# FY 2024 Follow‐Up Federal Annual Monitoring Evaluation (FAME) Report New Mexico Occupational Health and Safety Bureau (OHSB)



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## Executive Summary

The primary purpose of this report is to assess the State Plan’s progress in Fiscal Year (FY) 2024 for the State of New Mexico Occupational Health and Safety Bureau (OHSB) under the 23(g) State Plan grant in resolving outstanding findings from the previous FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report. This report was prepared under the direction of Eric S. Harbin, Regional Administrator, Dallas Region, Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and covers the period from October 1, 2023, to September 30, 2024.

This report also reviews recommendations from the FY 2023 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report, focusing on the status of corrective activities. OHSB’s overall performance, as it relates to mandated activities and implementation of policies and regulations, continues to be at an acceptable level except for certain elements noted in this report.

The New Mexico OHSB conducted 133 inspections (38%) of their total projected goal of 350 inspections for FY 2024. Of the 133 inspections, OHSB conducted 87 (32%) safety inspections of their goal of 175 inspections (SAMM 7a), and 46 (61%) health inspections of their goal of 75 inspections (SAMM 7b). This was in part because OHSB continued to experience significant staff turnover and needed to train new personnel.

This FAME report shows three findings, which were all continued. There were no new findings. This report also includes four observations: one new observation and three continued observations. Appendix A describes the continued findings and recommendations. Appendix B describes the observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with completed corrective actions. Appendix D describes the State OSHA Annual Report.

## State Plan Background

The New Mexico Occupational Health and Safety Program is administered by the OHSB, which is part of New Mexico Department of the Environment. The New Mexico Department of the Environment State Plan designee is Secretary of the Environment Department James C. Kenney and the OHSB Acting Bureau Chief is Kristy Peck.

The program covers all private sector industries and state and local government workers within the state of New Mexico. There are no maritime (longshoring, ship building, and ship breaking) industries located in New Mexico. Federal OSHA covers federal workers, Tribal lands, military installations, US Postal Services, and other areas of exclusive federal jurisdiction within the state.

The OHSB continued to experience a high staff turnover rate throughout FY 2024 with an average compliance officer vacancy rate of 37%. The high turnover rate was due in part to compliance and enforcement section expansion, competitive job markets, and staff making career changes. To improve professional recruitment and retention in FY 2024, OHSB completed a comprehensive Appropriate Placement initiative to increase the budget.

In FY 2024, OHSB updated enforcement processes, cross training strategies, and training opportunities to develop new staff. OHSB scheduled over 140 courses and over 4,830 hours of combined OSHA Training Institute (OTI), University of Texas Arlington (UTA) and other supplemental training for enforcement, consultation, compliance assistance, whistleblower protection (WB), and administrative staff, enhancing their abilities to deliver services to the regulated public and keep New Mexico workers safe.

## New Issues

OHSB has made some progress in addressing the previous nine findings and eight observations from the FY 2023 Comprehensive FAME Report but has not resolved these issues entirely. This follow‐up FAME report contains three continued findings and four observations (one new and three continued). The new observation was related the Whistleblower Protection Program. Appendix A describes the continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan.

The new observation involved Whistleblower cases that were Administrative Closure complaints but coded as Docket and Dismiss and closed without a Report of Investigation or Findings, which are needed as Docket and Dismiss.

## Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA has established a two‐year cycle for the FAME process. One year is an on-site comprehensive FAME and the second year is a follow-up FAME. This is the follow‐up year, and except for the whistleblower protection program that performed an on-site audit and reviewed 41 case files, OSHA did not perform an on-site audit. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analysis and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

* State Activity Mandated Measures (SAMM) Report
* 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

## Whistleblower Protection Program

The FAME review included an evaluation of OHSB’s whistleblower protection program, including policy and procedures and investigative files.

## Voluntary Compliance Program

The Cooperative Programs in OHSB are administered under the 23(g)‐grant program. OHSB cooperative programs include five (5) Voluntary Protection Programs (VPP) sites, six (6) Partnerships, and two (2) Alliances.

OHSB’s Voluntary Protection Programs is called the Zia Star Voluntary Protection Programs (VPP). OHSB continued focusing efforts on strengthening the program’s quality and reviewing current VPP participants during the year. OHSB projected an increase of one (1) new VPP site in FY 2024. However, one (1) Zia Star VPP site withdrew from the program due to high injury and illness rates. OSHA encourages OHSB to continue seeking process safety management (PSM) training to ensure that staff maintain their 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 an enforcement incentive to partner employers through a deferral from programmed inspections. 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.

## State and Local Government 23(g) On-Site Consultation Program

The State and Local Government Consultation Program (the Program) conducted twenty-six (26) consultation visits throughout New Mexico, reaching approximately 4,006 workers and impacting many more. Based on their FY 2024 grant proposal, OHSB established a goal of 20 consultation visits, which was exceeded. Through these visits, they identified 230 hazards. OHSB conducted 83 compliance assistance activities targeting state and local government agencies as part of the overall goal of reducing the injury rate.

During the review period, OHSB had 0.5 FTE (full-time equivalent) safety consultants and 0.5 health FTE consultants. In addition, OHSB had 0.2 FTE safety consultant and 0.2 FTE health consultant vacancies. In FY 2024, OHSB’s state and local government consultation program completed 130% (26/20) of its FY 2024 23(g) State Plan Projected Onsite Consultation Visits Goal. Overall, the Program did an excellent job at meeting its FY 2024 23(g) State Plant Projected Onsite Consultation Visits Goal.

OSHA will continue to 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 88% (22/25) 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 employees controlled by the employer). The Program conducted 100% (75/75) of initial visits in establishments with 250 or fewer employees, and 96% (24/25) of initial visits in establishments with 500 or fewer employees controlled by the employer.

The MARC 3 goal is to confer with employees during all initial visits, follow-up visits, and training and education visits. The Program conferred with employees during 100% (25/25) of initial visits, and 100% (1/1) of follow-up visits. It did not conduct any training and education visits in FY 2024.

MARC 4 has several subsections, of which, three have goals. The first is to ensure that 100% of serious hazards are verified as being corrected within 14 days of the original correction due date. The Program had a 100% verification rate (201/201) for identified serious hazards within this time frame. The second goal was to ensure that all serious hazards identified are -timely corrected (>14 days latest correction due date-in original time of onsite). All serious hazards identified were timely corrected. The third goal was to verify correction of at least 65% of serious hazards either on-site or by the original correction due date. Ninety-six percent 96% (191/201) of identified serious hazards were verified as being either corrected on-site or by the original correction due date.

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

## Private Sector 23(g) On-Site Consultation Program

Private sector consultation 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).

## Findings and Observations

The State Plan is continuing to address the nine findings and eight observations from the FY 2023 Comprehensive FAME Report. This follow‐up FAME report contains three continued findings and four observations (one new and three continued). One of the findings from FY 2023 Comprehensive FAME was divided into two findings in FY 2024 to effectively track progress between two SAMM subparts. The new observation was related to the Whistleblower Protection Program. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the Corrective Action Plan for previous findings and observations.

### Completed Findings

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

**Status:** A review of selected sample data from 26 inspection files for FY 2024 was provided as part of the follow up FAME and 100% of the inspections with interviews had documentation to support the contact with the employees. This finding is completed.

**Finding FY 2023‐04:** Unions not contacted: Of the 52 total inspection files reviewed for FY 2023, five inspections involved unions, union representatives were contacted in only three of the inspections.

**Status:** A review of selected sample data from 26 inspection files for FY 2024 was provided as part of the follow-up FAME and 100% of the inspections with unions had documentation to support the contact with the unions. This finding is completed.

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

**Status:** The OHSB WIM was approved on November 25, 2024. Therefore, this finding is completed.

**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.

**Status:** During FY2024 review it was determined OSHB has accepted verbal complaints without the need of a written complaint**.** This finding is completed.

**Finding FY 2023‐07:** 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.

**Status:** During FY 2024, reviewed cases contained evidence of supervisory review and approval. This finding is completed.

**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, partnership verification activities were not 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).

**Status:** During the FY 2024 FAME review, the OIS Compliance Assistance Activities Report, and partnership documents reviewed showed that OHSB conducted thirty-three (33) partnership verification activities. Therefore, this finding is completed.

**Finding FY 2023‐09:** In two out of three (66%) files reviewed, 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.)

**Status:** The FY 2024 FAME review found that in five out of five (100%) casefiles reviewed where employees had a designated employee representative (i.e. union), a closing conference was conducted with employee representatives and the list of hazards was transmitted to union within 20 working days following the closing conference. Therefore, this finding is completed.

### Continued Findings

**Finding FY 2024‐01:** In FY 2024 OHSB conducted 87 (32%) safety inspections out of their projected goal of 175 inspections (SAMM 7a).

**Status:** OHSB did not accomplish their goal of conducting 175 inspections in FY 2024 and were short by 88 inspections. Not meeting the safety inspection goal has been a finding for the last five years and is trending downward for the percentage of inspections conducted. This finding remains open.

**Finding FY 2024‐02:** In FY 2024 OHSB conducted 46 (61%) health inspections out of their projected goal of 75 inspections (SAMM 7b).

**Status:** OHSB did not accomplish their goal of conducting 75 inspections in FY 2024 and were short by 29 inspections. Not meeting the health inspection goal has been a finding for the last five years and is trending downward for the percentage of inspections conducted. This finding remains open.

**Finding FY 2024‐03:** In FY 2024, the average lapse time for safety inspections was 114.64 days and the average lapse time for health inspections was 106.2 days. This exceeded the further review level (FRL) range of 44.82 to 67.23 for safety and 53.77 to 80.65 for health (SAMM 11a and 11b).

**Status:** OHSB exceeded the FRL range for lapse time for safety inspections by 47.21 days and 25.55 days for health. Surpassing the FRL for lapse time for safety and health inspections has been a finding for the last four years and the lapse time is trending upward. This finding remains open.

### New Findings

There were no new Findings in FY 2024.

### Observations

### Closed Observations

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

**Status:** A review of FY 2024 casefiles showed that there was documentation for contact with family members for 3 fatalities selected. This observation is 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.

**Status:** Review during the FY 2024 FAME revealed significant improvement to the case file organization and completeness. This observation is closed.

**Observation 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.).

**Status:** The FY 2024 FAME review found that thirteen of fifteen (86%) casefiles reviewed the Written Reports to the Employer (WRE) included 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 for the employer’s reference. However, please note that in two files reviewed the employer did not maintain injury and illness logs and the BLS industry averages were not provided in the Executive Summary to the employer for reference purposes. Therefore, this finding is closed.

**Observation FY 2023-OB-07:** All 3 of the 3 files reviewed (100%) showed local and state government employers were scored as NE- not evaluated on the Safety and Health Program Assessment Worksheet (Form-33) attributes even though sufficient data had been collected by the consultant.

**Status:** The FY 2024 FAME review found that fifteen of fifteen (100%) casefiles reviewed the (Form-33) contained the evidence to support the consultant’s conclusions and recommendations for the employer’s safety and health management system. In addition, the comments and ratings found on the Form-33s correlated with entries on the OSHA 300 logs and serious hazards identified by the consultant in relation to the deficiencies in the employer’s safety and health program. Therefore, this observation is closed.

**Observation FY 2023-OB-08:** OSHB has experienced some delays in procurement of adequate technical equipment and personal protective equipment (PPE) i.e. (foot protection) for the consultants. Although 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.

**Status:** The FY 2024 FAME review found that consultants and other staff are provided personal protective equipment (PPE) that is easily accessible and available when needed. Consultants are provided with the following PPE: reflective vest, hearing protection, steel toe boots, hard hats (protective helmets and work gloves, flame resistant clothing, prescription safety glasses. Therefore, this observation is closed.

### Continued Observations

**Observation FY 2024-OB-01**: in FY 2024 NM OHSB had 18 safety inspections in which they did not complete abatement within 60 calendar days and eight health inspections in which they did not complete abatement within ninety calendar days (SIR 3a and 3b)

**Status**: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2025 comprehensive FAME. This observation was not evaluated in FY 2024 and will be continued.

**Observation FY 2024-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.

**Status**: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2025 comprehensive FAME. This observation was not evaluated in FY 2024 will be continued.

**Observation FY 2024-03**: In FY 2023, there were 14 valid complaint unprogrammed activities (UPAs) handled as an inspection which have been open for more than 60 calendar days and 157 valid complaints handled as a phone/fax which have been open more than 30 calendar days.

**Status**: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2025 comprehensive FAME. This observation was not evaluated in FY 2024 and will be continued.

### New Observation

**Observation FY 2024-OB-04:** In FY 2024 OHSB closed 7 whisteblower cases determined as Docket and Dismiss. These cases did not contain a Report of Investigation (ROI) nor Findings, which is required per the WIM. The cases appeared to be Administrative Closure complaints and not Docket and Dismiss.

**Federal Monitoring Plan:** During next year’s FAME, a sample of case files will be reviewed to determine if this issue has been fully resolved.

## State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon 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 2024 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

Any SAMMs that were below the FRL were reviewed and addressed accordingly through a finding or observation and discussed in those respective sections. OHSB did have the following highlights for FY 2024, where they exceeded the FRL in a positive way.

SAMM 5a- For inspections with violations, OHSB averaged 2.28 violations per inspection with violation type (SWRU). The 2.28 average number of violations is above the high limit of the FRL at 2.08 and surpassed that high limit by 0.20. This is a positive indicator.

SAMM 8 – OHSB average current serious penalties for private sector from one to 250 workers was $6,183.91 and above the upper end of the FRL at $3793.81. OHSB is issuing violations with higher penalty amounts than the national average and exceeded that category for employees from 26-100, 101-250, and greater than 250. This is a positive indicator.

SAMM 12- OHSB was able to stay near their issued penalty amount and had an 83.37 percent penalty retained average. This was above the high end of the FRL of 81.43%. OHSB has exceeded the national average for retaining the penalty amount issued. This is a positive indicator.

## Appendix A – New and Continued Findings and Recommendations

FY 2024 New Mexico Follow‐up FAME Report

| **FY 2024‐#** | **Finding** | **Recommendation** | **FY 20XX‐# or FY 20XX‐OB‐#** |
| --- | --- | --- | --- |
| FY 2024-01 | In FY 2024, OSHB conducted 87 (32%) safety inspections out of their projected goal of 175 inspections (SAMM 7a). | OSHB should implement a corrective action to ensure yearly safety inspection goals are met. Managers should monitor and adjust if goals are not being met weekly to monthly. | FY 2023-02 |
| FY 2024-02 | In FY 2024, OSHB conducted 46 (61%) health inspections out of their project goal of 75 inspections (SAMM 7b). | OSHB should implement a corrective action to ensure yearly health inspection goals are met. Managers should monitor and adjust if goals are not being met weekly to monthly. | FY 2023-02 |
| FY 2024-03 | In FY 2024, the average lapse time for safety inspections was 114.64 days and the average lapse time for health inspections was 106.20 days. This exceeded the FRL range of 44.1882 to 67.23 for safety and 53.77 to 80.65 for health (SAMM11a and 11b). | OSHB should periodically review all open cases with the compliance officers to prevent high lapse times. | FY 2023-03 |

## Appendix B – Observations Subject to Continued Monitoring

FY 2024 New Mexico Follow‐up FAME Report

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Observation #**  **FY 2024‐OB‐#** | **Observation#**  **FY 20XX‐OB‐# *or* FY 20XX‐#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| FY 2024-OB-01 | FY 2023-OB-01 | OHSB did not complete abatement in eighteen safety inspections more than 60 days and eight health inspections more than 90 days (SIR 3(a) and 3(b)). | OSHA will continue to monitor performance in this area during quarterly meeting and FY 2025 case file review. | Continued |
| FY 2024-OB-02 | FY 2023-OB-02 | 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 a and b combined. | OSHA will continue to partner with the National Office and OIS team to investigate 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: For FY 2025, NM OSHA modified Construction Industry programmed inspections to include only general contractors and any subcontractors whose employees were exposed to hazards observed during walk-around. |
| FY 2024-OB-03 | FY 2023-OB-03 | In FY 2024, there were 14 valid complaints UPAs handled as an inspection which has been open for more than 60 calendar days and 157 number of valid complaints handled as 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 2024-OB-04 |  | In FY 2024, OHSB closed 7 cases determined as Docket and Dismiss. The cases did not contain a Report of Investigation (ROI) nor Findings which is required per the WIM. The cases appeared to be Administrative Closure complaints and not Docket and Dismiss. | OHSB should conduct training with its personnel on Administrative Closures and Docket and Dismiss cases. Docket and Dismiss determinations of complaints should be documented with the applicable determination in OIS. If a complaint is determined to be a Docket and Dismiss it will contain an ROI, Findings and any appropriate documentation. | New |

## Appendix C ‐ Status of FY 2023 Findings and Recommendations

FY 2024 New Mexico Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2023-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date**  **(if Applicable)** | **Current Status**  **(and Date if Not Completed)** |
| 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. | OHSB implemented focused construction inspections to reduce case files without interviews.    OHSB trained compliance officers (COs) to document interviews in OIS narrative.  OHSB will retrain all compliance officers on multiple methods for documenting interviews in OIS. Projected completion: August 30, 2024.  OHSB will complete SIEP reviews of inspection E-Casefiles on a quarterly basis to verify interview documentation. | June 30, 2024        June 30, 2024  October 21, 2024.          Quarterly file review of FY 2024 Q4 was completed on Nov. 6, 2024. The evaluation tool provides Quality Assurance analytics. | Completed  The Management Analysis Team developed a tool to conduct quarterly file reviews. The evaluation tool was developed to allow changes identified in trends and/or formal reviews. Completion date November 15, 2024. |
| 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. | OHSB will increase and retain trained staff to meet inspection goals by holding a 4-day OHSB CO training   1. Appropriate placement of staff salaries. (retention) 2. Retain staff training goals   OHSB modified tasks to increase inspection resources including redistribution of unprogrammed activities.  OHSB will conduct monthly meetings with management, compliance officers and analysts to review program metrics; OHSB will review management analyst (MA) weekly and monthly reports. | February 23, 2024  June 1, 2024  February 23, 2024  July 31, 2024  October 4, 2024 | Open |
| 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. | OHSB trained COs on the use of timed milestones to reduce citation lapse times.  OHSB developed and implemented casefile documentation SOP with timed events/ inspection casefile milestones appendix to be followed by staff including COs for inspections; compliance supervisors (CSs), Compliance Program Manager (CPM), and Bureau Chief (BC) for citation issuance.  OHSB conducted weekly CS Meetings with CPM and BC to review and prioritize case completion.  OHSB will provide additional staff training on updated casefile procedures. Projected completion: August 30, 2024.  OHSB will modify UPA procedures and redistribute tasks to provide additional time focused on case file completion. Projected completion: September 30, 2024.  OHSB developed and implemented new E-Casefile order, format, naming and archive methods.    OHSB will conduct monthly compliance staff meetings to provide updates and review program procedures, methods, and directives. Projected completion: 9/30/2024.    OHSB will use MA weekly and monthly reports to review program and individual CO performance.  Projected completion: September 30, 2024.    OHSB anticipates completion of projects to reduce lapse times to within FRL by September 30, 2025. | March 21, 2024  March 21, 2024                July 31, 2024  July 3, 2024    UPA procedure modification  August 9, 2024,  ESS-B positions have been filled; Start dates of Dec. 7, 2024 & Jan. 4, 2025  July 3, 2024        September 4, 2024.  September 23, 2024  July 3, 2024 | Open  Two ESS-B positions created Hiring in process. |
| 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. | Retrain Compliance Officers to include Union Representatives in the inspection walkaround to reinforce training provided in FY2023. Projected completion: September 30,2024.    OHSB will modify inspection checklist to include data field to capture union representative name and contact information. Projected completion: September 30,2024.    OHSB will conduct multi-level reviews of case files by staff, management and analysts. Projected completion: October 30, 2024. | October 4, 2024        Oct. 31, 2024        Nov. 6. 2024. | Completed  FY24 Q1 quarterly file scheduled for Nov. 4-6th. Analysts will review files utilizing a new monitoring tool. |
| 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 FY 2023. | If OHSB adopts their draft manual in FY 2024, this finding will be fully addressed and will be removed on the FY 2024 FAME. | NM staff currently use the draft WIM as guidance for investigations with approval from Bureau Chief.  Draft WIM sent to federal review team and approved for use.  OHSB completed a draft WIM aligned with CPL 02-03-011 and New Mexico statute.  The draft NM WIM has been sent to OGC for legal review.  OHSB officially adopts WIM for use by investigative staff. | October 30, 2023    November 13, 2024  August 9, 2024  October 11, 2024  Nov. 26, 2024. | Completed |
| 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. | OHSB updated procedures in the draft New Mexico WIM to accept complaints in conformance with federal programs. NM staff currently use the draft WIM as guidance for investigations with approval from Bureau Chief.  Draft WIM sent to federal review team and approved for use.  OHSB completed a draft WIM aligned with CPL 02-03-011 and New Mexico statute.  The draft NM WIM has been sent to OGC for legal review.  OHSB officially adopts WIM for use by investigative staff. | October 30, 2023  November 13, 2023  August 9, 2024  October 11, 2024  Nov. 26, 2024. Legal review complete; OHSB adopts WIM for WB investigations. | Completed |
| 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 FY 2024, this finding may be considered for removal in the FY 2024 FAME Review. | OHSB revised its organizational structure to include a direct WB supervisor and an additional investigator position. Since this change all admin closures and docketing requests have been reviewed by a supervisor. | August 1, 2023, | Completed |
| 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. | OHSB updated compliance assistance specialist OIS user access and verification activity reporting.    OHSB assigned a business operations specialist to assist with OIS updates on activities.    OHSB will complete OIS updates for 4th quarter FY2024 verification activities. Projected completion: October 30, 2024.    MA staff will provide quarterly compliance assistance activity reports for strategic/ construction partnerships. Projected completion: October 30, 2024. | July 1, 2024  July 1, 2024  Nov. 18, 2024.  CAS activities for Strategic Partnership for Construction have been entered for FY24.  Nov. 18, 2024. Administrative staff have been assigned to assist with Compliance Assistance Activities. | Completed |
| 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). | NM OHSB added union representation fields to the consultation request forms and the casefile protocol checklist to ensure union information is captured and updated in the OIS. Changes to the forms and checklist and union notification, including sending the list of hazards to a union official, were reviewed individually with consultants and discussed in team meetings. | March 1, 2024 | Completed |

## Appendix D – FY 2024 State Activity Mandated Measures (SAMM) Report

FY 2024 New Mexico Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 5.73 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 3.85 | 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) | 2.71 | 0 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | 0.53 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | N/A | 100% | The further review level is fixed for all State Plans. The State Plan did not receive any imminent danger complaints in FY 2024. |
| 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) | 2.28 | +/- 20% of 1.74 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.39 to 2.08 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.51 | +/- 20% of 0.94 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75 to 1.12 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 16.54% | +/- 5% of  Grant 9.71% | 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 9.23% to 10.20%. |
| 7a | Planned v. actual inspections (safety) | 87 | +/- 5% of  Grant 275 | 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 261 to 289 for safety. |
| 7b | Planned v. actual inspections (health) | 46 | +/- 5% of  Grant 75 | 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 71 to 79 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $6,183.91 | +/- 25% of  $3,793.81 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,845.36 to $4,742.27. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $3,362.00 | +/- 25% of  $2,498.51 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,873.88 to $3,123.14. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $7,512.84 | +/- 25% of  $4,322.61 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,241.96 to $5,403.26. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $8,361.03 | +/- 25% of  $6,114.84 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,586.13 to $7,643.55. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $10,692.28 | +/- 25% of  $7,533.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,650.19 to $9,416.98. |
| 9a | Percent in compliance (safety) | 35.48% | +/- 20% of  32.83% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 26.27% to 39.40% for safety. |
| 9b | Percent in compliance (health) | 15.63% | +/- 20% of  44.18% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.34% to 53.01% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 85.71% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 114.64 | +/- 20% of 56.02 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.82 to 67.23for safety. |
| 11b | Average lapse time (health) | 106.20 | +/- 20% of 67.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 53.77 to 80.65 for health. |
| 12 | Percent penalty retained | 83.37% | +/- 15% of  70.81% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 60.19% to 81.44%. |
| 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 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 17 | Percent of enforcement presence | 0.31% | +/- 25% of  1.00% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75% to 1.25%. |

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 12, 2024, as part of OSHA’s official end-of-year data run.