**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2022 – September 30, 2023**

Initial Approval Date: December 10, 1976

State Plan Certification Date: December 4, 1984

Final Approval Date: None

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1. **Executive Summary**

This is a biannual comprehensive Federal Annual Monitoring Evaluation (FAME) review of the 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, Regional Administrator, Region VI, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor. The report covers fiscal year (FY) 2023 which is the period from October 1, 2022, to September 30, 2023.

The purpose of this comprehensive FAME report is to evaluate the State Plan’s performance for Fiscal Year (FY) 2023, and its progress in resolving outstanding findings from the previous follow-up FAME report for FY 2022 and comprehensive FAME report for FY 2021. The NM OHSB is generally responsive to the identified findings and recommendations from previous FAME reports. While many of the findings and observations have been carried over from the FY 2022 follow-up FAME, improvements have been made. The NM OHSB program administration continues to strive towards maintaining high levels of program performance.

The State Plan made progress to address the previous eight findings and seven observations from the FY 2022 follow-up FAME Report. While some performance improvements were made, seven of the eight findings from the FY 2022 follow-up FAME remain, one finding was converted into an observation, four observations were closed, one new finding and two new observations were established. The State Plan is working to improve program performance based on the findings and observations OSHA has determined. OSHA will follow up on the corrective action plan (CAP) to ensure that the necessary changes are executed.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

**II. State Plan Background**

1. **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 Health Division of the New Mexico Environment Department. The State Plan designee is Secretary of the New Mexico Environment Department James C. Kenney, and the OHSB Bureau Chief is Robert Genoway.

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, US Postal Service, and other areas of exclusive federal jurisdiction.

The State Plan has a total work force of 688,800 private sector and 190,800 state and local government workers. Total nonagricultural employment grew by 20,500 (2.4%) jobs between December 2022 and December 2023. The private sector service providing industries grew by 12,600 jobs (1.7%) percent, while the goods producing industries grew by 7,900 jobs (7.9%). In the state and local government agencies, there was a loss of 3,400 jobs (6.2%) in state government, though this was offset in part by with an additional gain of 2,900 jobs (2.9%) in local government. Construction reported the largest employment increase, with a gain of 4,900 jobs (10.1%). (Source: New Mexico Department of Workforce Solutions Employment News Release)

Private sector employers reported 12,400 nonfatal workplace injuries and illnesses in New Mexico in 2022. This resulted in a Total Case Incident Rate (TCIR) of 2.3 cases per 100 full-time equivalent workers, which is lower than the national average of 2.7. Workplace fatalities were up slightly to 57 from 53 in 2021. In New Mexico, the education and health services sector had a significant decrease in its TCIR from the previous year, falling from 4.3 in 2021 to 2.8 in 2022.

New Mexico administers a combined onsite consultation program under Section 21(d) for the private sector and 23(g) for public. OHSB’s five consultant positions are funded from a variety of sources, including the 21(d) and 23(g) grants and state funds. Private sector consultation is provided by the Bureau under a 21(d) Cooperative Agreement, while public sector consultation is provided under the 23(g) grant.

The federal share of the FY 2023 23(g) grant was $1,291,700 and the state plan match was $1,291,700. The state also provided an overmatch of $1,130,100, for total program funding of $3,713,500, and did not deobligate or lapse any funds under the 23(g) Grant in FY 2023.

New Mexico transmitted a five-year Strategic Plan and corresponding Annual Performance Plan during the FY 2024 grant application process. State Emphasis Programs remain for construction, oil and gas well drilling and servicing, primary and fabricated metals, silica, hospitals, and nursing care.

NM OSHB has a total of 51 total positions. The Bureau has three sections which report to the bureau chief, including the Compliance and Enforcement Section, the Certification and Assistance Section, and the Operations and Planning Section. In addition to these sections, there are three dedicated financial positions and one attorney position which are funded by OHSB and allocated fully to bureau support.

Most OHSB staff members work in the Santa Fe or Albuquerque offices. Six positions work in a Las Cruces office, while two COs are work in Roswell and one in Farmington. This distribution has allowed OHSB to provide more rapid response to reports of hazards, including imminent danger situations and accidents across a wide geographical area, as detailed in this report.

1. **New Issues**

In FY 2023, OSHA received one Complaint Against State Plan Administration (CASPA) concerning New Mexico OHSB not following their policies and procedures for handling complaints and/or referrals alleging safety hazards at a construction job site. An investigation was opened to evaluate NM OHSB’s complaint and referral program. Upon investigation, OSHA determined that NM OHSB did follow their policies and procedures for handling the majority of complaints and/or referrals and provided additional training to staff to ensure proper handling of future complaints and referrals. This CASPA was closed on January 31, 2024. Additional safety and health concerns were raised by the complainant on January 31, 2024; however, due to OSHA’s statute of limitations, 6 months from the date of exposure, OSHA is prohibited from further investigating the events surrounding the safety and health concerns. The matter on the additional concerns was closed on February 6, 2024.

Cooperative and State Programs reviewed the Cooperative Programs under the 23(g)-grant program during the FY 2023 review period including review of New Mexico’s Zia Star Voluntary Protection Program, Compliance Assistance Activities, New Mexico’s Strategic Partnership for Construction and Public Sector Consultation Files.  The review resulted in three (3) observations and two (2) findings. Observations include ensuring comparison injury rates are included in consultation visit reports and evaluating, documenting all attributes of the employers Safety and Health Program Assessment Worksheet (OSHA Form-33) and ensuring the procurement processes allow for timely acquisition of PPE and technical equipment for consultants.  Findings include ensuring that New Mexico follows the New Mexico OSHB Directive for their Strategic Partnership program, to include conducting verification audits and ensuring that upon completion of a consultation visit the list of hazards identified during the visit is sent to the bargaining union.

There are no significant, or new major issues for the evaluation period for the Enforcement and Whistleblower Programs.

**III. Assessment of State Plan Progress and Performance**

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process including a comprehensive and follow-up cycles. The comprehensive cycle consists of an onsite evaluation and casefile review to ensure the state plan policies and procedures are being followed. The purpose of the comprehensive cycle is to identify and inform the state plan of areas needing improvement, and to develop a corrective action plan (CAP) to ensure the necessary changes are implemented. The follow-up cycle consists of ensuring corrections were made based on CAP developed during the previous comprehensive FAME cycle. FY 2023 is a comprehensive year, and as such, OSHA was required to conduct an on-site evaluation and case file review. A seven-person OSHA team was assembled to conduct a full on-site case file review to evaluate the Voluntary Compliance Programs, the Whistleblower Program, and Enforcement Programs. The FY 2023 comprehensive case file review was conducted at the New Mexico State Plan office in Albuquerque, New Mexico, in a span of five days from November 27, 2023, to December 1, 2023.

The following data was evaluated during the FY 2023 onsite comprehensive FAME casefile review:

**Enforcement Program**

The enforcement program reviewed a total of 52 safety and health inspection case files from FY 2023. Of the 52 case files, three were fatalities, three were accidents, 20 were complaints/referrals, and 26 were programmed. In addition to the case file review, three employees were interviewed to gain insight of the enforcement program performance.

**Whistleblower Program**

The whistleblower program reviewed 54 complaint case files from FY 2023 to evaluate the whistleblower program policies, procedures, and investigative files. Of the 54 case files reviewed, 50 were administratively closed complaints and four were docketed cases. Data analysis was conducted of OIS, OITSS and OHSB reports and personnel responsible for the program were interviewed.

**Voluntary Compliance Programs**

During the onsite FY 2023 comprehensive FAME review, the Voluntary Compliance Program reviewed all three public sector consultation files, all VPP annual self-evaluations reports, OHSB VPP onsite evaluation reports, VPP reapprovals reports, VPP withdrawal documentation, Alliances, and all Partnership agreements. The onsite review yielded three new observations and two new findings discovered over the course of the monitoring evaluation for FY 2023.

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

* State Activity Mandated Measures (SAMM) Report / Appendix D
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Limited case file review

Each State Activity Mandated Measures (SAMM) Report 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. State Plan 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 2023 State Activity Mandated Measures Report and includes the FRL for each measure.

1. **Review of State Plan Performance**

There are 11 mandated activities and programs that are evaluated during the comprehensive FAME. These mandated activities and programs include Program Administration, Enforcement, Review Procedures, Standards and Federal Program Change (FPC) Adoption, Variances, State and Local Government Worker Program, Whistleblower Program, Complaint About State Program Administration (CASPA), Voluntary Compliance Program, State and Local Government 23(g) On-Site Consultation Program, and the Private Sector 23(g) On-Site Consultation Program.

**1. PROGRAM Administration**

1. Training

In FY 2023, NM OHSB developed staff skills and knowledge needed to effectively identify workplace hazards in various industries in its jurisdiction. OSHB provided job related guidance and training options to develop staff competencies and enforce the New Mexico Environmental Department’s (NMED) authority with a high degree of professionalism and expertise using OTI and on-the-job training programs. Supervisors and compliance officers participated in various educational activities with coursework and field experiences to develop both safety and health career paths. The competency-based curriculum along with experimental and field training initiatives were maintained for each member of OSHB’s compliance and enforcement team.

NM OHSB scheduled over 90 courses and over 4,000 hours of combined OSHA Training Institute (OTI), University of Texas Arlington (UTA) and other supplemental training for enforcement, consultation, compliance assistance, whistleblower protection, and administrative staff to improve performance and services to keep New Mexico workers safe in FY 2023.

1. OSHA Information System (OIS)

NM OHSB and the Compliance Program Managers (CPM) use OIS reports, such as the State Activity Mandated Measures Report (SAMM) and State Information Report (SIR) to manage enforcement activities. The enforcement reports are run weekly.

OIS is a supplemental database used by the OHSB to input inspection information however their official casefiles are maintained electronically apart from OIS. NM OHSBs efforts to standardize electronic casefiles systems will remain a high priority to improve C&E team efficiency in FY 2024.

When entering data into OIS, there were a few instances where OHSB staff members did not enter data in a timely and accurate manner. Some of the inaccuracies in data entry included complaints being entered as referrals, non-covered fatality cases being entered improperly, abatement information not being updated, and lack of accuracy in interview documentation. The CPMs continue to follow up on data entry errors since OSHB transitioned to OIS.

1. State Internal Evaluation Program (SIEP) Report

New Mexico’s SIEP was developed and implemented to ensure that program operations conform to policies and procedures established by the State Plan. The SIEP also identifies areas which additional procedures should be developed in response to the demands of the organization.

The program was designed to encompass a five-year period. On an annual basis, areas of vulnerability for the OHSB are determined. The specific portions of this evaluation program pertaining to the areas of vulnerability will be implemented each year. Regardless of vulnerability determination, all areas of the program will be executed at least once every five years.

OHSB’s SIEP Report provides an internal evaluation of its operations. This is a critical component of the monitoring system and highlights the State Plan’s flexibility to design and implement programs that will fit each individual state’s needs and personnel resources.

Areas of Emphasis for SIEP Program

* Fatality/catastrophe investigations
* Assurance of abatement
* Casefile documentation
* Casefile controls
* Complaints
* Referrals

1. Staffing

The allocated NM OHSB staffing consists of 51 total positions including the bureau chief. The Bureau has three sections reporting to the bureau chief, each overseen by a section chief or program manager. The Compliance and Enforcement (C&E) Section includes a section chief, program manager, three compliance supervisors, 19 compliance officers (CO), and two discrimination investigators. The Certification and Assistance Section has a program manager, eight consultation positions including a supervisor and two consultants created in FY 2024, and two compliance assistance specialists (CAS) with one reporting directly to the Bureau Chief. The Operations and Planning Section consists of a program manager, management analyst supervisor, management analyst, five program support positions, and two labor statisticians. Additionally, three dedicated financial positions and one attorney position are funded by OHSB and allocated fully to bureau support.

Most OHSB staff members work out of the Santa Fe or Albuquerque offices. Six positions are in a Las Cruces office, while two COs are stationed in Roswell and one in Farmington. This distribution has allowed OHSB to provide more rapid response to reports of hazards, including imminent danger situations and accidents across a wide geographical area, as detailed in this report.

**2. ENFORCEMENT**

The NM OHSB C&E efforts were focused on conducting inspections at industrial workplaces with high injury, illness, and fatality rates. NM OHSB targeted industries identified as having a high number of health and safety hazards with ongoing use of State Emphasis Programs (SEPs).

Most of the issues addressed throughout this report are measures in the official end-of-year SAMM Report run on November 14, 2023. OHSB performance as indicated in the Appendix D, SAMM is discussed during quarterly State Plan monitoring meetings and through ongoing communication throughout the year.

In FY 2023, NM OHSB conducted a total of 218 inspections which was 83% of their yearly inspection goal of 264 (Appendix D, SAMM 7), falling short by 46 inspections, 17%. Over the last few years, NM OHSB has not been meeting their inspection goals. A contributing factor to this ongoing issue is the high turnover rates that OSHB continues to have.

The table below shows NM OHSB’s planned vs. actual inspections gathered from SAMM 7 on the Appendix D.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Planned vs. Actual**  **Inspections**  **(SAMM 7)** | **FY 2023** | **FY2022** | **FY 2021** | **FY 2020** | **FY 2019** | **FY 2018** |
| **Goal** | 264 | 500 | 315 | 345 | 360 | 400 |
| **Conducted** | 218 | 186 | 140 | 183 | 325 | 219 |
| **Differences** | (46) | (314) | (175) | (162) | (35) | (181) |

1. Complaints

Complaints are defined as 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. Complaints are responded to by inspection in accordance with the New Mexico OHS Act and regulations. Referrals may be handled by phone and fax, letter, or inspection, as determined by the CPM.

According to the NM OSHB Field Operations Manual (FOM), the timeframe 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. It is important to comply with this guidance to ensure that all complaints and referrals are being addressed and the appropriate citations are issued.

NM OSHB received one Complaint Against State Plan Administration (CASPA) during FY 23 regarding the way complaints are handled. To address this concern, NM OHSB reviewed the working definition of a complaint and updated Chapter nine of the NM OHSB FOM to be at least as effective (ALAE) as the federal definition of a complaint to ensure all complaints are being handled appropriately.

Appendix D, SAMM 1a, shows that the average number of days to initiate complaint inspections is 13.85 days. The FRL is 5 days. SAMM 1b shows that NM OSHB responded to all complaints and referrals related to imminent danger within one day (100%).

**Observation FY 2023-03**: In FY 2023, there were 12 valid complaint unprogrammed activities (UPAs) handled as an inspection which have been open for more than 60 calendar days and 138 valid complaints handled as a phone/fax which have been open more than 30 calendar days.

**Federal Monitoring Plan**: OSHA will continue to monitor performance in this area during quarterly meeting.

**Observation FY 2022-OB-04**: OHSB working definition of a complaint is not at least as effective (ALAE) as the federal program and results in fewer complaints. OHSB categorizes more of their unprogrammed activities as referrals as opposed to complaints, which allows for a longer time to respond.

**Federal Monitoring Plan**: OSHA will continue to monitor performance in this area during quarterly meeting.

1. Fatalities

Fatalities involve a death resulting from a work-related incident or exposure. Per the NM FOM, all fatalities withing OHSB’s jurisdiction are to be thoroughly investigated in an attempt to determine the cause of the event. An investigation will also determine any effect the violation(s) had on the accident. The investigation should be initiated as soon as possible after receiving report of the incident, ideally within one working day, by an appropriately trained and experienced compliance officer, assigned by the Compliance Program Manager.

During the FY 2023 on-site review, all three closed fatality inspections were reviewed. During the review, documentation for initial contact with family members was missing for one of the three (30%) fatality inspections.

The NM FOM states that family members of employees involved in fatal or catastrophic occupational incidents shall be contacted early in the investigation and a standard information letter shall be sent to the individual(s) listed as the emergency contact on the victim’s employment records or the next of kin.

**Observation FY 2023-OB-04:** In FY 2023, one of the three (30%) fatality inspections reviewed lacked documentation for initial contact with family members.

**Federal Monitoring Plan:** OSHA will continue to monitor performance in this area during quarterly meetings and during the next follow-up FAME cycle.

c) Targeting and Programmed Inspection

Chapter two of the NM FOM directs OSHB personnel to establish targeting based on annual projections of inspection activity as determined through annual performance planning.

NM OSHB participated in the Nation Emphasis Programs (NEPs). Chapter two of the OHSB FOM directs OHSB personnel to establish targeting based on annual projections of inspection activity as determined through annual performance planning.

NM OHSB uses the high hazard industry list based on Dunn 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. Programmed construction inspections are targeted through Dodge reports.

In FY 2023, the State Plan continued to implement State Emphasis Programs (SEPs) within the industries of primary and fabricated metal manufacturing, oil and gas well drilling and servicing operations, commercial and residential construction, work processes with silica exposures, hospitals, and nursing care facilities, and placed of employment where exposure to COVID exist. NM OHSB has also adopted and participated in several OSHA National Emphasis Programs (NEPs) including primary metals, hexavalent chromium, process safety management in chemical processing facilities, and heat-related hazards. NEPs provided guidance to enforce the NM Occupation Health and Safety Act within work sites identified by planning guides to contain hazards associated with primary metals processing, hexavalent chromium, process safety management PSM covered chemical facilities, trenching and excavation, heat related illness, and combustible dusts. In FY 2023, NM OHSB, began implementing the NEP for outdoor and indoor heat-related hazards that will further protect workers in New Mexico. Additionally, the growing cannabis and hemp industry with producers and product manufacturers continued as an emerging sector requiring enforcement activity.

The OHSB Strategic Partnership for Construction (OSPC) and alliance programs were integral to the overall successes in sustaining low state injury rates. OHSB and the New Mexico Construction Safety Coalition (CSC) continued to improve partnership processes in the construction industry with sharing of information and ideas to promote worksite health and safety. The CSC is comprised of the 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). OHSB worked with established Alliances including the Southeast New Mexico Service, Transmission, Exploration and Production Safety Network and renewed and existing Alliance with the Mexican Consulate in Albuquerque, New Mexico.

As shown in SAMM 17, in the Appendix D, NM OHSB had .56% enforcement presence in FY 2023. The FRL was +/- 25% of .93% (0.70 % to 1.17%).

The NM State Plan’s percent in-compliance for safety is 39.25% which is higher than the FRL of +/-20% of 31.73% (25.38% to 38.08%). Their percent in-compliance health is 30.77% which is lower than the FRL +/- 20% of 43.82 (35.06% to 52.58%) based on SAMM 9a-9b.

Some contributing factors for NM OHSB’s high in-compliance rates for safety are due to the Bureau’s high staff turnover and low number of experienced staff, deficiencies in employee training, and New Mexico’s lack of adoption of the focused inspection policy for the construction industry.

**Finding FY 2023-02**: In FY 2023, OHSB conducted 218 (83%) out of their project goal of 264 (SAMM 7).

**Recommendation**: OSHB should implement a corrective action to ensure yearly goals are met. Managers should monitor and adjust inspection assignments weekly and monthly if the current inspections are falling behind inspection goal pace.

**Observation FY 2023-OB-02**: Of the 52 casefiles reviewed in FY 2023, 16 inspections had citations issued, 36 inspections were in-compliance, seven of the 36 (38.8%) were health inspections while 29 of the 36 (85%) were safety inspections. NM OSHB’s safety in-compliance rate was above the FRL range based on the official end-of-year SAMM 9.

OSHA identified a significant discrepancy between the results of the FY 2023 casefile review versus the end-of-year SAMM report data which was run on November 14, 2023. In FY 2023, NM OHSB’s percent in-compliance for safety inspections was 39.25% and 30.77% for health inspections. The table below represents the percent in-compliance over the past six years per the SAMM.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Percent In-Compliance (SAMM 9)** | **FY 2023** | **FY 2022** | **FY 2021** | **FY 2020** | **FY 2019** | **FY 2018** |
| **Safety** | 39.25% | 49.23% | 33.33% | 38.57% | 43.46% | 54.07% |
| **Health** | 30.77% | 40.91% | 34.69% | 20.93% | 33.33% | 36.84% |

**Federal Monitoring Plan**: OSHA will continue to partner with the National Office and OIS team to look into the inconsistency between the actual casefile review results versus the calculated end-of-year SAMM data regarding in-compliance rates. OSHA will continue to monitor performance in this area during quarterly meeting.

d) Citations and Penalties

NM OHSB’s average citation lapse time is 108.94 working days for safety and 98.63 working days for health, per SAMM 11, for FY 2023. The FRL is based on a three-year nation average. The range of acceptable date not requiring further review is 44.18 to 66.28 days for safety and 55.78 to 83.66 days for health.

The table below shows that the State Plan citation lapse time over the past six years.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Average Lapse Time (SAMM 11)** | **FY 2023** | **FY 2022** | **FY 2021** | **FY 2020** | **FY 2019** | **FY 2018** |
| **Safety** | 108.94 | 119.68 | 107.00 | 86.18 | 51.59 | 56.26 |
| **Health** | 98.63 | 119.34 | 103.03 | 96.74 | 52.44 | 71.00 |

Although, NM OSHB has made some progress in citation lapse times from FY 2022, they are still over the FRL level for this measure. This measure is a continuing concern for the State Plan. It is recommended that the managers continue to team up with compliance officers to monitor all open cases to prevent high lapse times.

**Finding FY 2023-03**: In FY 2023, the average lapse time for safety inspections was 108.94 days and the average lapse time for health inspections was 98.63 days. This exceeded the FRL range of 44.18 to 66.28 for safety and 55.78 to 83.66 for health. (SAMM 11a and 11b).

**Recommendation**: OHSB should periodically review all open cases with the compliance officers to prevent high lapse times.

SAMM 5 shows that the total number of violations per inspection is 2.7 violations.

SAMM 8 shows the average penalty assessed per serious violation. The table below shows the average penalty assessed per violation for FY 2023. These penalty amounts are within the FRL levels per Appendix D.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Average Penalty Assessed per Serious Violation (SAMM 8) (Private Sector)** | **FY 2023** | **FY 2022** | **FY 2021** | **FY 2020** | **FY 2019** | **FY 2018** |
| **Average current serious penalty in private sector- total (1 to greater than 250 workers)** | $4,405.67 | $4,214.74 | $5,305.61 | $2,251.51 | $2,207.27 | $1,909.40 |
| **(a) Average current serious penalty in private sectors (1-25 workers)** | $2,720.00 | $2,017.00 | $1,920.00 | $1,270.00 | $1,501.48 | $925.00 |
| **(b) Average current serious penalty in private sector (26-100 workers)** | $4,738.83 | $5,178.21 | $5.170.73 | $2,441.84 | $2,301.41 | $2.684.21 |
| **(c) Average current serious penalty in private sector (101-250 workers)** | $6,943.06 | $7,760.80 | $9,280.00 | $4,649.26 | $3,405.59 | $3,026.00 |
| **(d) Average current serious penalty in private sector (greater than 250 workers)** | $8,042.58 | $9,078.40 | $7,099.41 | $3,749.47 | $3,368.91 | $2,458.38 |

1. Abatement

Abatement refers to action taken by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OHSB during an inspection. Per the NM FOM, employers must certify abatement is complete for each cited violation. Failure to certify abatement can result in an additional 1903.19 citation or a follow-up inspection.

NM OHSB had a number of private sector inspections which had unabated violations that were greater than 60 calendar days past the issuance date for safety inspections or 90 calendar days past the issuance date for health inspections. NM OSHB had a total of 33 inspections which lacked abatement, 27 safety inspections and six health inspections. In these cases, NM OHSB should conduct a follow-up inspection and/or issue a failure to abate (1903.19) citation to ensure all cited hazards have been corrected.

**Observation FY 2023-OB-01**: NM OHSB had 27 safety inspections in which they did not complete abatement within 60 calendar days and six health inspections in which they did not complete abatement within ninety calendar days. (SIR 3a and 3b)

**Federal Monitoring Plan**: OSHA will continue to monitor performance in this area during quarterly meeting and FY 2022 case file review.

1. Worker and Union Involvement

NM OHSH has policies and procedures addressing worker involvement during the inspection process. 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 allows workers and/or employee representatives the opportunity to participate in every phase of the inspection process.

**Finding FY 2023-01**: Of the total 52 inspections reviewed, 24 inspections (46%) lacked documentation of employee contact or interviews where 100% were reportedly interviewed (SAMM 13).

**Recommendation**: Ensure compliance officers conduct and document employee interviews as required by the OHSB FOM Chapter 3.

**Finding FY 2023-04**: Unions not contacted: Out of a total of 52 files reviewed or FY 2023, five inspection case files had unions and three of the union’s representatives were contacted during inspections.

**Recommendation:** Follow the policies in the OHSB FOM, Chapter 3. During the opening conference, the highest‐ranking on-site union official or union employee representative shall designate who will participate in the walkaround.

SAMM 13 shows that the percent of initial inspections with worker walk-around representation of worker interview 100%. FRL is 100% fixed for all State Plans.

**3. REVIEW PROCEDURES**

1. Informal Conferences

The informal conference process in New Mexico allows for either amendments to citations or entering into Informal Settlement Agreements. Such amendments may include penalty reductions, withdrawal and/or reclassification of citations, and/or modifications to abatement due dates. The Bureau documents these changes in the OIS with the code ISA.

NM OHSB’s informal conference process allows for either amendments to citations and/or penalties or entering into informal settlement agreements. These changes are documented in the OIS with the code ISA.

SAMM 12 shows that the percent penalty retained is 94.50%. The FRL is +/-15% of 71.84% (61.06% to 82.62%). Nevertheless, NM OHSB has retained a higher percentage compared to that of the national average.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Penalty Retention** | **FY 2023** | **FY 2022** | **FY 2021** | **FY 2020** | **FY 2019** | **FY 2018** |
| **Percent Penalty Retained (SAMM 12)** | 94.50% | 95.93% | 93% | 74% | 84% | 90% |

If and/or when changes are made to the original penalties, NM OHSB documents these changes and enters them into OIS and their electronic casefiles.

1. Formal Review of Citations

Employers have the right to contest citations within a given time frame of 15 days after the receipt date. Once an employer, employee, or employee representative has contested a citation, 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 to enter into a formal settlement agreement or file and administrative complaint with the New Mexico Occupational Health and Safety Review Commission (NMOHSRC). 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.

The NMOHSRC is made up on three members appointed by the Governor for six-year terms. There is also a Commission Secretary who handles all administrative matters to include correspondence and scheduling. The NMOHSRC meets on an as-needed basis. All settlement agreements made after contest are sent to the NMOHSRC for approval.

The Office of General Counsel provided legal representations for the NM OHSB. The attorneys are based in Santa Fe and Albuquerque, NM. It is common for an attorney to work closely with the compliance staff during the preparation of a case. NM OSHB staff have a good working relationship with the attorneys and are knowledgeable of OSHA requirements of a legally sufficient case.

**4. Standards and Federal Program Change (FPC) Adoption**

The State Plan continues to be timely with responses to federal program changes, adoption

of standards and notifying OSHA of any major state-initiated changes.

1. Standards Adoption

In accordance with 29 CFR 1902, State Plans are required to adopt standards and federal program changes within a six-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. 21 OHSB 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 three (3) final rules. OHSB adopted one (1) identical to federal OSHA, the other two (2) rules are not identical to federal OSHA including rules related to Covid-19 and penalties. The adopted rule was transmitted prior to the due date in two (2) instances, and just after the due date in one (1) instance. The table below identifies the OSHA-initiated standards.

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | N/A | N/A | N/A | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | N/A | N/A | N/A | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 1/15/2022 | No | No | 7/15/2022 | N/A |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 8/9/2022 | Yes | No | 8/14/2022 | 4/28/2023 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 4/1/2023 | Yes | No | 7/15/2023 | 4/1/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 8/2/2023 | Yes | Yes | 1/21/2024 | 10/1/2023 |

**\***The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn.

1. Federal Program Change (FPC) Adoption

Six (6) Federal Program Changes (FPCs) required a response and/or plan supplement in FY 2023. All responses were transmitted prior to the due date. OHSB was current on timely adoption of standards during FY 2023. OHSB adopted five (5) out of six (6) required changes identical to OSHA. OHSB is currently in the process of adopting the OSHA Whistleblower Investigation Manual in accordance with state regulations and is operating under a draft directive during the internal legal review process.

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC)**

**Where Adoption Was Required**

| **FPC Directive/ Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| National Emphasis Program on Warehousing and Distribution Center Operations CPL 03-000-026 | 9/11/2023 | 9/13/2023 | Yes | Yes | 9/11/2023 | 9/13/2023 |
| Revised Combustible Dust National Emphasis Program CPL 03-00-008 (1/30/2023) | 3/31/2023 | 3/3/2023 | Yes | Yes | 3/31/2023 | 3/3/2023 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs)**

**Where Equivalency Was Required**

| **FPC Directive/ Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 5/17/2022 | Yes | Yes | 7/3/2022 | 5/17/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/11/2022 | No | No | 2/11/2023 | \*\* |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 10/11/2022 | Yes | Yes | 11/15/2022 | 10/11/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 3/28/2023 | Yes | Yes | 4/8/2023 | 3/28/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/2/2023 | Yes | Yes | 6/30/2023 | 6/2/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 10/18/2023 | Yes | Yes | 11/28/2023 | 10/18/2023 |

\*\*NMOHSB is in the process of adopting a similar directive in accordance with their

state regulations and is operating under a draft version which is undergoing internal state

legal review.

**5. Variances**

NM OSHB did not issue any permanent or temporary variances in FY 2023. NM OSHB has only issued one temporary variance in its total history. The Bureau honors all multi-state variances that have been issued by OSHA.

**6. STATE AND LOCAL government WORKER Program**

SAMM 6 shows that 10.09% of the total inspections conducted by NM OHSB were conducted in the state and local government. NM OHSB falls within +/-5% of the national average rate of 10.23% (9.72% to 10.74%).

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **SAMM 6** | **FY 2023** | **FY 2022** | **FY 2021** | **FY 2020** | **FY 2019** | **FY 2018** |
| **Percent of Total Inspections in Local Government Workplaces** | 10.09% | 14.52% | 13.57% | 3.83% | 7.08% | 1.83% |

**7. WHISTLEBLOWER Program**

OHSB has made a great deal of progress addressing the findings and observations from the FY 22 follow-up FAME pertaining to the whistleblower program. Despite the loss of the whistleblower program’s supervisor in FY 23, the acting supervisor has devoted a great deal of time and effort to addressing policy and program issues. The results of these improvements should continue to move OHSB’s whistleblower program in the right direction.

**Whistleblower Findings**

**Finding FY 2023‐05:** OHSB lacks adequate written procedures for its whistleblower program. OHSB did not adopt federal program changes or equivalents to CPL 02‐03‐011 during FY 2023.

In the FY 2022 follow-up FAME report, Finding FY 2022-06, it was found that: “OHSB lacks adequate written procedures for its whistleblower program. OHSB did not adopt federal program changes or equivalents for TED 01‐00‐ 020 and CPL 02‐03‐011.”

On March 31, 2023, OHSB revised its “New Mexico Occupational Health and Safety Bureau (OHSB) Directive 09-09” which, upon review, is a sufficient equivalent of TED 01-00-020 “Mandatory Training Program for OSHA Whistleblower Investigators.” Therefore, this aspect of Finding FY 2022‐06 has been fully addressed.

On November 13, 2023 (beyond the dates of this FY 23 FAME review), OHSB submitted a draft Whistleblower Investigations Manual (WIM) which they intend to adopt as their equivalent to CPL 02‐03‐011. While the draft is not yet approved or adopted, OHSB advises: “It is also functioning as an interim guide until it is approved.”

**Recommendation:** OHSB addresses this issue by adopting their draft Whistleblower Investigations Manual (WIM) which, upon review, is a sufficient equivalent of CPL 02‐03‐011. If OHSB adopts their draft manual in FY 2024, this finding will be fully addressed and will be removed on the FY 2024 FAME.

**Finding FY 2023‐06:** OHSB is less effective than the federal program in its criteria for acceptance of whistleblower complaints because it places more stringent requirements on Complainants to file whistleblower complaints.

In the FY 2022 Follow-Up FAME report, Finding FY 2022-07, it was found that: “OHSB is less effective than the federal program in its criteria for acceptance of whistleblower complaints because it places a more stringent requirements on Complainants to file whistleblower complaints.”

In the FY 2023 review, it was found that in the majority of the complaints closed for lack of cooperation, the investigator asked the Complainant to provide a written document of the allegation, and if the document was not received in 48 hours the case would be closed for Lack of Cooperation. Several complaints were closed for lack of cooperation as a result. This is placing a more stringent requirement on state plan Complainants than federal OSHA requires.

**Recommendation:** OSHB addresses this issue in their draft Whistleblower Investigations Manual, (Chapter 3, II A B, Page 26), which states:

“It is important to note that when taking a complaint over the phone that even though the New Mexico statute specifies in writing” and acknowledged by the employee that this does not require that the employee put the complaint in writing.”

When the Complainant offers a verbal complaint over the phone, the Whistleblower Investigator should take the verbal complaint and document it in writing. At the end of documenting the complaint, the Investigator should read back the information they have gathered, correcting any mistakes with the Complainant, and gaining verbal confirmation that the information is correct. This agreement constitutes *acknowledgement* for the purposes of 50-9-25 (B).”

If the OSHB manual is adopted and put into practice in FY 2024, this finding may be removed in the FY 2024 FAME Review.

**Finding FY 2023‐08**: OHSB management did not review Administrative Closures and Case Files. Of the 54 files reviewed, 32 cases contained no evidence of supervisory review or approval in the case file.

In the FY 2022 Follow-Up FAME report, Finding FY 2022-08, it was found that: “OHSB management did not review Administrative Closures and Case Files. Of the 41 files reviewed, 30 cases contained no evidence of supervisory review or approval in the case file.”

In the FY 23 review, among the 50 administratively closed complaints and 4 docketed cases reviewed files reviewed, 41 case files lacked closing letters and or management approval. 32 case files did not contain any documentation or evidence of review by a supervisor.

OSHB addresses supervisory review and approval of administrative closures and docketed cases in their draft Whistleblower Investigations Manual.

**Recommendation:** If the OSHB manual is adopted and put into practice in FY2024, this finding may be considered for removal in the FY2024 FAME Review.

**Whistleblower Observations**

Observation FY 2022-OB-06: In the FY 2022 Follow-Up FAME report, Observation FY 2022-OB-06, it was observed that: “OHSB has not properly entered data in OITSS and OIS for whistleblower activities.”

In FY 2023, Federal OSHA referred 67 complaints to NM OSHA. 9 of those complaints were missing from the Case Listing report in OIS. It was found that this was likely because referrals were sent to one person and not tracked effectively by OHSB. However, OSHB implemented a new intake process which we are satisfied will prevent complaints from falling through the cracks in the future. OSHB is contacting the 9 complainants, so this issue is adequately addressed.

Currently NM OHSB is entering all WB cases into OIS. This has improved significantly since the FY2022 Follow-Up FAME, and this observation will be closed.

During the FY 2023 review, it was determined that Observation FY 2022‐OB‐06 can be closed.

**Observation FY 2023‐OB‐05:** Whistleblower case files lacked organization and many files were missing documents. Although OHSB adopted a case file format directive, the directive is not being consistently followed.

**Federal Monitoring Plan:** OSHA will continue to monitor this measure during the quarterly meetings.

In the FY 2022 Follow-Up FAME report, Observation FY 2022-OB-07, it was observed that: “Whistleblower case files lacked a system of organization, and many files were missing documents. Among the 41 files reviewed there were 178 instances of missing items including documents and signatures.”

On May 1, 2023, OHSB notified federal OSHA of the adoption of a new directive: “Electronic Case File System Procedures for Whistleblower Protection Program.” (Equivalent to federal directive CPL 02-03-009 “Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program.”) We believe that this is a giant step forward for OHSB and their new directive will help improve the organization and completeness of OHSB’s whistleblower case files. However, this new policy has not yet translated into practice.

In FY 2023 NM OHSB closed 4 docketed cases and administratively closed 228 complaints without investigation. The review team evaluated 50 of the Administratively Closed case files from FY2023, the 4 Closed Docketed cases from FY 2023, as well as the current cases Pending Investigation from FY 2023.

While OHSB’s new case file directive was instituted mid-way through the FY, it does not appear that directive was being consistently followed once implemented.

Among the 50 administratively closed files reviewed files reviewed, 41 case files lacked closing letters and or management approval. 32 case files did not contain any documentation or evidence of review by a supervisor. In 29 of the case files there was no closing letter in the file or evidence that it was mailed to the Complainant.

All 4 closed docketed cases from FY 2023 were reviewed. Although OHSB adopted a policy outlining the procedures for organizing case files under the ECF, all 4 closed docketed and closed case files reviewed lacked organization, were missing documents, one case had the Respondent’s name wrong, and all 4 files contained many duplicate documents and documents were placed in the wrong folders.

**Additional Points of Policy Needing Clarification**

In the past, OSHA has discussed with OHSB our concerns over an unwritten policy understood by the investigators to mean that anytime a party in a whistleblower case was represented by an attorney, OGC must be contacted and be involved in the interviews. There still appears to be some confusion among the staff as to whether a referral to OGC is required or not and whether an OGC attorney must be present for witness interviews.

OSHA’s concern is that due to OGC’s resources, interviews could be delayed by requiring an OGC attorney be present for all interviews in which a party is represented by an attorney. We recommend that OHSB and OGC revisit this policy and then clearly communicate the policy to the staff in writing – possibly as part of their whistleblower investigations manual.

**8. Complaint About State Program Administration (CASPA)**

In FY 2023, Region VI received one CASPA concerning New Mexico OHSB not following their policies and procedures for handling complaints and/or referrals alleging safety hazards and job sites. The complaint was received by Talk to DOL on August 17, 2023. The complaint was forwarded to the El Paso Area Office on August 30, 2023. It was determined within five calendar days that this CASPA warranted an investigation of NM OHSB’s complaint and referral program. A written response letter was sent to the complainant on September 11, 2023, providing notice of the initiation of investigation towards the CASPA. OSHA reviewed NM OHSB’s complaints and referrals and conducted employee interviews. Upon investigation, it was determined that NM OHSB followed their policies and procedures for handling the majority of complaints and/or referrals within the exception of some errors with the handling of one complaint. In response to this CASPA, NM OHSB management immediately initiated a review of the complaints and referral and provided additional training to staff to ensure proper handling of future complaints and referrals. The CASPA was closed on January 31, 2024, and a determination/findings letter was sent to the complainant. On January 31, 2024, the complainant raised additional safety and health concerns. OSHA determined that due to OSHA’s statute of limitations, six months from the date of exposure, OSHA is prohibited from further investigating the safety and health concerns listed in the complaint. The complainant was notified of this on February 6, 2024.

During the FY 2022 follow-up FAME cycle, Region VI received one CASPA concerning New Mexico OHSB not following their policies and procedures for providing personal protective equipment (PPE) to staff, providing, and calibrating inspection equipment, and providing adequate training to compliance staff. A CASPA investigation was initiated and completed to evaluate the NM OHSB. Upon investigation, it was determined that NM OHSB did not follow their policies and procedures for providing PPE. NM OHSB was made aware of the deficiencies and was given 30 days to correct the deficiencies. Information of the CASPA findings were provided to the complainant on November 30, 2023, and the CASPA has been closed.

**9. Voluntary Compliance Program (VCP)**

The Cooperative Programs in OHSB are administered under the 23(g)‐grant program. OHSB cooperative programs include six (6) Voluntary Protection Program (VPP) sites, six (6) Partnerships, and three (3) Alliances.

OHSB’s Voluntary Protection Programs is called the Zia Star Voluntary Protection Programs (VPP). OHSB continued to focus efforts on strengthening program quality and reviewing current VPP participants during the year. The OHSB projected an increase of one (1) new VPP site in FY 2023. However, the Zia Star VPP experienced a reduction of two (2) sites by withdraw due to operations/facility shut down. The OHSB performed two reapprovals in FY 2023. OSHA encourages OHSB to seek training for process safety management (PSM) to ensure that staff maintain the ability to evaluate PSM VPP sites (including all required PSM supplement reports A, B, and C) and increase the number of potential sites in Zia Star VPP.

OHSB has a cooperative program called the OHSB Strategic Partnership for Construction (OSPC). This program operates in accordance with New Mexico OHSB Directive 15-07 (OHSB 15-07). This directive applies only to employers within the construction industry when performing work at construction worksites. In addition, OHSB’s OSPC provides enforcement incentives to employers through a deferral from programmed inspections for partner employers. Per OHSB’s OSPC directive an annual onsite partnership verification must be conducted by OHSB for this deferral to be granted. OHSB’s directive 15-07, in section L “Verification” indicates that a verification includes document review, site walkthrough, employee interviews and correction of hazards.

**VCP Findings**

**Finding FY 2023-08:** During the FY 2023 onsite FAME review OHSB did not provide documentation that onsite verification activities were conducted as required in Section L- “Verification” of the New Mexico OHSB Directive-15-07- OHSB Strategic Partnership for Construction. Additionally, no partnership verification activities were in recorded in the OSHA Information System (OIS) as Compliance Assistance Activity. In FY 2023 OHSB provided enforcement incentives to construction employers through deferrals from programmed inspections in accordance with their OHSB OSPC, however, documentation of annual onsite partnership verification was not provided during or after the review. (Reference: OHSB Directive 15-07- OHSB Strategic Partnership for Construction Section L and N).

**Recommendation:** OHSB should follow their internal directive titled OHSB Directive 15-07- OHSB Strategic Partnership for Construction specifically in Section N.- Recording Activities. In addition, as per OHSB Directive 15-07 Section N. Recording Activities- all information pertaining to this program shall be recorded in the OSHA Information System (OIS) following current instructions as a Compliance Assistance Activity.

OHSB and partner members focus work on common construction safety issues. There were 52 member companies participating in six industry association partnerships during FY 2023. The Bureau currently has partnerships with industry groups including the Associated General Contractors, the Associated Contractors of New Mexico, the Associated Builders and Contractors, the New Mexico Utility Contractors Association, the Mechanical Contractors Association, and the American Subcontractors Association.The New Mexico Construction Safety Coalition held virtual meetings in FY 2023 that emphasized best practices in preventing heat illness at partner worksites. The Coalition is composed of OHSB staff and representatives from each of the six (6) OHSB Strategic Partnership for Construction (OSPC) partnership associations.

During FY 2023 OHSB signed two (2) alliances, Somos Un Pueblo Unido and Consulate of Mexico in Albuquerque, NM. The Alliance Agreement with the Somos Un Pueblo Unido offers community education about worker’s rights and remedies, and it forges leadership opportunities for immigrants and low-wage workers. The OHSB has worked closely with the Consulate of Mexico in Albuquerque, New Mexico to provide information about worker’s rights, employer obligations, and occupational safety and health since 2007, and more formally through signed Alliance Agreements since 2016. The Bureau renewed the Alliance Agreement in FY2023 for the third time since 2016.

In addition, OHSB conducted virtual presentations on the common hazards in the dairy industry as part of the outreach goals through Alliance Agreements with Consulate of Mexico in Albuquerque, New Mexico and Somos Un Pueblo Unido. New Mexico’s Dairy industry is a top contributor to national milk production with New Mexico and Texas combining for the 3rd largest milkshed in the nation behind California and Wisconsin; Also, New Mexico is the 4th leading state in cheese production for the nation. (NMSU-2023 Statistics). Information was also presented in a radio interview with the local radio station, Radio Lobo 97.7FM.

OHSB presented and participated in farmworker workshops in Deming, Anthony, and Hatch, New Mexico. The workshops provided information about resources and services available to the farm working community. Over 350 farmworkers and representatives from federal, state, and local agencies and organizations attended the events.

During FY 2023, OHSB 23(g) compliance and outreach activities were focused on State Emphasis Programs (SEPs) and National Emphasis Programs (NEPs) within the industries of construction, industries that have occupational exposure to hexavalent chromium, industries that occupational heat exposure, primary and fabricated metals, oil and gas well drilling and servicing, and hospitals and nursing care. The Bureau continued its SEP for silica exposure in the earth products manufacturing industries. A total 57 compliance assistance activities were completed in strategic SEPs and 38 National Emphasis Programs (NEPs) in FY 2023 for a total 95. OHSB outreach initiatives reached 32, 070 workers of their goal of 120,000 workers.

**10. STATE AND LOCAL GOVERNMENT 23(g) On-site CONSULTATION PROGRAM**

The State and Local Government Consultation Program conducted three (3) consultation visits throughout New Mexico, reaching approximately 147 workers and impacting many more. Based on their FY 2023 grant proposal, OHSB had established a goal of 25 consultation visits but were not able to meet their goal. Through these visits, they identified 14 hazards. OHSB conducted 58 compliance assistance activities targeting state and local government agencies as part of the overall goal of reducing the injury rate. According to the 2022 BLS Injury and Illness Rates for New Mexico state and local governments (TRC- 3.6 and DART 1.7) continue to experience injury and illness rates greater than the private sector (TRC-2.3 and DART 1.3).

Staffing shortages for the program posed a challenge to meeting the consultation visit goal. During the review period, OHSB had 0.3 FTE (Full-Time Employee) safety consultants and 0.5 health FTE consultants. In addition, OHSB had 0.4 FTE safety consultant vacancies during the review period. The program continues to experience ongoing challenges with meeting its projected consultation visits goals in the FY 2023 grant. In FY 2023, the OHSB state and local government consultation program completed 12% (3/25) of its FY 2023 23(g) State Plan Projected Onsite Consultation Visits Goal. Since 2020, there has been a consistent decline in projected onsite consultation visits.

OSHA will work with OHSB to ensure managers evaluate and monitor the program’s marketing efforts to generate additional requests for state and local government consultation visits. OHSB should adjust its goals as necessary to provide adequate resources when consultation visit activities are projected. OSHA will continue to monitor this in quarterly meetings to ensure its effectiveness.

The MARC Report for Consultation contains five (5) measures. The goal for MARC 1 is to conduct no less than 90% of initial visits in high hazard industries. OHSB conducted 100% (3/3) of their initial state and local government consultation visits in high- hazard industries.

The MARC 2 goal is to conduct no less than 90% of initial visits in small businesses (defined as no more than 250 employees in the establishment with no more than 500 employers controlled by the employer). OHSB conducted 100% (3/3) of initial visits in establishments with 250 or fewer employees, and 100% (3/3) of initial visits in establishments with 500 or fewer employees controlled by the employer.

The MARC 3 goal indicates OHSB consulted with workers in 100% (3/3) of the state and local government sector initial visits, follow-up visits, and training and education visits.

MARC 4 has several subsections, two of which have goals. The first is to ensure that 100% of serious hazards are verified to have been corrected within 14 days of the original correction due date. OHSB verified correction of 100% (6/6) of identified serious hazards within this timeframe. The second goal is to verify correction of at least 65% of serious hazards either on site or by the original correction due date. OHSB verified correction of 100% (6/6) of identified serious hazards either on site or by the original correction due date.

MARC 5 is the number of serious hazards requiring correction more than 90 days due past due. The goal is zero, and the program had none.

**State and Local Government 23(g) Consultation Program Findings**

**Finding FY 2023-09:** In two out of three (66%) files reviewed, NM OHSB did not send the List of Hazards to the union within twenty days after the closing conference. In the two casefile reviews, visit no. 335507 and visit no. 316964, no union official was sent a copy of the written report to the employer. (Reference 29 CFR 1908.6(e)(8) and CPPM (Consultation Policy and Procedures Manual) Chapter 4, Section III.E.)

**Recommendation:** Send the List of Hazards to union officials within 20-working days of the closing conference per Chapter 4, Section III.E. of the CPPM and 29 CFR 1908.6(e)(8).

**State and Local Government 23(g) Consultation Program Observations**

**Observation-2023-OB-06:** The review showed two out of three (66%) casefiles did not include the Bureau of Labor Statistics (BLS) rates for the establishment’s industry average Days Away, Restricted, or Transferred (DART), and Total Recordable Case (TRC) rates in the Executive Summary of the Written Report to the Employer for the employer’s reference. (Reference: CPPM, Chapter 6, Section I.C.1.f.).

**Federal Monitoring Plan:** OSHA will continue to monitor performance in this area during quarterly meetings and will encourage OHSB to ensure that all the Written Report to the Employer include a comparison of the establishment’s Days Away, Restricted, or Transferred (DART) rate, and Total Recordable Case (TRC) rate to the Bureau of Labor Statistics (BLS) rates for the industry in the Executive Summary. If the employer does not maintain injury and illness logs, the industry average rates should be provided.

**Observation FY 2023-OB-07:** In 3 out 3 files reviewed (100%) the files showed local and state government employers were scored as NE- not evaluated on the Form-33 attributes when sufficient data had been collected by the consultant to adequately score them.

For example, in all on the consultation files reviewed when employers had experienced OSHA recordable injuries in prior years, or the consultant had identified numerous serious hazards applicable attributes not evaluated when they could have been by the consultant.

In each of these consultation visits a limited visit was conducted in a general industry establishment. The comments and ratings found on the Form-33 were not correlated well with entries on the OSHA 300 logs and serious hazards identified by the consultant in relation to the deficiencies in employer’s safety and health program. (Reference: 29 CFR 1908.6(e)(3) CPPM, Chapter 4, Section II. B.3 and D.1, E. and F.)

**Federal Monitoring Plan:** OSHA will continue to monitor performance in this area during quarterly meetings and will encourage OHSB to ensure that consultants on the Form-33 will include attribute assessed, and the consultants will complete the comments section of the Form 33 by adding a summary of findings (i.e., adequacies and deficiencies) and any recommendations for the employer.

It is recommended that the CPM shall ensure that consultants, on the Form-33, will include each attribute assessed, and the consultants will complete the comments section of the Form 33 by adding a summary of findings (i.e., adequacies and deficiencies) and any recommendations for the employer. The recommendations must be based on the findings (e.g., how to correct identified deficiencies or continuous improvement measures).

**Observation FY 2023-OB-08:** NM OSHB has experienced some delays in procurement of adequate technical equipment and personal protective equipment (PPE) i.e. (foot protection) for use by consultants. NM OHSB Consultants have not conducted any visits without proper equipment, procurement processes should be evaluated to ensure that necessary Industrial Hygiene equipment and PPE is available and calibrated for immediate use to ensure that consultants are able to perform work and training assignments in a timely manner (Reference-29 CFR 1908.6(a)), CPPM- Chapter 4 Section I., Appendix K- Consultant Function – Competency Statements and Consultant Qualifications.

**Federal Monitoring Plan:** OSHA will continue to monitor performance in this area during quarterly meetings and will encourage OHSB to provide updates on procurement of technical equipment and protective equipment to include any issues with timely procurement.

**11. Private Sector 23(g) On-site Consultation Program**

Private Sectorconsultation services are provided in New Mexico under a 21(d) Cooperative Agreement, and state and local government agencies 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).

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | In FY 2023, 24 of the total 52 inspections reviewed (46%) lacked documentation of employee contact or interview where 100% were reportedly interviewed (SAMM 13). | OSHB should ensure compliance officers conduct and document employee interviews as required by the OHSB FOM Chapter 3. | FY 2022-01, FY 2021‐01, FY 2020‐01, FY 2019‐01 |
| FY 2023-02 | In FY 2023, OHSB conducted 218 (83%) out of their project goal of 264 (SAMM 7). | OHSB should implement a corrective action to ensure yearly goals are met. Managers should monitor and adjust if goals are not being met weekly to monthly. | FY 2022-02, FY 2021‐02, FY 2020‐02 |
| FY 2023-03 | In FY 2023, the average lapse time for safety inspections was 108.94 days and the average lapse time for health inspections was 98.63 days. This exceeded the FRL range of 44.18 to 66.28 for safety and 55.78 to 83.66 for health. (SAMM 11a and 11b). | OHSB should periodically review all open cases with the compliance officers to prevent high lapse times. | FY 2022-03, FY 2021‐03 |
| FY 2023-04 | Unions not contacted: Out of a total of 52 files reviewed for FY 2023, five inspection case files had unions and three of the union’s representatives were contacted during inspections. | OSHB should follow the policies in the OHSB FOM, Chapter 3. During the opening conference, the highest‐ranking in‐site union official or union employee representative shall designate who will participate in the walkaround. | FY 2022-05  FY 2021-05 |
| FY 2023-05 | OHSB lacks adequate written procedures for its whistleblower program. OHSB did not adopt federal program changes or equivalents CPL 02‐03‐011 during FY2023. | If OHSB adopts their draft manual in FY 2024, this finding will be fully addressed and will be removed on the FY 2024 FAME. | FY 2022-06 |
| FY 2023-06 | OHSB is less effective than the federal program in its criteria for acceptance of whistleblower complaints because it places more stringent requirements on Complainants to file whistleblower complaints. | OSHB addresses this issue in their draft Whistleblower Investigations Manual, which states:  “It is important to note that when taking a complaint over the phone that even though the New Mexico statute specifies “in writing and acknowledged by the employee” that this does not require that the employee put the complaint in writing.”  When the Complainant offers a verbal complaint over the phone, the Whistleblower Investigator should take the verbal complaint and document it in writing. At the end of documenting the complaint, the Investigator should read back the information they have gathered, correcting any mistakes with the Complainant, and gaining verbal confirmation that the information is correct. This agreement constitutes *acknowledgement* for the purposes of 50-9-25 (B).  If the OSHB manual is adopted and put into practice in FY 2024, this finding may be removed in the FY 2024 FAME Review. | FY 2022-07 |
| FY 2023-07 | OHSB management did not review administrative closures and case files. Of the 54 files reviewed, the Whistleblower team found that 32 cases contained no evidence of supervisory review or approval in the case file. | OSHB addresses supervisory review and approval of administrative closures and docketed cases in their draft Whistleblower Investigations Manual. If the OSHB manual is adopted and put into practice in FY2024, this finding may be considered for removal in the FY 2024 FAME Review. | FY 2022-08 |
| FY 2023-08 | OHSB did not provide documentation that onsite verification activities were conducted as required in Section L- “Verification” of the New Mexico OHSB Directive-15-07- OHSB Strategic Partnership for Construction. Additionally, no partnership verification activities were recorded in the OSHA Information System (OIS) as Compliance Assistance Activity. | OHSB should follow their internal directive titled OHSB Directive 15-07- OHSB Strategic Partnership for Construction specifically in Section N.- Recording Activities. In addition, as per OHSB Directive 15-07 Section N. Recording Activities- all information pertaining to this program shall be recorded in the OSHA Information System (OIS) following current instructions as a Compliance Assistance Activity. | New |
| FY 2023-09 | In two out of three (66%) files reviewed, NM OHSB did not send the List of Hazards to the union within twenty days after the closing conference. In the two casefile reviews, visit no. 335507 and visit no. 316964, no union official was sent a copy of the written report to the employer. (Reference 29 CFR 1908.6(e)(8) and CPPM (Consultation Policy and Procedures Manual) Chapter 4, Section III.E.) | Send the List of Hazards to union officials within 20-working days of the closing conference per Chapter 4, Section III.E. of the CPPM and 29 CFR 1908.6(e)(8). | FY 2022-05, FY 2021‐05 |

# Appendix B – Observations Subject to New and Continued Monitoring

FY 2023 New Mexico OSHB Comprehensive FAME Report

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2020-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023‐OB‐01 | FY 2022-OB-01  FY 2021‐OB‐01  FY 2020‐OB‐01 | OHSB did not complete abatement in twenty-seven safety inspections more than 60 days and 6 health inspections more than 90 days. (SIR 3a-3b) | OSHA will continue to monitor performance in this area during quarterly meeting and FY 2022 case file review | Continued |
| FY 2023‐OB‐02 | FY 2022-OB-02  FY 2021‐OB‐02  FY 2020‐OB‐03 | Of the 52 files reviewed in FY 2023, the in‐compliance rate for safety and health inspections was 69%, which was above the FRL on the official end of year SAMM 9.  OSHA identified a significant discrepancy between the results of the FY 2023 casefile review versus the end-of-year SAMM report data which was run on November 14, 2023. In FY 2023, NM OHSB’s percent in-compliance in for safety inspections was 39.25% and 30.77% for health inspections. | OSHA will continue to partner with the National Office and OIS team to look into the inconsistency between the actual casefile review results versus the OIS calculated end-of-year SAMM data regarding in-compliance rates. OSHA will continue to monitor performance in this area during quarterly meetings. | Continued |
| FY 2023‐OB‐03 | FY 2022-OB-03  FY 2021‐OB‐03 | In FY 2023, there were 12 valid complaint UPAs handled as an inspection which have been open for more than 60 calendar days and 138 number of valid complaints handled as a phone/fax which have been open more than 30 calendar days | OSHA will continue to monitor performance in this area during quarterly meetings. | Continued |
| FY 2023-OB-04 | FY 2022-04, FY 2021‐04 | In FY 2023, one of the three (30%) fatality inspections lacked documentation for initial contact with family members. | OSHA will continue to monitor performance in this area during quarterly meetings. | Previous Finding |
| FY 2023‐OB‐05 | FY 2022-OB-07 | Whistleblower case files lacked organization and many files were missing documents. Although OHSB adopted a case file format directive, the directive is not being consistently followed. | OHSB supervisory reviews need to enforce their ECF directive. Federal OSHA will continue to assist OHSB in training new supervisors. | Continued |
| FY 2023-OB-06 |  | The review showed two out of three (66%) casefiles did not include the Bureau of Labor Statistics (BLS) rates for the establishment’s industry average Days Away, Restricted, or Transferred (DART), and Total Recordable Case (TRC) rates in the Executive Summary of the Written Report to the Employer for the employer’s reference. (Reference: CPPM, Chapter 6, Section I.C.1.f.). | OSHA will continue to monitor performance in this area during quarterly meetings and will encourage OHSB to ensure that all the Written Report to the Employer have a comparison of the establishment’s Days Away, Restricted, or Transferred (DART) rate, and Total Recordable Case (TRC) rate to the Bureau of Labor Statistics (BLS) rates for the industry in the Executive Summary. | New |
| FY 2023-OB-07 |  | In 3 out 3 files reviewed (100%), the files showed local and state government employers were scored as NE- not evaluated on the Form-33 attributes when sufficient data had been collected by the consultant to adequately score them. | OSHA will continue to monitor performance in this area during quarterly meetings and will encourage OHSB to ensure that consultants on the Form-33 will include attribute assessed, and the consultants will complete the comments section of the Form 33 by adding a summary of findings (i.e., adequacies and deficiencies) and any recommendations for the employer. | New |
| FY 2023-OB-08 |  | NM OSHB has experienced some delays in procurement of adequate technical equipment and personal protective equipment (PPE) i.e. (foot protection) for use by consultants. NM OHSB Consultants have not conducted any visits without proper equipment, procurement processes should be evaluated to ensure that necessary Industrial Hygiene equipment and PPE is available and functioning property to ensure that consultants are able to perform work and training assignments in a timely manner (Reference-29 CFR 1908.6(a)), CPPM- Chapter 4 Section I., Appendix K- Consultant Function – Competency Statements and Consultant Qualifications. | OSHA will continue to monitor performance in this area during quarterly meetings and will encourage OHSB to provide updates on procurement of technical equipment and protective equipment to include any issues with timely procurement. | New |

**Appendix C - Status of FY 2022 Findings and Recommendations**

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022‐01 | In FY 2021, 35 of the total 54 inspections reviewed (65%) lacked documentation of employee contact or interview where 100% were reportedly interviewed (SAMM 13). | Ensure compliance officers conduct and document employee interviews as required by the OHSB FOM Chapter 3. | OHSB added documentation of interviews to the standard casefile checklist in FY 2022. The Bureau created and filled additional supervisor positions in FY 2022 for immediate review of compliance officer (CO) inspections including employee contact. OHSB created and filled Management Analyst Program (MAP) positions in FY 2022 and instituted quarterly case reviews. The MAP team reviews files for employee participation. OHSB anticipates completion by September 30, 2023. | Completion confirmed by internal quarterly casefile audits. | Completed |
| FY 2022‐02 | In FY 2022 OHSB conducted 186 out of their project goal of 500 (37%) (SAMM 7). | OHSB should implement a corrective action to ensure yearly goals are met. Managers should monitor and adjust if goals are not being met weekly to monthly. | New Mexico inspection numbers have been significantly impacted by CO vacancies and turnover. OHSB increased the number of CO and supervisor positions by 80% in FY 2022 to help address inspection numbers. In FY 2022 and FY 2023 OHSB implemented an enhanced training schedule to expedite new CO competency development. The Bureau also adjusted inspections goals to account for CO turnover and development time; OHSB currently has 3 fully trained COs, 7 COs in training, and 7 vacant CO positions. OHSB is in the process of filling all 7 vacant CO positions including a rapid hire event scheduled for September 2023. In FY 2023, OHSB also added recruitment incentives including paid leave upon hire and retention incentives including voluntary office relocation to reduce staff commuting time and improve morale. The Bureau improved inspection numbers over the past three years by conducting 138 inspections in FY 2021, 186 inspections in FY 2022, and 189 inspections during the first 11 months of FY 2023. OHSB anticipates these actions will result increases to inspection numbers to meet goals submitted in the FY 2024 grant. | Employee attrition and FLMA resulted in reduced overall goal attainment. Progress is ongoing. OHSB held a rapid hire event in September to fill most vacant positions. Performance improvement ongoing | Open |
| FY 2022‐03 | In FY 2022, the average lapse time for health inspections was 119.34 days and the average lapse time for safety inspections was 119.68 days. This exceeded the FRL range of 43.66 to 65.50 for safety and 55.22 to 82.84 for health. (SAMM 11). | OHSB should periodically review all open cases with the compliance officers to prevent high lapse times. | OHSB’s new MAP team reported lapse times to compliance supervisors on a weekly basis and in quarterly file reviews. Leadership set goals for staff and added supervisors to direct workflow and reduce time to complete files. OHSB scheduled extensive training of COs in 2023, which will aid in reducing lapse times in the long-term. The Bureau’s high turnover rate continues to have an impact on lapse times. To account for high turnover and vacancies, OHSB created and filled additional CO positions in FY 2022 to address caseloads and lapse times. In FY 2023, OHSB began recruitment incentives including paid leave upon hire and retention incentives including office relocation to reduce staff commuting time. The Bureau anticipates completion of this by September 30, 2024 with the following schedule: FY 2022 baseline was 119 days for safety and 119 days for health; FY 2023 through 11 months was 108 days for safety and 100 days for health; FY 2024 goal for Quarter 1 (Q1) is 90 days for safety and 90 days for health; goal for Q2 is 75 days for safety and 80 days for health; goal for Q3 is 60 days for safety and 70 days for health; goal for Q4 is 50 days for safety and 60 days for health. | Lapse times have been dropping and were in line with federal and other state plans during Q3 of FY23. Employee attrition and FLMA resulted in another increase. Progress is ongoing. | Open |
| FY 2022‐04 | In FY 2021, 12 of the 12 (100%) fatality inspections lacked documentation for initial contact with family members, and/or family members did not receive final notification or inspection results. | Family members of employees involved in fatal or catastrophic occupational incidents should be contacted early in investigation, be allowed to discuss incident circumstances, and be sent a letter of finding in accordance with the NM FOM. | OHSB instituted updated letters in FY 2022 sent to families in all cases. The MAP team provided weekly reports and conducted quarterly file reviews to address errors. The MAP team is also developing standard operating procedure to supplement the FOM and prevent loss of institutional knowledge during periods of high staff turnover. OHSB completed corrective action in FY 2022. | Completion confirmed by internal quarterly casefile audits.  April 25, 2023 | Converted to Observation |
| FY 2022‐05 | Unions not contacted: Out of a total of 54 files reviewed for FY 2021, five inspection case files had unions and none of the union’s representatives were contacted during inspections. | Follow the policies in the OHSB FOM, Chapter 3. During the opening conference, the highest‐ranking in‐site union official or union employee representative shall designate who will participate in the walkaround. | OHSB added documentation of union participation to the standard casefile checklist. The Bureau added compliance supervisor positions for additional case file review and follow-up with COs in cases where union contact is not made or not documented. The OHSB MAP team conducts quarterly reviews to ensure completeness of files including documentation of union contact including a review completed April 19, 2023. | Completion confirmed by internal quarterly casefile audits.  April 19, 2023. | Completed |
| FY 2022‐06 | OHSB lacks adequate written procedures for its whistleblower program. OHSB did not adopt federal program changes or equivalents for TED 01‐00‐ 020 and CPL 02‐03‐011. | OHSB should institute an updated policy that adopts the federal WIM or incorporates equivalent provisions. | OHSB adopted a state equivalent to TED 01‐00‐ 020 training directive and CPL 02-03-009 Electronic Case File system in 2023. The Bureau is incorporating applicable provisions of CPL 02‐03‐011 WIM into a state directive that is in accordance with New Mexico’s state whistleblower statute. OHSB anticipates completion by September 30, 2023. | Training directive updated with Whistleblower classes May 25, 2023, ECF adopted May 22, 2023, WIM in draft review by Legal and send to OSHA by November 10, 2023. | Open |
| FY 2022‐07 | OHSB places excessive requirements on its whistleblower complainants in order to file a complaint. | OHSB should adopt requirements equivalent to federal for acceptance of complaints. If OHSB believes that they are constrained by statute from having equivalent requirements for acceptance of complaints, a legislative change to Section 50‐9‐25. A should be sought. | OHSB issued clarification of complaint requirements to include interpretation of state statute commensurate with federal equivalents. The Bureau completed staff training and instruction to whistleblower investigators on April 25, 2023. During FY 2024, the OHSB MAP team will review WBI cases quarterly to verify continued compliance. | Clarification on OHSB policy sent out and trained to WB investigators  April 25, 2023. | Completed |
| FY 2022‐08 | OHSB management did not review Administrative Closures and Case Files. Of the 41 files reviewed in FY 2022, 30 cases contained no evidence of supervisory review or approval in the case file. | OHSB management should conduct case file reviews to ensure that Complainant interviews and final letters to Complainants are present in the case files, both for administrative closures (“screen outs”) as well as docketed cases. The date on the final letter should match the closing date in OITSS or OIS. Also, case file reviews should ensure that they are complete, and all required documents and evidence are present. | OHSB management instructed each whistleblower investigator (WBI) to request supervisor review and approval prior to administrative closure. The supervisor reviews the available information and responds by email to further direct intake/ investigation or approve the complaint for administrative closure. The WB Investigator then saves the full email chain as a document in the case file folder as a record of review and decision. During FY 2024, the OHSB MAP team will review WBI cases quarterly to verify continued compliance. | OHSB Leadership instituted supervisor review on all case closures including documentation thereof  April 25, 2023. | Completed |

**Appendix D – FY 2023 State Activity Mandated Measures (SAMM) Report**

FY 2023 New Mexico OHSB Comprehensive FAME Report

**U.S. Department of Labor**

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

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 13.85 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 12.75 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of workdays to initiate complaint investigations (state formula) | 3.66 | 0 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | 1.81 | 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) | 100% | 100% | 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. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 2.27 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.53 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 10.09% | +/- 5% of  10.23% | 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 9.72% to 10.74%. |
| 7a | Planned v. actual inspections (safety) | 169 | +/- 5% of  190 | 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 180.50 to 199.50 for safety. |
| 7b | Planned v. actual inspections (health) | 49 | +/- 5% of  74 | 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 70.30 to 77.70 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $4,405.67 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $2,720.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $4,738.83 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $6,943.06 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $8,042.58 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 39.25% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 30.77% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 66.67% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 108.94 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 98.63 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 94.50% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 100% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 0.56% | +/- 25% of  .93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

NOTE: The national averages in 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 14, 2023, as part of OSHA’s official end-of-year data run.