periodically during internal Compliance Officer (CO) training sessions and employee evaluations. With the conversion to the OSHA Information System (OIS), OHSB modified its procedure for documenting employer knowledge to capture information on OIS documents. Through the case file review in FY 2015, OHSB has determined that additional forms will be developed during FY 2016 to augment limitations identified for OIS forms.

6) Worker and Union Involvement

The New Mexico Field Operations Manual (NMFOM), Chapter 3, pages 3-8, Section D and Chapter 7, page 7-2, Sections C.1 and C.2 afford workers and/or employee representatives the opportunity to participate in every phase of the inspection process. The Scan Summary Report shows that approximately 5.67% (22/388) of New Mexico inspections conducted in FY 2015 were at union sites.

SAMM 13 shows 98.4% (382/388) of initial inspections with employee walk around representation or employee interviews. The measure should be 100%, but there were six data entry errors OHSB has corrected since the running of the SAMM report.

The case file review showed only 64% (29/45) of employees were interviewed, and 51% (22/45) of employee interviews were documented in the case file. All of the fatality inspections showed employees were interviewed and well documented. OHSB is not consistently conducting employee interviews.

Finding 15-2 (formerly 14-2):

Case files reviewed were not always fully and accurately documented.

Recommendation 15-2:

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.

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

The state had inconsistencies in language and interpretation within the state's private interviewing regulations. The issue was addressed through proposed changes to the State Plan regulations. The New Mexico Environmental Improvement Board (EIB) did not adopt the changes as proposed. The Department then drafted legislation to change the OHS Act to ensure private interviewing. The legislation was introduced in the 2009 legislative session, but did not pass.

OHSB developed and instituted procedures for cases where employee representation falls under the provisions of the regulation. The new procedures include a requirement that personal counsel provided OHSB with non-conflict letters when representing employees during private interviews, which have mitigated the potential for conflict or inconsistency. The OHSB meets the legal requirements set forth by the United States Courts of Appeals for private interviewing.

Finding 2014-4 spoke to apparent inconsistencies in language and interpretation within the state's private interviewing regulations. Now that these inconsistencies have been resolved, this recommendation is completed.

C. REVIEW PROCEDURES

1) Informal Conferences

The informal conference process in New Mexico allows for either amendments to citations or entering into Informal Settlement Agreements. The Bureau documents these changes in the OSHA Information System (OIS) with the code ISA.

For FY 2015 the SIR measure 5A shows that 1.86% (8/430) of violations vacated Pre-Contest for private sector inspections. SIR measure 5B shows 10% (1/10) of violations vacated after a contest had been filed for private sector inspections.

2) Formal Review of Citations

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

These include changes made through formal settlement, OHS Review Commission decisions, and court decisions. State Indicator Report (SIR)

measures 6A, and 6B address changes to citations and penalties subsequent to contest. Measure 6A shows 1.96% (8/408) of violations reclassified Pre-Contest for private sector inspections and 6B shows 0% (0/9) of violations reclassified after a contest had been filed for private sector inspections.

SIR measure 7A shows that 93% of New Mexico penalty retention Pre-Contest for private sector inspections, and 7B shows 78.6% of penalty retention after contest had been filed for private sector inspections.

SIR measure 8 is the average lapse time from receipt of contest to first level decision. The New Mexico average was 67 days; the National data shows 114 days (OSHA and all State Plans). Almost all cases result in formal settlement agreements in New Mexico; only a few each year reached the Review Commission level.

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

The New Mexico Occupational Health and Safety Review Commission (OHSRC) held hearings on one OHSB case during FY 2015. Review Commission decisions are available upon request.

D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

1) Standards Adoption

In accordance with 29 CFR 1902, states are required to adopt standards and federal program changes within a six-month time frame. States that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. States also have the option to promulgate standards covering hazards not addressed by federal standards.

New Mexico's regulations provide that amendments to OSHA standards that have been adopted by the New Mexico Environmental Improvement Board (EIB) are considered "adopted by reference" without conducting a hearing. Any new OSHA standards or State-initiated standards proposed for adoption require a public hearing.

During this evaluation period, OSHA had two final rules and one revision. OHSB adopted all identical to federal OSHA. All responses were transmitted

prior to the due date. There were no state-initiated standards adopted in FY 2015.

Federal Standards Adopted in 2015

FPC Directive/Subject	Intent to Adopt	Adopt Identical	Adoption Due Date
Cranes and Derricks in Construction - Operator Certification Final Rule	Yes	Yes	3/26/2015
Occupational Injury and Illness Recording and Reporting Requirements NACIS Update and Reporting Revisions	Yes	Yes	1/1/2016
Final Rule for Confined Spaces in Construction	Yes	Yes	8/4/2015
Final Rule for Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment	Yes	Yes	1/11/2015

2) OSHA or State Plan-Initiated Changes

There were eleven Federal Program Changes (FPCs) which a response and/or plan supplement was due in FY 2015. All responses were transmitted prior to the due date. New Mexico was current on timely adoption of standards at the start of FY 2015. OHSB adopted five of them identical to federal OSHA.

Status of Federal Program Changes (FPCs) Adoption

FPC Directive/Subject	Intent to Adopt	Adopt Identical	Adoption Due Date
Compliance Directive for the Cranes and Derricks in Construction Standard CPL-02-01-057	Yes	Yes	12/1/2014
National Emphasis Program - Primary Metal Industries CPL-03-00-018	Yes	Yes	12/1/2014
Whistleblower Investigations Manual CPL 02-03-005	Yes	No	10/21/2015
Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis CPL 02-02-078	Yes	Yes	12/30/2015

Inspection Procedures for the Hazard Communication Standard (HCS 2012) CPL 02-02-079	Yes	Yes	9/15/2015
OSHA Alliance Program CSP 04-01-002	No	No	N/A adoption not required
Special Government Employee Program Policies and Procedures Manual for the Occupational Safety and Health Administrations Voluntary Protection Programs CSP-03-01-004	No	No	N/A adoption not required
National Emphasis Program on Amputations CPL 03-00-019	Yes	No	4/30/2016
Alternative Dispute Resolution Process for Whistleblower Protection Program CPL 02-03-006	No	No	N/A adoption not required
Field Operations Manual Directive CPL 02-00-159	No	No	Awaiting an equivalency
Mandatory Training Program for OSHA Whistleblower Investigators TED 01-00-020	No	No	Awaiting an equivalency
Consultation Policies & Procedures Manual, Directive CSP-02-00-003	Yes	Yes	5/19/2016

E. VARIANCES

New Mexico did not issue any permanent or temporary variances in FY 2014 or 2015. New Mexico has only issued one temporary variance in its 38-year history. The Bureau honors all multi-state variances that have been issued by OSHA.

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

SAMM 6 shows that 5.67% (22/388) of the total inspections New Mexico conducted were in the public sector. OHSB's goal is approximately 6%, based on the percentage of public sector employers who are considered in a high hazard industry.

Penalties are assessed for violations identified in public sector inspections. Penalties for serious violations are deemed "paid" (waived) if abatement is verified by the established abatement date. This represents a decrease over last year's 7.06%.

SAMM 6	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011
Percent of Total Inspections in Public Sector	5.67%	7.06%	6.9%	9.28%	11%

The Bureau continued its compliance assistance activities in the public sector during FY 2015 as part of the overall goal of reducing the injury rate within this sector, which continues to experience injury and illness rates greater than the private sector. In addition to providing technical assistance to several public sector entities, the OHSB presented occupational safety and health information to a total of eight county, city and state government agencies, reaching approximately 150 employees and impacting many more. The OHSB also increased the number of physicians from the University of New Mexico Medical School participating in a rotation with NM OSHA to three. See Section F for more information about this program. This particular program was designed to provide physicians with information to better understand OSHA, occupational-related injuries and illnesses from an OSHA perspective, and safety and health hazards within the healthcare and other industries.

G. WORKPLACE RETALIATION PROGRAM

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

New Mexico’s policies and procedures for retaliation complaints under the OHS Act are identical to OSHA’s with one exception: the New Mexico Act requires that retaliation complaints be filed in writing. If a complainant contacts the Bureau by phone within 30 days of the retaliation activity and follows up in writing after the 30-day period has expired, the complaint is deemed to have been filed within that 30-day timeframe. During FY 16, the state updated this procedure to allow for online complaints.

The State Plan policies and procedures are contained in NMFOM Chapter 13. Complainants are notified in writing of their right to dually file with OSHA. New Mexico policies and procedures include an internal appeal process.

SAMM 14 shows that 19% (3/16) of New Mexico’s retaliation investigations during the period were completed within 90 days.

SAMM 15 shows a 0% (0/16) meritorious case rate for New Mexico. During FY 2015 the State Plan actually had three merit cases, but these cases were not entered into WebIMIS correctly. They have since been corrected.

SAMM 16 shows that New Mexico takes average of 153 days to complete an 11c investigation (2,448/16).

Five Year Performance Comparison

Discrimination	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011	Reference
Percent of 11(c) investigations completed within 90 days (SAMM 14)	19% (3/16)	40% (2/5)	100% (2/2)	100% 5/5	100% (22/22)	100%
Percent of 11(c) complaints that are meritorious (SAMM 15)	0% (0/16)	20% (1/5)	0% (0/2)	40% (2/5)	9.09% (2/22)	+/-20%
Average number of calendar days to complete an 11(c) investigation (SAMM 16)	153 (2,448/16)	155 (779/5)	74 (148/2)	N/A	N/A	90

The State Plan has continued to make progress in their retaliation program. When you compare the case load from FY11 to FY15 it has grown by 31%.

11(c) Yearly Comparison

Discrimination	FY 2015	FY 2014	FY 2013	FY 2012	FY 2011
Complaints	73	52	9	11	23
Complaints Docketed	12	15	8	5	16
Administratively Closed	61	30	1	5	7

OSHA conducted a comprehensive monitoring review of New Mexico’s retaliation program to evaluate the state’s progress and to evaluate the current administration of the State Plan’s retaliation program. During this year’s monitoring cycle, OSHA reviewed 54 retaliation case files; 46 administratively closed and eight dismissed complaints.

From FY 2012 through FY 2014, OHSB experienced a number of personnel transitions affecting its whistleblower discrimination program. This resulted in serious challenges to maintaining program effectiveness. During the FY 2015, review, the whistleblower program FTE stabilized and the program work was conducted by a sole investigator.

OHSB has provided a full curriculum of training for whistleblower investigations staff and has significantly reduced its prior backlog of cases. However, a significant increase in the number of whistleblower complaints filed in FY 2014 and FY 2015 compared to prior years continues to present a challenge given the Bureau’s limited resources. The Bureau logged 52 complaints in FY 2014, compared to an average of 14 complaints per year for the previous 5 years. OHSB responded to the increase in complaints by shifting staff resources to the whistleblower program.

Finding 15-1 (formerly 14-1):

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

Recommendation 15-1:

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

From FY 2012 through FY 2014, OHSB experienced a number of personnel transitions affecting its whistleblower discrimination program. This resulted in serious challenges to maintaining program effectiveness. Since the last onsite review in FY 2013, the program has continued to make improvement.

OHSB experienced personnel changes during FY 2014, which resulted in a backlog of cases in FY 2014 and 2015. The backlog caused the bureau to fall short of its goal of completing investigations within established timeframes. OHSB completed 19% (3/16) of investigations within 90 days, which was significantly below the 100% reference mark set in the SAMM report. A significant increase in the number of whistleblower complaints filed in FY 2014 and FY 2015 compared to prior years has contributed to the investigative backlog. The State Plan logged 43 complaints in FY 2014 and approximately 73 in FY 2015, compared to an average of 14 complaints per year during the previous 5 years. OHSB responded to the increase in complaints by maintaining staff resources to the Whistleblower program.

H. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

No complaints About State Program Administration (CASPA) were received by OSHA regarding New Mexico in FY 2014 or 2015, and none were open from the previous year.

I. VOLUNTARY COMPLIANCE PROGRAM

New Mexico adopted the federal policy and procedures manuals for Alliances and the Voluntary Protection Program (VPP), but did not adopt the recently revised Partnership Directive dated November 6, 2013. OHSB has many partnerships and alliances, as detailed in the New Mexico FY 2015 State Plan OSHA Annual Report (SOAR).

New Mexico cooperative programs include the Zia Star Voluntary Protection Program with 12 sites, 6 partnerships, and 3 alliances. Descriptions of each program and member companies are included in New Mexico State OSHA Annual Report (SOAR), which is available on the New Mexico OHSB website at https://www.env.nm.gov/Ohsb_Website/ComplianceAssistance/.

OHSB 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 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 2015, the council met to discuss cooperative program improvements designed to drive down injuries and illnesses within the industry. The successful implementation of these programs allows OHSB to focus enforcement efforts on higher injury and illness rate industries.

OHSB continued to focus efforts on strengthening program quality and reviewing current VPP participants during the year. New Mexico had 12 VPP worksites as of the end of FY 2015. In addition, OHSB assisted federal OSHA with review and approval of federal VPP sites in New Mexico.

In FY 2015, OHSB presented information to small employers during seven new employer workshops statewide. Bureau staff worked with Small Business Development Centers to provide this outreach and education. In September 2014, and again in June 2015, OHSB participated in meetings of the New Mexico Association of Counties. The bureau provided information on employer responsibilities and enforcement data for public sector establishments. OHSB participated in the 2015 International Laser Safety Conference held in Albuquerque from March 23 to March 26, 2015. The four-day conference covered all aspects of laser safety and hazard control. Presentations addressed developments in regulatory and voluntary safety standards for laser products and for laser use. The use of lasers has become widespread across many industries including manufacturing and medicine. Laser safety experts from all over the world were present to discuss the latest research, programs and standards. Bureau staff provided information and answered questions on the regulatory and inspection process, and distributed materials on OSHA services available in New Mexico and nationwide.

OHSB presented information on worker safety to 32 employer participants at the New Mexico Environment Department, Solid Waste Bureau's (SWB) Transfer Station Operator Certification Course on June 17, 2015. In response to a history of fatalities and high injury rates within the industry, SWB and OHSB initiated collaborative efforts, including training, to reduce injuries and fatalities. The training focuses on the need for safety in the industry and the consequences of safety system failures. Nationwide, worker injury rates within the solid waste industry have been significantly higher than other industries. However, in New Mexico, rates have steadily fallen since 2008 to levels more than 30 percent lower than the national average.

On July 15, 2015, OHSB, the New Mexico Oil and Gas Association (NMOGA), and the Southeast New Mexico Service, Transmission, Exploration & Production Safety

(SENM STEPS) Network joined together to promote safety and health within the oil and gas industry by coordinating the Southeast New Mexico Oil and Gas Safety Summit. More than 100 oil and gas operators, contractors, vendors, educational institutions and regulatory entities attended the event.

In August 2015, OHSB participated in Labor Rights Week as part of an ongoing alliance with the Consulate of Mexico. NMED staff provided presentations in Spanish, distributed information on employee rights, and coordinated other activities. Under the alliance, OHSB and the consulate provide workers access to education and training resources in Spanish about their rights in the workplace and the responsibilities of employers under the Occupational Health and Safety Act. Both parties also promote safety and health during speaking engagements and with appearances at each other's outreach events, including mobile consulate activities.

Compliance Assistant Specialist Activity	
Type	Number of Activities
Articles	2
Ceremonies	3
Conferences/Seminars	5
Email Alerts	3
Booths	7
Harwood Monitoring	1
Other	64
Stakeholder meetings	80
Speeches/Presentations	24
Technical Training	13
Training	4
VPP	6
Total	230
Number of Workers Affected	230,559

New Mexico continued its compliance assistance activities in the public sector as part of the overall goal of reducing the injury rate, which continues to experience injury and illness rates greater than the private sector. As stated previously, in addition to providing technical assistance to several public sector entities, the OHSB presented occupational safety and health information to a total of eight county, city and state government agencies, reaching approximately 150 employees and impacting many more. The OHSB also increased the number of physicians from the

University of New Mexico Medical School participating in a rotation with OHSB to three. See Section III, Part F for more information on this program.

J. PUBLIC SECTOR 23(d) ON-SITE CONSULTATION PROGRAM

Private sector consultation services are provided in New Mexico under a 21(d) Cooperative Agreement, and public sector consultation services are provided under the 23(g) State Plan grant. Performance related to 21(d) funding work is reported in the Regional Annual Consultation Evaluation Report (RACER).

NMED Consultation began using OSHA Information System (OIS) in September of 2013.

New Mexico projected a total of 14 public sector consultation visits (9 safety and 5 health) for FY 2015. OHSB exceeded their goal by conducting 21 public sector consultation visits (7 Safety, 9 Health and 5 both, plus 7 training and education and 3 follow up visits.

The Mandated Activities Report for Consultation (MARC) is a computerized report on public sector consultation activities. The MARC contains five performance measures, but MARCs 1 and 2 do not apply to the public sector.

MARC 3 shows that New Mexico consulted with workers in 100% (21/21) of the public sector initial visits.

MARC 4A shows that 100% (35/35) of the identified serious hazards were corrected in a timely manner (within 14 days of the latest correction due date); the goal is 100%. MARC 4D shows that 91.4% (32/35) of the serious hazards were corrected within the original timeframe or on-site; the goal is 65%. MARC 5 shows that there were no serious hazards with corrections more than 90 days past due.

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

New Mexico made progress on their FY 2015 Annual Performance Plan goals, as discussed in the New Mexico FY 2015 State OSHA Annual Report (SOAR) and below.

New Mexico transmitted their FY 2015 Annual Performance Plan and appropriate financial documentation during the FY 2015 grant application process. The Regional Office reviewed and concurred with the annual performance goals for FY 2015. The FY 2015 Annual Performance Plan was officially approved by the Assistant Secretary when the FY 2015 23(g) grant was awarded.

Details of OHSB's performance in relation to the FY 2015 Annual Performance Plan are highlighted below:

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. The DART rates for 2015 are currently not available; however, the 2014 overall DART rate of 3.2 is a decrease of 14% from the 2007 baseline rate.

Goal 1.2: The New Mexico 5 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. The Performance Goal for FY 2015 is to experience fewer than 11 workplace fatalities requiring OHSB investigations.

OHSB conducted 57.2% (222/388) of the total inspections in construction and oil and gas well drilling and servicing. These two industries accounted for 8 of the 11 (72%) workplace deaths reported in FY 2015.

Goal 1.3: Goal was deleted during FY 2011.

Goal 1.4: The five year Strategic Goal is to improve the quality of participant health and safety programs by reducing top-level member DART rates by 10% through 2019. The FY 2015 performance goal is to reduce the DART rates for top-level members by 2%. Data is currently unavailable for this measure.

Goal 1.5: The goal is to increase VPP from 13 to 14 approved VPP members by the end of FY 2015, and there were 12 companies approved as Zia Star VPP members as of September 30, 2015.

Goal 1.6: Goal was deleted during FY 2015.

Goal 2.1: New Mexico's goal is to respond to 100% of workplace fatalities within 1 working day of notification. New Mexico responded to 9 of 9 (100%) incidents of workplace fatalities within one working day of notification.

Goal 2.2: New Mexico's goal is to respond to 99% of referrals alleging serious hazards within 10 working days. They responded to 99% (413/418). An investigation may include an onsite inspection or inquiry by phone, fax or letter. This issue is also discussed in Section III B.1 of this report.

Goal 2.3: New Mexico's goal is to complete 95% of discrimination investigations within 60 days. (This is a more ambitious goal than that established in State Activity Mandated Measure (SAMM) 13, which is to complete 100% of discrimination investigations with 90 days.) New Mexico completed 19% (3/16) discrimination complaint investigations within 60 days. This issue is also discussed in Section III Section G of this report.

V. Other Special Measures of Effectiveness and Areas of Note

None

Appendix A- Observations Subject to New and Continued Monitoring

FY 2015 New Mexico Comprehensive FAME Report

FY 2015-#	Finding	Recommendation	FY 2014
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.	2014-1
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 also be included.	2014-2
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.	2014-3
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.	

Appendix B- Observations Subject to New and Continued Monitoring

FY 2015 New Mexico Comprehensive FAME Report

Observation # FY 2015 OB-#	Observation# FY 2015-#	Observation	Federal Monitoring Plan	Current Status
		No New or Continued Observations		

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 New Mexico Comprehensive FAME Report

FY 2014 #	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
2014-1	In the nine whistleblower cases investigated, the investigations were not always conducted in accordance with Section 50-9-25 of the OHS Act and Chapter 13 of the New Mexico FOM.	New Mexico OHSB 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. However, a significant increase in the number of whistleblower complaints filed in FY 2014 and FY 2015 compared to prior years continues to present a challenge given the Bureau's limited resources. The bureau logged 43 complaints in FY 2014, compared to an average of 14 complaints per year for the previous 5 years. OHSB responded to the increase in complaints by shifting staff resources to the whistleblower program. OHSB continues to improve its program by providing additional training as it becomes available through the OSHA Training Institute and by working with the state's Office of General Counsel to streamline investigation and settlement processes.		Open

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 New Mexico Comprehensive FAME Report

2014-2	Case files reviewed were not always fully and accurately documented for employer knowledge as required by their FOM.	New Mexico OHSB should ensure that employer knowledge is documented for all violations.	In FY 2015 OHSB continued to stress to compliance staff the importance of documenting employer knowledge when establishing violations. To drive continuous improvement, the Compliance Program Manager reviews case files to check the adequacy of documentation on an on-going basis. Management reviews violation documentation periodically during internal Compliance Officer (CO) training sessions and employee evaluations. With the conversion to the OSHA Information System (OIS), OHSB modified its procedure for documenting employer knowledge to capture information on OIS documents. Through the process of reviewing files completed using OIS during FY 2015, OHSB has determined that additional forms will be developed during FY 2016 to augment limitations identified for OIS forms.	Open
2014-3	Average lapse time from inspection to open date to issuance date was 70.58 days for safety and 66.44 days for health, which is within the 20% reference range (safety is well outside of the range at 63%). The	New Mexico OHSB should review processes and policies to identify roadblocks and inefficiencies.	As part of an ongoing effort to reduce citation lapse times, OHSB instituted several measures to aid staff in timely closing inspection files. OHSB continues to utilize IMIS and OIS reports to identify open cases with prolonged lapse times in order to minimize delays in citation issuance. During FY 2015, management closely monitored inspection assignments to ensure caseloads were reasonable. The Compliance Program Manager reviewed assignment reports to compare with open inspection reports weekly.	Open

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 New Mexico Comprehensive FAME Report

	reference is 43.4 safety and 57.04 for health. The Region will continue to monitor both safety and health based on the historical trend of high health lapse time.		OHSB also more closely reviewed referrals alleging serious hazards to identify those where an initial investigation by inquiry was appropriate. OHSB performed a monthly analysis of lapse times for individual Compliance Officers and used lapse times as a major factor during employee performance evaluations. Performance reviews included an analysis of task prioritization to identify potential improvements, and supervisors coached Compliance Officers on task prioritization. The Compliance Program Manager reviewed file progress weekly and met with Compliance Officers at least monthly on open cases.		
2014-4	There are apparent inconsistencies in language and interpretation within the state's private interviewing regulations.	New Mexico OHSB should continue efforts to clarify the apparent inconsistencies within the private interviewing regulations (11.5.1.21.E NMAC).	Following the rule change, OHSB developed and instituted procedures for cases where employee representation falls under the provisions of the regulation. The new procedures include a requirement that personal counsel provided OHSB with non-conflict letters when representing employees during private interviews, which have mitigated the potential for conflict or inconsistency. Based on an ongoing review, OHSB no longer considers any perceived inconsistency in the regulatory language an issue in the effective conduct of private interviews. Although OHSB may seek to amend the private interview regulation when appropriate, our position is that the matter has been sufficiently resolved.	10/1/2015	Closed

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 New Mexico Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. The SAMM Report, which is native to IMIS, a system that generates reports from the NCR, is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year's report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA's WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM.

All of the New Mexico State Plan's enforcement data was captured in OIS during FY 2015. The New Mexico State Plan opened 388 enforcement inspections, and they were all captured in OIS.

U.S. Department of Labor

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

State Plan: **New Mexico - OHSB**

FY 2015

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.86	5	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.43	N/A	State Plan data is pulled only from OIS. 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)	.50	0	State Plan data is pulled from OIS. Further review level is negotiated by OSHA and the State Plan.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 New Mexico Comprehensive FAME Report

2b	Average number of work days to initiate complaint investigations (federal formula)	.00	N/A	State Plan data is pulled only from OIS. 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)	100%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 2.15	+/-20% of SWRU: 1.92	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
		Other: 1.07	+/-20% of Other: .87	
6	Percent of total inspections in state and local government workplaces	5.67%	+/- 5% of 6.25%	State Plan data is pulled from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 302	+/- 5% of S: 310	State Plan data is pulled from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 86	+/- 5% of H: 90	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$853.23	+/-25% of \$2,002.86	State Plan data is pulled from OIS. Further review level is based on a one-year

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				national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	\$589.92	+/-25% of \$1,402.49	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,024.44	+/-25% of \$2,263.31	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	c. Average current serious penalty in private sector (101-250 workers)	\$975.00	+/-25% of \$3,108.46	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$1,726.47	+/-25% of \$3,796.75	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
9	Percent in compliance	S: 45.98%	+/-20% of S: 28.47%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
		H: 29.73%	+/-20% of H: 33.58%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
11	Average lapse time	S: 72.84	+/-20% of S: 42.78	State Plan data is pulled from OIS.

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		H: 70.58	+/-20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	94.96%	+/-15% of 67.96%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
13	Percent of initial inspections with worker walk around representation or worker interview	98.45%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	19%	100%	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/-20% of 24%	State Plan data is pulled from WebIMIS. Further review level is based on a three-year national average, pulled from WebIMIS.
16	Average number of calendar days to complete an 11(c) investigation	153	90	State Plan data is pulled from WebIMIS. Further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.13%	+/-25% of 1.35%	State Plan data is pulled from OIS. Further review level is based on a one-year national rate, pulled only from OIS.