**FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

**NORTH CAROLINA DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH DIVISION**



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

**Initial Approval Date: January 26, 1973**

 **Program Certification Date: October 5, 1976**

**Final Approval Date: December 10, 1996**

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1. **Executive Summary**

The purpose of this report is to assess the State Plan’s performance for Fiscal Year (FY) 2023. The FY 2023 FAME report is a comprehensive FAME report. This report is focused on the State’s overall enforcement program and its compliance assistance activities. This report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2023, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report(SIR) reports ending September 30, 2023. A review of the SAMM data for FY 2023 indicated NC Department of Labor’s (NCDOL) Occupational Safety and Health Division (OSHNC) generally met or exceeded federal activity results. OSHNC continued to meet all criteria for an effective State Plan. These SAMM measures are identified and discussed in detail throughout the FAME report.

The North Carolina Occupational Safety and Health Strategic Management Plan for FY 2019 to FY 2023 established two strategic goals: 1) Reduce the rate of workplace fatalities by 2% and 2) Reduce the rate of workplace injuries and illnesses by 5%. Fatalities rose in North Carolina by 4% FY 2023. Fatalities increased in manufacturing and the wholesale sector compared to the same time-period last year. However, there was a significant decrease in fatalities in Agriculture, Forestry, Fishing and Government.

To recognize the efforts to reduce fatalities in agriculture, the Agricultural Safety and Health (ASH) Bureau educated farmers, farm labor contractors, and other stakeholders about heat stress prevention through in-person training events and through distribution of bilingual heat stress publications, during preoccupancy inspections of migrant housing throughout the state. ASH participated in two Farm Labor Contractor (FLC) workshops hosted by N.C. Cooperative Extension. A total of 29 FLCs were trained on the following topics: migrant housing regulations; field sanitation requirements; and heat stress prevention. The ASH Bureau Chief also presented at an H2A stakeholder event that was attended by 274 farmers, farm labor contractors, H2A agents, and others. During this event the following training topics were addressed: migrant housing regulations; field sanitation requirements; and heat stress prevention.

During this FAME period, the, North Carolina minimum and maximum civil penalties associated with occupational safety and health standard violations were increased effective October 1, 2022. Effective July 1, 2023, they increased again in accordance with the United States Consumer Price Index published by the United States Department of Labor. These changes are reflected in North Carolina General Statute §95-138(a) in accordance with 13 North Carolina Administrative Code 07A.0301 and 29 CFR 1903.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans, and Appendix C describes the status of previous findings with associated completed corrective actions. Appendix A, B and C have been left blank because the State Plan did not have any new findings or observations or previous findings from FY 2022 and FY 2023.

North Carolina’s injury and illness rates for Calendar Year (CY) 2022 have stayed at historic low levels. The private sector Total Recordable Case (TRC) rate was 2.2 and the Days Away, Restricted, or Transferred (DART) rate was 1.4. These rates are 19% lower and 18% lower, respectively, then the national average. When the public sector numbers are included, the overall TRC rate was 2.4 and the DART rate was 1.4. These rates are 20% lower and 22% lower, respectively, then the national rates.

**II. State Plan Background**

1. **Background**

The North Carolina Occupational Safety and Health State Plan received final approval, under Section 18(e) of the OSH Act on December 10, 1996. The official designated as responsible for administering the program, under OSHNC, is the Commissioner of Labor. The Commissioner of Labor is a constitutional officer selected through a statewide election. During the evaluation period, the Commissioner of Labor was Josh Dobson. Within the NC Department of Labor, the Occupational Safety and Health Division has responsibility for carrying out the requirements of the State Plan. Jennifer Haigwood serves as Deputy Commissioner/Director of the Occupational Safety and Health Division, and Paul Sullivan serves as Assistant Deputy Commissioner/Assistant Director of the OSH Division. Commissioner Dobson and his leadership team were all in position during the evaluation period.

The Occupational Safety and Health Division is organized into the following operating units: East and West Compliance Bureaus; Bureau of Education, Training, and Technical Assistance (ETTA); Bureau of Consultative Services; Bureau of Planning, Statistics, and Information Management (PSIM), and the Agricultural Safety and Health (ASH) Bureau. The main office and a district office are located in Raleigh, with four additional offices located throughout the State: Asheville; Charlotte; Winston-Salem; and Wilmington. Currently, there are 196.8 positions funded under the 23(g) grant, including 102 positions, which are 100% state funded.  These positions include 64 safety compliance officers and 45 health compliance officers assigned to district offices throughout the State.  Additional safety and health professionals work in ETTA with responsibilities related to training, development of outreach materials, standards, and the Carolina Star Program (Voluntary Protection Program). The worker population in North Carolina consists of approximately 4,436,892 workers, and nearly 282,534 establishments.

Employee protection from retaliation related to occupational safety and health is administered by the Employment Discrimination Bureau, which falls under the Deputy Commissioner for Standards and Inspections, in the North Carolina Department of Labor. This Bureau covers several types of employment-related retaliation, in addition to whistleblower protection that falls under the jurisdiction of the State Plan.

The North Carolina Department of Labor provides private sector onsite consultative services through a 21(d) Grant. There are 20.1 positions funded under the 21(d) grant, including consultants, administrative staff, and managerial employees. Four of the 21(d) positions are 100% state funded. State and local government 23(g) grant consultative services, enforcement, and compliance assistance activities, are accomplished by the same staff, in accordance with consultation procedures established for the private sector. OSHNC’s Carolina Star Program organizationally falls within the Education, Training, and Technical Assistance Bureau.

The table below shows OSHNC’s funding levels from FY 2019 through FY 2023:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Fiscal Year** | **Federal Award ($)** | **State Plan Match ($)** | **100% State Funds ($)** | **Total Funding ($)** | **% of State Plan Contribution** |
| **2023** | 6,469,500 | 6,469,500 | 9,157,287 | 22,096,287 | 70.72 |
| **2022** | 6,029,800 | 6,029,800 | 8,535,199 | 20,594,799 | 70.72 |
| **2021** | 5,900,200 | 5,900,200 | 7,788,501 | 19,588,901 | 69.88 |
| **2020** | 5,810,300 | 5,810,300 | 7,782,005 | 19,402,605 | 70.05 |
| **2019** | 5,431,200 | 5,431,200 | 7,716,338 | 18,578,738 | 71.33 |

1. **New Issues**

Session Law 2023-134 (2023 Appropriations Act) included several budgetary and policy changes of significance to the OSH Division.

1. The biennial budget provided for a 4% salary increase for state employees, effective July 1, 2023. The budget also includes an additional 3% increase for state employees which will become effective July 1, 2024. The OSH Division, especially the Compliance Bureau, has struggled to recruit and retain qualified safety and health professionals, partly due to salaries which are not commensurate with similar jobs in the private sector and in other government agencies. While the legislative salary increase is helpful, the department continues to seek opportunities to significantly increase salaries in order to become more competitive in the job market.
2. The budget eliminated the OSH Division’s long-established authority to adopt verbatim all changes to the federal OSHA standards. By eliminating N.C.G.S. 150B-21.5(c), the OSH Division is now required to adopt all rule changes by using the standard rulemaking process. The OSH Division was not consulted about this provision in the budget and had no advance knowledge that it would be included. This policy change will likely impact the OSH Division’s ability to adopt federal rule changes within the required six-month time frame. Typical rulemaking can last anywhere from six months to several years, depending on the complexity of the change and the level of public input and/or opposition. The department is working with the legislature to educate members on the negative impact of this change and to come up with a possible compromise adjustment in the 2024 legislative session.
3. The budget amended a portion of the OSH Act regarding the time frame by which the OSH Division must issue citations. Last year’s appropriations act amended this section by allowing OSH to issue citations up to six months following the “initiation of inspection,” and that change became effective October 1, 2022. This year’s budget again changes the language to provide that OSH must issue citations within six months following the “occurrence of any violation.” This new change became effective October 1, 2023. The department was also not consulted prior to this provision appearing in the budget, and creates challenges for the OSH Division to be able to issue citations within six months, when we are notified of fatalities and/or serious accidents well past the accident date (date of the violation).

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

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. 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, which included a whistleblower investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the North Carolina State Plan office during the timeframe of December 4-8, 2023. A total of 149 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2022, through September 30, 2023). The selected population included:

* Twenty (20) fatality case files
* Twenty-one (21) complaint and referral investigation files
* Eighty (80) Construction/General Industry safety and health case files
* Six (6) Agriculture Safety and Health case files
* Fifteen (15) closed whistleblower case files
* Seven (7) Public Sector Consultation files

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 Report (Appendix D)
* State Information Report
* Mandated Activities Report for Consultation
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Full 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 a three-year 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**

**1. PROGRAM Administration**

1. Training

The Education, Training and Technical Assistance (ETTA) Bureau is responsible for training the North Carolina Occupational Safety and Health Division personnel, and employees across the State. In FY 2023, ETTA offered 278 hours of formal training, 148 hours of continuing education, 37 hours of other job-related training to internal personnel. ETTA conducts OSHA Training Institute (OTI) equivalent training for OSH Division compliance staff. The North Carolina OSH Division directive, Operating Procedure Notice (OPN) 64I, establishes the policies and procedures for the initial training and development of the State Plan’s compliance staff. NC OSH’s training directive is comparable to OSHA’s training directive, TED-01-00-019. By conducting internal training, ETTA trains its employees at the appointed times and at a lower cost. The State also continues to utilize senior compliance personnel to conduct training and augment the ETTA staff. OSHNC also continues to conduct outreach and training by providing safety and health training employers and employees throughout North Carolina.

**Statistical Training Information FY 2023**

|  |  |
| --- | --- |
| Private sector employers trained  | 4579 |
| State and local government workplace employers trained  | 983 |
| Total number of workers that received training  | 5562 |

1. OSHA Information System

The State Plan has consistently used OSHA Express (OE) Data Management System, and OIS reports to manage the program, and track OSHNC Division activity. This includes both mandated activity and activity goals and outcome goals included in the Strategic Management Plan. In FY 2023, OSH transmitted data from OE Data Management System to OSHA’s Information System (OIS) via an interface. OSH and the OE vendor continue to work together to ensure that the OE and OIS, State Activity Mandated Measures (SAMM) and State Information Report (SIR) reports are providing accurate data.

Four change requests were submitted for the OE Data Management System this past year. OSH continues to provide administrative support for the OSHA Legacy Data (OLD) system. The OLD system was rolled out in late FY 2016, and additional features were subsequently added to allow OSHA and State Plans to access and modify pre-OIS inspection files, as necessary. Progress continues to be made in closing open legacy case files. At the end of FY 2023, OSH had five cases remaining in the OLD system.

1. State Internal Evaluation Program Report

The North Carolina State Plan has an effective internal audit procedure, documented in Administrative Procedure Notice 14.  As part of the OSHNC quality program, 113 high profile case file reviews were completed by the OSH Director’s Office. The purpose of the audits was to ensure that inspection activities were being conducted, in accordance with established policies and procedures. The findings of these audits were posted internally, and feedback was provided to the compliance bureau chiefs, district supervisors, and compliance officers.

The beginning of a two-year internal audit was started in 2023 to assess and document the positions and activities in the PSIM bureau in advance of multiple retirements. The purpose of the audit is to provide an outline of tasks and administrative needs for the department and to assess if job duties could be streamlined or combined in the future.

Two action requests were processed by Compliance. This Quality Program activity provides opportunities for program improvement identified by customers, OSH Division employees or as a result of internal audits and Federal OSHA audits. Ongoing revisions are made to the Field Operations Manual (FOM) and Operational Procedure Notices (OPN), as a result of the quality program action items.

1. Staffing

During this period, the OSHNC’s staffing levels were below the established benchmarks for the program, but at an acceptable level, based on the benchmark criteria. However, the State Plan remains committed to staffing its program at the appropriate level, within the current budgetary constraints.

When the FY 2023 goals were established at the end of Quarter 3 of FY 2022, OSH Compliance had 54 released CSHOs and 14 CSHOs in training.  The FY 2023 goals were set based on the assumption that many of those CSHOs in training would be released during the year.  Unfortunately, that did not occur, and the OSH Division was down to 50 released CSHOs at the end of FY 2023, 1st Quarter, and 51 released CSHOs at the end of FY 2nd Quarter.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **FY 2019** | **FY 2020** | **FY2021** | **FY2022** | **FY2023** |
| **Safety** | Benchmark | 64 | 64 | 64 | 64 | 64 |
| Positions Allocated | 66 | 66 | 66 | 64 | 64 |
| Positions Filled | 49 | 53 | 52 | 46 | 50 |
| Vacancies | 13 | 13 | 14 | 18 | 14 |
| Percent of Benchmarks Filled | 77 | 83 | 81 | 72 | 78 |
| **Health** | Benchmark | 50 | 50 | 50 | 50 | 50 |
| Positions Allocated | 45 | 45 | 45 | 45 | 46 |
| Positions Filled | 39 | 37 | 32 | 33 | 35 |
| Vacancies | 6 | 8 | 13 | 12 | 11 |
| Percent of Benchmarks Filled | 78 | 74 | 64 | 66 | 70 |

**2. ENFORCEMENT**

a) Complaints

The OSH Complaint Desk processed 3,528 complaints. The average number of complaints received by the Complaint Desk has averaged 1,000 more each year than in years prior to COVID-19, and the number of unprocessed complaints continued to steadily climb, as well. To alleviate the number of complaints not under OSH jurisdiction, an online web form was developed in question-and-answer format and directs online complaints toward the appropriate agency. The Complaint Desk received and responded to 80 COVID-19, and 293 heat-related, emails and phone calls, respectively, during FY 2023. According to the SAMM report, OSHNC responds timely to complaints. The average number of days to initiate a complaint inspection in FY 2023 was 3.86, which is well below the FRL-negotiated standard of 10 days. The average number of days to initiate a complaint investigation was 1.76, which is also well below the negotiated standard of four days.

OSHNC has a centralized complaint and referral intake procedure, with complaints transferred to the district supervisor having geographic jurisdiction. The State Plan’s emphasis has been on customer service, and assuring that each complaint is given attention, consistent with the severity of the alleged hazards. OSHNC’s complaint process for formal complaints is similar to OSHA’s process. OSHNC considers electronic complaints obtained through OSHA’s complaint system as a formal complaint. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items. The source of the complaint, with those from a current employee having priority, and the severity of the alleged hazards, are primary considerations for supervisors to decide, whether to handle the complaint by letter, or by inspection.

In FY 2023, 822 referrals were processed by the complaint desk. Referrals are alleged hazards or violations of the Act, which are typically received from other federal, state, or local government agencies, as well as media outlets, compliance officers or employers, reporting an injury or illness. OSHNC follows similar procedures as OSHA for employer-reported referrals.

1. Fatalities

In FY 2023, North Carolina investigated 71 workplace fatalities. The number of manufacturing deaths increased from eight (8) in FY 22 to 15 in FY 23. In addition, the number of fatalities in construction increased from 23 in FY 22 to 24 in FY 23. North Carolina’s procedures for investigation of occupational fatalities are effectively the same as those of federal OSHA. A review of the fatality inspection files showed that the correct fatality inspection procedures were followed. One hundred percent (100%) of the fatality inspection cases were responded to within one day, according to SAMM 10. North Carolina has implemented procedures to assure the quality of fatality investigations.

The Next-of-Kin (NOK) was contacted on all investigations. North Carolina has a procedure for communication with family members of deceased workers. Letters are sent to the NOK at the beginning of the investigation, and when the investigation has concluded. The family is provided with the name and telephone number of the “next-of-kin ombudsman,” who handles telephone contacts with the family. Supervisors indicated that they check to assure that the letters have been sent when they review the file.

The table below details the industries, where fatalities occurred in FY 2022 and FY 2023.

|  |  |  |
| --- | --- | --- |
| **By Industry** | **FY 2022** | **FY 2023** |
| Construction | 23 | 24 |
| Manufacturing | 8 | 15 |
| Transportation & Public Utilities | 3 | 2 |
| Wholesale Trade | 1 | 7 |
| Retail Trade | 4 | 4 |
| Services | 11 | 12 |
| Agriculture, Forestry, Fishing | 10 | 4 |
| Government | 7 | 3 |
| Finance: Insurance & Real Est. | 1 | 0 |
| Other | 0 | 0 |
| **Total** | **68** | **71** |

During FY 2023, 59 fatality inspections had citations issued.  Of the 59 cases with citations, 22 are still open and 12 of those are contested.  The penalty at issuance was $1.72 million and the State retained 86% of the penalty during settlement discussions. In FY 2023, OSHNC has also been aggressive with heat stress citations under the General Duty Clause with penalties up to $145,027 following a heat-related fatality.

In FY 2023, fatality investigations resulted in the following number of violations:

|  |  |
| --- | --- |
| Number of Violations | OSHNC |
| Willful | 7 |
| Repeat | 2 |
| Serious | 145 |
| Nonserious | 32 |

The OSH Division’s Unmanned Aircraft Systems (UAS) Program was utilized as a resource during compliance inspections that require aerial photographs and videos. In FY 2023, drones were successfully deployed on multiple fatality inspections which aided in evidence collection where staff would otherwise have not been able to reach the site due to unsafe conditions. These inspections included multiple high-profile fatality and accident investigations such as a mast climbing scaffold collapse which resulted in three fatalities, a struck by front loader which resulted in a leg amputation, and an electrocution from an excavator contacting an overhead power line.

The NC Attorney General’s Office works closely with the CSHO when a fatality case file is being prepared to assure that the case documentation is legally sufficient. Contacts between the CSHO and the attorney were documented in the case files. Fatality investigations are required by Administrative Procedure Notice (APN) 16D to go through a review by a Citation Review Committee, made up of senior management and legal staff prior to issuance of citations or determination of an in-compliance investigation. The determination must be reviewed and signed by the OSH Director. Informal settlement agreements related to fatality cases also receive a higher-level review.

OSHNC has taken a proactive approach to help prevent injuries, illnesses, and fatalities in North Carolina’s workplaces by establishing partnerships with some of the most hazardous industries. OSHNC continues to place increased emphasis on tracking specific injuries and fatalities monthly. If there is an increase in injuries and fatalities, additional resources are allocated, including inspection and focused training events.

c) Targeting and Programmed Inspection

According to inspection statistics reviewed, OSHNC conducted 1,761 inspections in FY 2023, of which 953 were programmed. OSHNC conducted 915 construction inspections in FY 23 and 624 of those were programmed. Construction work is considered high hazard, and inspection sites are targeted using several procedures, based on specified criteria. North Carolina conducts a high number of programmed inspections in the construction sector, particularly under their Special Emphasis Program (SEP) for high emphasis counties. These counties are associated with their strategic goal to reduce construction fatalities. According to the SIR, 65.19% of private sector programmed safety inspections and 71.85% of private sector programmed health inspections were issued with violations. Of those, 88.58% of safety inspections and 88.02% of health inspections, as issued, had serious, repeat, and/or willful violations (SRW) [SIR Measure 2d]. OSHNC’s Program Targeting System is identifying industries. where serious hazards are more likely to exist. OSHNC is finding Serious/Willful/Repeat (S/W/R) violations during programmed inspections.

The State Plan’s strategy for reducing injury, illness, and fatality rates is based on addressing specific areas that have the greatest impact on the overall rates. The areas of emphasis in the current Strategic Plan include, Construction, Logging and Arboriculture, Grocery and Related Product Wholesalers, Long Term Care, Exposures for Health Hazards (asbestos, lead, isocyanates, silica, hexavalent chromium), Food Manufacturing and Amputations.

Since FY 20, OSH Compliance has conducted 226 programmed planned Amputations SEP inspections including 73 in FY 23.  This targeting program has proven to be very successful as SWR violations have been identified on nearly 75% of inspections.  During FY 23, OSH Compliance averaged 2.75 Serious, Willful, or Repeat (SWR) violations on each programmed planned Amputation inspection. Nine of the top ten standards cited under this SEP in FY 23 were for machine guarding or lockout/tagout violations, the exact amputation hazards this program is targeting.

The Health Hazards SEP uses the General Schedule targeting metrics and overlays NAICS codes likely to have one of the SEP chemicals – silica, lead, isocyanates, asbestos, or hexavalent chromium.  Since FY 20, OSH Compliance has conducted 167 programmed planned Health Hazards SEP inspections, including 59 in FY 23.  This targeting program has also proven to be very successful as SWR violations have been identified on nearly 78% of inspections.  During FY 23, OSH Compliance averaged 2.44 SWR violations on each programmed planned Health Hazards SEP inspection.  13 of the top 15 standards cited under this SEP in FY 23 were for silica in construction, respiratory protection, and hazard communication, which are all types of health hazards this program is targeting.

d) Citations and Penalties

In FY 2023, compliance inspections conducted identified 1.94 SWR violations per inspection, and 0.94 non-serious violations per inspection with a total initial penalty assessment of $10.4 million. OSHNC exceeds the three-year national average and is within range of the FRL for SWRU, which is 1.40 to 2.10 (SAMM 5a), and is well within the FRL for non-serious, which is 0.71 to 1.07. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes. In FY 23, OSHNC issued 2,061 serious violations. Additionally, 88 repeat violations and 11 willful violations were issued.

OSHNC conducted 1,104 safety and 657 health inspections, which was 97.6% of the planned inspection goal of 1,805 inspections, as compared to 1,954 inspections conducted in FY 22.  In FY 23, safety inspections were within range of the FRL, which is 1,087.75 to 1,202.25. However, health inspections did not meet the FRL range of 717.25 to 792.75. The goal was not attained due to the ongoing difficulty recruiting and retaining qualified CSHOs.

OSHNC also maintained a lower average lapse time, from opening conference to citation issuance date, than the FRL (SAMM 11) as referenced below:

|  |  |  |
| --- | --- | --- |
| **Average Lapse Time** | **OSHNC** | **FRL** |
| Safety | **53.23 days** | **44.18 – 66.28** |
| Health | **56.35 days** | **55.78 – 83.66** |

The case files that were reviewed were well-documented, with very detailed narratives. The total in-compliance rate (SAMM 9) for all safety inspections in FY 23 was 32.49% and 35.78% for health inspections. The percentage for safety and health was also well within the FRL.

OSHNC’s average current penalty per serious violation in the private sector (SAMM 8: 1 -250+ workers) was $3,708.50 in FY 23. The Further Review Level (FRL) is ±25% of the three-year national average ($3,625.21). The FRL ranges from $2,718.91 to $4,531.51. Therefore, OSHNC’s current penalty per serious violation in the private sector (1-250+ workers) is 102.3% over the national average penalty in this range.

OSHNC’s average current penalty for serious violations in the private sector (SAMM 8: greater than 250 workers) was $9,663.12 in FY 23. The Further Review Level (FRL) is ±25% of the three-year national average ($7,331.41). The FRL ranges from $5,498.56 to $9,164.26. OSHNC’s current penalty per serious violation in the private sector (greater than 250+ workers) well exceeds the acceptable FRL.

e) Abatement

Available procedures and inspection data indicate that North Carolina obtains adequate and timely abatement information in most case files and has processes in place to track employers, who are late in providing abatement information. The Bureau Chiefs run a weekly past due abatement report that is shared with supervisors and is sorted by CSHO’s. Confirmation of abatement is also a measure in the work plan for each CSHO.

Follow-up inspections accounted for 3% of the total inspections in North Carolina for FY 23. Follow-up inspections are useful to ensure abatement if there is a problem with abatement verification. According to the SIR for FY 23, the number of private sector inspections that have unabated violations that are greater than 60 calendar days for safety, and 90 calendar days for health, past the issuance date, was 17 for safety and 14 for health, respectively. In addition, there were two valid complaints handled as inspections, which have been open more than 60 days, and there were 149 valid complaints handled as an investigation (phone/fax), which were open more than 30 days. OSHNC should ensure that the number of complaint investigations open remains low, so that hazards are quickly eliminated.

Most case files reviewed contained written documentation, photos, work orders, or employer’s certification of abatement. Petitions for Modification of Abatement (PMA) were appropriately provided when the employer requested an extension for their corrective action timeframe and interim protection information was provided in the case file.

f) Worker and Union Involvement

OSHNC’s procedures for employee and union involvement are identical to OSHA’s. Case file review disclosed that employees were included in 100% of fatality investigations, and other inspections. This determination was supported by SAMM 13.

During FY 23, the OSH Division began receiving external requests for Statements of Interest (SOI) in support of deferred immigration action relative to workers involved in open Compliance inspections. The Division continues to work on a formal policy for receipt and processing of SOI requests and submitted its first letter to the Department of Homeland Security in October 2023.

**3. REVIEW PROCEDURES**

1. Informal Conferences

OSHNC has procedures in place for conducting informal conferences and proposing informal settlement agreements. These procedures appear to be followed consistently by District Supervisors. According to the SIR, 2.06% of violations were vacated (pre-contest), and 1.53% of violations were reclassified (pre-contest) as a result of informal settlement agreements. The percent of penalty retained was 86.99%, which exceeds the national average of 75.19%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified, and most cases were resolved with some penalty reduction. Where there were vacated or reclassified violations, or a larger penalty reduction, the files normally included the rationale for the changes. No negative trends or problems with citation documentation have been noted.

1. Formal Review of Citations

In FY 23, 3.7% of inspections with citations were formally contested by employers. The North Carolina OSH Division is represented by attorneys in the North Carolina Attorney General’s Office (AG). The attorneys are assigned exclusively to represent the Division, and they receive specific training on legal issues relating to occupational safety and health.

The Attorneys participate in organizations, such as the State OSHA Litigators Organization (SOLO), where State and Federal high-profile cases, and cases with special legal issues, are shared and discussed. The Division also utilizes the Department of Labor’s in-house attorneys, who advise on various legal issues. All fatalities and high-profile cases are considered by a citation review committee before citations are issued. This committee is made up of OSH management, staff attorneys, and attorneys in the AG’s Office.

The North Carolina Review Commission is an independent body that hears and issues decisions on appeals, relating to the issuance of citations and assessment of penalties by the OSH Division. Commission members are appointed by the Governor for terms that usually run for six years. All commission hearings are open to the public and decisions are available for public review on the Commission’s web page.

The OSH Division can request judicial review of decisions made by the Review Commission. The Division is advised on these matters by the Attorney General’s Office with input from the Commissioner of Labor’s Office.

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

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal program changes, within a 6-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines which are at least as effective ALAE as the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, OSHNC adopted all federal directives and OSHA-initiated standards, which required action in a timely manner, except for the Maximum Penalty Increase. The tables below provide a complete list of the federal directives and standards, which required action during this period:

**Table A**

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

(May include any delinquent standards from earlier fiscal years)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| \*Emergency Temporary Standard(Different fiscal year)  | 7/06/2021  | 7/02/2021  | \*Yes  | \*Yes  | \*7/06/2021  | \*6/21//2021  |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910, 15, 17, 18, 26, 28(11/5/2021) | 11/20/2021 | n/a | No | No | 12/5/2021 | n/a |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910(11/5/2021) | 1/7/2022 | 1/07/2022 | No | No | 1/24/2022 | n/a |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 202229 CFR 1903(1/15/2022) | 3/15/2022 | 2/4/2022 | Yes | Yes | 7/15/2022 | 10/1/2022 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)(2/14/2022) | 4/14/2022 | 4/14/2022 | Yes | No | 8/14/2022 | \* Waiting on Federal fiscal Note |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 202329 CFR 1903(1/15/2023) | 3/16/2023 | 3/15/2023 | Yes | Yes | 7/15/2023 | 3/15/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses29 CFR 1904(7/21/2023) | 9/21/2023 | 9/8/2023 | Yes | Yes | 1/21/2024 | 1/21/2024 |

\* On March 16, 2022, a meeting was held with federal OSHA officials, attorneys from the federal Solicitor’s Office, NCDOL OSH management, and the NCDOL General Counsel, to discuss the legal conflict regarding OSHA’s position on the enforcement of the COVID-19 log and reporting provisions of the Healthcare ETS1. Pursuant to that meeting, NCDOL made the decision to move forward with permanent rulemaking only in relation to the COVID-19 log and reporting provisions noted above. Rulemaking action will begin after the completion and approval by the Office of State Budget and Management (OSBM) of a fiscal note for the COVID-19 log and reporting provisions. Permanent rulemaking under the Administrative Procedure Act takes a minimum of six months to adopt a final rule; there are some statutory requirements that may result in the rulemaking process taking longer, to include possible intervening action by the North Carolina General Assembly.

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) 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** |
| Revised Combustible Dust National Emphasis Program CPL 03-00-008(1/30/2023) | 3/31/2023 | 3/13/2023 | Yes | Yes | 7/30/2023 | 7/30/2023 |
| National Emphasis Program on Warehousing and Distribution Center OperationsCPL 03-00-026(7/13/2023) | 9/11/2023 | 9/6/2023 | Yes | No(current OPN 145 is equivalent)  | 1/9/2024 | 9/26/2023 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required**

(May include any delinquent FPCs from earlier fiscal years)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **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 StandardCPL 02-01-063(2/11/2022) | 7/3/2022 | 6/30/2022 | Yes | Yes | 11/3/2022 | 11/03/2022 |
| OSHA Whistleblower Investigations ManualCPL 02-03-011(4/29/2022) | 10/11/2022 | 10/11/2022 | Yes | No | 2/11/2023 | 2/11/2023 |
| Severe Violator Enforcement Program (SVEP)CPL 02-00-169(9/15/2022) | 11/15/2022 | 11/2/2022 | Yes | No | 3/15/2023 | 3/15/2023 |
| Site-Specific Targeting (SST)CPL 02-01-064(2/7/2023) | 4/8/2023 | 3/3/2023 | Yes | Yes(excluding public sector) | 8/6/2023 | 8/06/2023 |
| National Emphasis Program – FallsCPL 03-00-025(5/1/2023) | 6/30/2023 | 6/27/2023 | Yes | No(equivalent NC procedures) | 10/28/2023 | 9/26/2023 |
| Consultation Policies and Procedures Manual CSP 02-00-005(9/29/2023)  | 11/28/2023 | 10/18/2023 | Yes | Yes | 3/27/2024 | 3/18/2023 |

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

(May include any delinquent FPCs from earlier fiscal years)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| OSHA’s Use of Small Unmanned Aircraft SystemsCPL 02-01-169(12/22/2021) | 2/22/2022 | 2/2/2022 | Yes | No;OPN 30 is more stringent | 2/02/2022 |
| National Emphasis Program – Outdoor and Indoor Heat-Related HazardsCPL 03-00-024(4/8/2022) | 6/8/2022 | 6/6/2022 | No | No;OPN 141 is equivale-nt | 6/06/2023 |

**Table E**

**FY 2022 and FY 2023 State-Initiated Changes**

|  |  |  |
| --- | --- | --- |
| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| NA |   |   |

**5. Variances**

North Carolina currently has nine permanent variances, one of which is a multi-state variance approved by OSHA.  No variances were issued by the State Plan in FY 2022-2023.  North Carolina does not have any temporary variances, and the State Plan appropriately shares variance requests with federal monitors.

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

OSHNC’s Public Employee Program operates identically as the private sector. As with the private sector, state and local government employers can be cited with monetary penalties. The penalty structure for both sectors is the same. OSHNC conducted 118 state and local government agency inspections in FY 2023, which accounted for 6.81% of all inspections. The Planning Statistics and Information Management (PSIM) Bureau mailed 3,287 surveys to state and local government employers (collection of calendar year 2022 injury and illness data). As of the end of FY 2023, 2,995 survey responses were received with a 96.1% response rate, where the data as provided can be used to calculate injury and illness rates, and for targeting purposes.

The following table outlines the total number of violations for programmed activity, as well as the in-compliance rate and the percentage of SWR violations for state and local government agencies:

|  |  |
| --- | --- |
| **All State and Local Government Agency Programmed Inspections** | **OSHNC** |
| Average number of violations | 3.27 |
| In-Compliance Rate | 40.7% |
| % Violations classified as Serious, Repeat, and Willful | 31.4% |

**7. WHISTLEBLOWER Program**

**Overview**

The Retaliatory Employment Discrimination Bureau (REDB) of the North Carolina Department of Labor (NCDOL) is charged with enforcing the North Carolina Retaliatory Employment Discrimination Act (REDA). [N.C. Gen. Stat. § 95-240 *et seq.*]. North Carolina is one of 28 states operating a “State Plan” with federal OSHA. Complaints filed under Section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act), [29 U.S.C. § 660(c)] which allege retaliation because the employee exercised a protected safety and health activity occurring in North Carolina are referred to the REDB of NCDOL. REDB contacts each complainant and provides them with the REDB Complaint Form and OSH Addendum should they also wish to file a complaint under REDA. REDB will then review the complaint to determine if NCDOL has jurisdiction and if the allegations of the complaint state a prima facie case under REDA.

Organizationally, REDB falls under the Standards and Inspections Division of the North Carolina Department of Labor.  Phil Hooper is the Deputy Commissioner of Standards and Inspections. Jennifer Haigwood is the Deputy Commissioner of the Occupational Safety and Health Division and is responsible for ensuring effective communication and coordination between REDB and NC OSH in their efforts to promote workplace safety and health and protection from retaliation.

REDA prohibits retaliation by employers against employees who engage in protected activities under eleven protected activity statutes incorporated into REDA, one of which is the North Carolina Occupational Safety and Health Act. [N.C. Gen. Stat. § 95-126 *et seq*.].  This is comparable to Federal OSHA protection from retaliation, under Section 11(c) noted above.

The REDB currently has eight discrimination investigator positions and two administrative staff positions. All staff currently report to the Old Revenue Building in Raleigh, NC. The program is supervised by an Administrator (formerly “Bureau Chief”).  Each investigator is required to complete the OSHA 1420 course and three other related whistleblower training courses. Because of the COVID pandemic, training offerings have been virtual but infrequent, so scheduling has been difficult as new investigators are hired.

All filed complaints are uploaded into OnBase, the bureau’s electronic database system which was initiated in 2021. All documents received and activities taken in every case are uploaded and documented in the electronic file. REDB continues its work with the NCDOL IT department to correct errors, increase efficiency, and maximize the capabilities of the OnBase system.

The REDB Operations Manual (previously the REDB Operations Desk Guide) is updated periodically to incorporate changes in federal whistleblower directives, statutory or rule revisions, and the bureau’s workflow processes. The current Manual establishes practices and procedures that are at least as effective as federal practices and procedures set out in the federal Whistleblower Investigations Manual, revisions adopted on April 29, 2022.

**FY 2023 Annual Overview**

During the intervening fiscal years since the last full FAME audit, federal OSHA discontinued the IMIS system and implemented the OIS database system. REDB transitioned to OIS for all REDA cases filed on or after July 1, 2022. Complaints filed prior to that date were closed out in IMIS when completed.

Complaints arising out of the COVID-19 pandemic significantly declined. Despite this, however, REDA complaints alleging safety and health protected activity under the NC Occupational Safety and Health Act have increased, from 155 in FY 2021 and 211 in FY 2022 and 201 for FY ending September 30, 2023. Section 11(c) referrals have increased dramatically, from 25 referrals in FY2021 to 81 referrals in FY2022 to 123 referrals in FY 2023, almost a five-fold increase since September 30, 2021.

With respect to closed REDA cases involving safety and health protected activities, exclusive of the closing of Section 11(c) referrals, the bureau closed 160 complaint files in FY 2021, 169 in FY 2022 and 213 in FY 2023.

During the second quarter of FY 2023, the bureau assumed responsibility for the redactions of documents in REDA complaints alleging protected activities, under the NC Occupational Safety and Health Act. These redactions were previously completed by another bureau within the agency, and turnaround times between 4- 8 months were not uncommon. Also, an investigation of an OSH REDA complaint cannot be initiated if there is an open OSH compliance inspection or investigation. Delays for this reason can range from several months to several years. Both contributed to a higher than desirable average of elapsed days from file date to case closure.

**The NCDOL REDB Alternative Dispute Resolution Program.**

When “reasonable cause to believe” the allegation of the complaint is found, REDA requires that the Commissioner of Labor “shall attempt to eliminate the alleged violation by informal methods…” In response to this charge, the bureau established an Alternative Dispute Resolution Program. The bureau offers conciliation and mediation in cases in which “merit” is found and as an early resolution tool.

The bureau’s voluntary Mediated Settlement Conference Program, implemented in fall 2020, has been successful. Mediation is conducted by a volunteer mediator certified by the NC Dispute Resolution Commission and offered to the parties at no charge both as an early resolution tool and after an investigation results in a “merit” determination.

**FY 2023 Settlement Statistics**

The following chart incorporates all ADR activity in REDA cases alleging protected activities under the NC Occupational Safety and Health Act and does not include ADR activities in complaints alleging protected activity under any of the other 10 statutes under REDA.

**ADR Process #Referred % Settled Settlement Amount**

Mediation 14 64% $133,560

Conciliation 4 100% $ 22,000

TOTAL 18 72% $155,560

**FY 2023 Evaluation**

This evaluation included a thorough review of North Carolina’s discrimination program to determine whether REDB is following its own policy and procedures, and whether the procedures and processes are “at least as effective” as those required in the current federal Whistleblower Manual.

As part of this fiscal year’s FAME audit, fifteen REDA complaints alleging protected activity under the NC Occupational Safety and Health Act were randomly selected and reviewed by the investigator. Files were selected to obtain a cross section of closed cases by investigator and determination. The determinations were (1) Merit, (4) Dismissals, (2) Withdrawal, (3) administrative closures, (3) Request for 90-Day Right-to-Sue letter, and (2) settlements.

The case files and Reports of Investigation were consistently well written and documented in accordance with the investigator’s manual. It is noted that supervisory review prior to case closure is documented in the case files, in the Reports of Investigation, settlement documents, or activity log, depending on the case closure reason. However, the closing procedures in the manual do not address how to document supervisory review where case closure does not require a Report of Investigation. It is recommended to revise the procedures to delegate responsibility and specify a method for documenting supervisory review to ensure clarity and consistency.

The investigations were consistently sufficient and reached logical conclusions based on the available evidence. It is noted that, in one case, Respondent’s defense should have been further tested due to conflicting witness testimony that supported both Complainant’s allegation and Respondent’s defense. Where defense testing is not warranted, such conflicting witness testimony may also be resolved by a documented assessment of witness credibility that addresses how the investigator weighed the conflicting evidence. Actual investigations were conducted expeditiously by the assigned investigators.

Fourteen percent (14%) of REDA OSH whistleblower cases were completed within 90 days, in FY2023. The average number of days to complete investigations was 289 days, which is consistent with the national average of 290 days. Additionally, North Carolina had a total Merit Rate of 18%, which exceeds the national average of 16%. The higher volume of cases completed in greater than 90 days likely contributed to REDA OSH’s higher than average Merit Rate.

REDA provides that a complainant may request a 90-Day Right-to-Sue (RTS) Letter in lieu of an investigation after 90 days have elapsed since the file. The complainant must file their REDA complaint in North Carolina superior court within 90 days of the date of the RTS letter. The bureau considers the issuance of the RTS letter as a “withdrawal” when completing reports for the federal OSH quarterly meetings.

During the file review, no observations were identified. All REDB case files demonstrated investigative diligence and organization.

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

During this evaluation period, no CASPAs were received regarding the NC DOL OSH Division.

**9. Voluntary Compliance Program**

The Education, Training and Technical Assistance (ETTA) and the Consultation Bureaus are responsible for the administration of the cooperative agreements. Administrative Procedure Notice (APN) 18S addresses the cooperative agreements programs and clearly distinguishes the differences between Alliances and Partnerships. APN 18S, Cooperative Agreements, is the document used to establish the procedures to be followed for Alliances and Partnerships agreements and is designed to enhance the ability of the Occupational Safety and Health Division to meet its strategic goals. The primary purpose of Alliances and Partnerships in North Carolina are to serve as an effective means of targeting resources to special emphasis programs (SEPs) areas in a cooperative manner.

**Alliance**

The Alliance Team Leader is responsible for coordinating the Alliance Program. The State Plans Alliance Program is similar to OSHA’s Alliance Program, with a few exceptions. For example, most NC OSH’s Alliances are limited to a two-year term with the opportunity for renewal. The exceptions to this policy are in operation for an indefinite time-period. During this audit, it was once again confirmed that the indefinite expiration period has not adversely impacted the State Plans Alliance Program. Additionally, each Alliance agreement includes a termination clause, which enables OSHNC to terminate an ineffective agreement. OSHNC currently has nine (9) active Alliances focusing on SEPs. A randomly selected number of the Alliance files were reviewed and found to contain the necessary information.

|  |  |
| --- | --- |
| **Active Alliances** |  |
| Carolinas Associated General Contractors | Lamar Advertising Company |
| Safety & Health Council of North Carolina  | North Carolina State University Industrial Expansion Solutions  |
| Mexican Consulate for the Carolinas  | North Carolina Utility Contractors Association of North Carolina (NCUCA |
| North Carolina Association of Local Government Employee Safety Officials | Plumbing-Heating-Cooling Contractor’s Association |
| N.C. Masonry Contractors Association |  |

**Partnership**

The Partnership Team Leader is responsible for coordinating the State’s Partnership Program. Guidelines for the program can be found in APN 18S, which is the same directive that addresses the Alliance Program. OSHNC’s Partnership Program is focused on the construction industry. Currently, the State Plan has three (3) active Partnerships, which were reviewed during this audit. Participants must submit an application for participation, which must be approved by a panel within OSHNC. Participants are limited to two Partnership worksites, within a ten-year period; however, the OSHNC Director or Commissioner of Labor can waive this restriction. This limit was established to ensure that a diverse group of employers are permitted the opportunity to participate in the program. Also, a variety of construction projects are represented in the program, and the partnership limit ensures that OSHNC can effectively manage the program.

OSHNC’s Partnership Program includes a provision that exempts Partnership worksites from programmed inspections. However, these worksites must provide the State Plan with injury and illness data, monthly. In Addition, Partnership worksites receive quarterly inspections from OSHNC. Serious violations observed during the verification must be abated immediately. The Partnership worksites are also required to meet quarterly to assess the site’s progress. Additionally, the worksite must maintain a DART rate 20% below the national DART rate for the industry.

The State Plan’s current Partnership policy is continually reviewed, and unprogrammed inspections are still conducted, because of formal complaints, or job site accidents resulting in hospitalizations or death. A review of the Partnership files revealed that they contained the necessary information, including the quarterly technical assistance visits and the monthly reports.

**Carolina Star Program – Voluntary Protection Programs (VPP)**

Voluntary Protection Program eligibility requirements for the Carolina Star Program are more stringent than OSHA’s. Employers in the North American Industry Classification System (NAICS) with codes 23 and 31-33 may apply. Employers are required to maintain injury and illness rates at least 50% below the rate for that industry in North Carolina. Initial re-evaluations are conducted at three-years, and the subsequent re-evaluations are conducted every five-years.

The ETTA Recognition Program Section trained twenty-one (21) new Special Star Team Members (SSTM) and recertified four (4) SSTM during FY 2023. Additionally, the Carolina Star Program was responsible for ensuring the recertification of 25 Star worksites, in addition to the initial (new) approval of six (6) Star worksites, thereby ending the FY 2023 with a total of 150 Star sites. This total includes 104 Carolina Star sites, 23 Building Star sites, 18 Public Sector Star sites, and 5 Rising Star sites.

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

The consultation program continues to provide effective services to the state and local government employers and employees throughout the State.  For state and local government agency visits, the State Plan had a goal to reach 190 establishments during FY 2023, and reached that goal with 255 public sector visits.  The number of hazards abated during these visits to state and local government agencies are in the table below:

|  |  |
| --- | --- |
| **Serious Hazards Confirmed Abated** | **Non-Serious Hazards Confirmed Abated** |
| **Total State and Local Government**  | **894** | **Total State and Local Government**  | **40** |
|  |  |  |  |

OSHNC Consultants continue to demonstrate special commitment to the state and local government agency surveys and services, since many of the state and local government sector employers in small towns have very limited safety and health resources. OSHNC consultants can quickly assist state and local government agencies with safety and health program development, expert hazard evaluations and other services. Because of the number of public sites with similar operations, OSHNC consultants are very familiar with program needs in this sector, and they continue to build on their consultative experience base to offer expert service to state and local government agency clients. Additionally, based on the select sample of state and local government sector consultation case file review, the determination was made that the program continues to effectively serve the state and local government sector.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 20XX-# or** **FY 20XX-OB-#** |
| --- | --- | --- | --- |
| NONE |  |  |   |

| **Observation #****FY 2023-OB-#** | **Observation#****FY 20XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| NONE |  |  |  |  |

| **FY 20XX-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status** **(and Date if Item is** **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
|  | **NONE** |  |  |  |  |
|  |  |  |  |  |  |

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

FY 2023 OSHNC Comprehensive FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 3.86 | 10 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 1.52 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 1.76 | 4 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 0.63 | 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) | 1.94 | +/- 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) | 0.94 | +/- 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 | 6.81% | +/- 5% of5.00% | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.75% to 5.25%. |
| 7a | Planned v. actual inspections (safety) | 1,104 | +/- 5% of 1,145 | 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 1,087.75 to 1,202.25 for safety. |
| 7b | Planned v. actual inspections (health) | 657 | +/- 5% of 755 | 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 717.25 to 792.75 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,708.60 | +/- 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) | $1,989.00 | +/- 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**)** | $3,615.02 | +/- 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) | $5,942.13 | +/- 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) | $9,663.12 | +/- 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) | 32.49% | +/- 20% of31.73% | 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) | 35.78% | +/- 20% of43.82% | 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 | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 53.23 | +/- 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) | 56.38 | +/- 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 | 81.59% | +/- 15% of71.84% | 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 | 0.83% | +/- 25% of0.93% | 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.