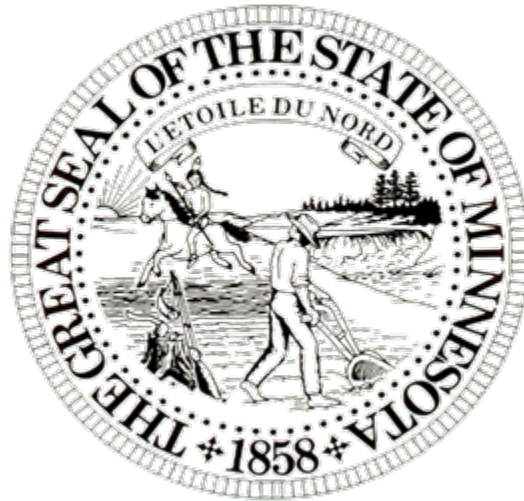


# **FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

**State of Minnesota**

**Minnesota Department of Labor and Industry  
Occupational Safety and Health Division**



**Evaluation Period: October 1, 2020 – September 30, 2021**

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## Contents

I.	Executive Summary.....	3
II.	State Plan Background .....	4
	A. Background .....	4
	B. New Issues.....	4
III.	Assessment of State Plan Performance .....	4
	A. Data and Methodology .....	4
	B. Review of State Plan Performance .....	5
	1. Program Administration .....	5
	2. Enforcement .....	7
	3. Review Procedures .....	13
	4. Standards and Federal Program Changes (FPCs) Adoption .....	14
	5. Variances .....	17
	6. State and Local Government Worker Program .....	18
	7. Whistleblower Program.....	18
	8. Complaint About State Program Administration (CASPA).....	22
	9. Voluntary Compliance Program.....	22
	10. State and Local Government 23(g) On-Site Consultation Program.....	23

## Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans .....	B-1
Appendix C – Status of FY 2020 Findings and Recommendations.....	C-1
Appendix D – FY 2021 State Activity Mandated Measures (SAMM) Report.....	D-1

## I. Executive Summary

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the State Plan's performance for Fiscal Year (FY) 2021 and its progress in resolving outstanding findings from previous FAME reports. This report assesses the current performance of the Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) 23(g) compliance program in the context of agreed upon monitoring measures.

A detailed explanation of the findings and recommendations of the MNOSHA performance evaluation is found in Section III, Assessment of State Plan Progress and Performance. The FY 2020 Follow-up FAME identified six continued observations. In this report, five have been closed and one has been converted to a finding due to the longevity of the concern. One new finding and three new observations have been identified. Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans.

The Minnesota Occupational Safety and Health Strategic Management Plan for FY 2019 to FY 2023 established three strategic goals: 1) Reduce occupational hazards through compliance inspections; 2) Promote a safety and health culture through compliance assistance, outreach, cooperative programs, and strong leadership; and 3) Strengthen and improve MNOSHA's infrastructure. The FY 2021 Performance Plan provided the framework for accomplishing the goals of the strategic plan by establishing specific performance goals for FY 2021. Notably, MNOSHA reduced their overall inspection projection from 1,700 to 1,200 inspections after completing 1,419 inspections during FY 2020 due to the SARS-CoV-2 (COVID-19) pandemic which was anticipated to continue in FY 2021. MNOSHA has also been working diligently to hire and train new staff to fill vacancies resulting from promotions and retirements and to build back up staffing levels that had waned due to increased personnel costs and stagnant funding levels in past years.

In the FY 2021 State OSHA Annual Report (SOAR), MNOSHA provided information that outlines their accomplishment of meeting their Five-Year Strategic Management Plan. The information has been reviewed and analyzed to assess their progress in meeting performance plan goals. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, ten of 15 annual performance goals have been met or exceeded. Goals not met during the year included reductions in the five-year average total recordable case and fatality rates, percent programmed inspections, and gaining an additional MNSTAR participant. The number of people attending outreach and training events has been lower than projected throughout the current strategic plan with no discernible cause. MNOSHA has provided crucial information to employers and employees on workplace safety and the COVID-19 pandemic.

Minnesota's estimated workplace injury and illness rate remains near its lowest rate since the measurements started in 1973. According to the annual Survey of Occupational Injuries and Illnesses, the state had an estimated 3.5 OSHA-recordable nonfatal workplace injuries and illnesses per 100 full-time equivalent (FTE) workers in 2020. The estimated rate for 2019 was 3.2 cases, the lowest rate ever recorded.

Quarterly monitoring team meetings were held during FY 2021, at which time the State Activity Mandated Measures (SAMM) reports and the State Indicators Reports (SIR) were reviewed and discussed with MNOSHA compliance staff. The FY 2021 SAMM is Appendix D of this report.

## II. State Plan Background

### A. Background

The Minnesota Department of Labor and Industry (DLI) administers the MNOSHA program. The program began operating on August 1, 1973, with final State Plan approval obtained on July 30, 1985. MNOSHA includes the Occupational Safety and Health (OSH) Compliance Division, which is responsible for compliance program administration (conducting enforcement inspections in the private sector and in state and local government agencies, adoption of standards, and operation of other related OSHA activities), and the Workplace Safety Consultation (WSC) Division, which provides free consultation services upon request to help employers prevent workplace accidents and diseases by identifying and correcting safety and health hazards.

MNOSHA's mission is "to ensure every worker in the State of Minnesota has a safe and healthful workplace." This mandate involves the application of a set of tools by MNOSHA, including standards development, enforcement, compliance assistance, and outreach, which enables employers to maintain safe and healthful workplaces.

Roslyn Robertson has served as DLI Commissioner since August 13, 2020. Mr. James Krueger is the Director of the OSH Compliance Division and Mr. Ryan Nosan is the Director of the WSC Division within DLI. The FY 2021 grant included funding totaling \$9,687,254 and full-time equivalent (FTE) staffing of 71.12 positions. The State Plan's expected staffing level is 31 safety investigators and 12 health investigators. MNOSHA allocated funding for 33.95 safety and 13.92 health positions.

### B. New Issues

None.

## III. Assessment of State Plan Progress and Performance

### A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A four-person team, which included a whistleblower supervisor, was assembled to conduct a virtual on-site case file review during the timeframe of February 22 – March 1, 2022. The review was held remotely due to travel restrictions and social distancing requirements in place for the coronavirus pandemic. A total of 125 safety, health, and whistleblower protection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2020, through September 30, 2021). The selected population included:

- Twenty (20) fatality case files
- Nine (9) complaint inspection case files
- Fifty-six (56) programmed and unprogrammed inspection case files
- Twenty-five (25) whistleblower case files
- Fifteen (15) phone/fax complaint and referral 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 OSHA Annual Report
- 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 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 2021 State Activity Mandated Measures Report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

The MNOSHA Strategic Management Plan aligns closely with OSHA's initiatives. The plan serves as a mechanism for communicating a shared set of expectations regarding the results that MNOSHA expects to achieve and the strategies that it will use to achieve them. MNOSHA will adjust the plan as circumstances necessitate, use it to develop the annual Grant Application and Performance Plan, report on progress in annual performance reports, and monitor program accountability for achieving the goals and outcomes.

#### **a) Training**

MNOSHA has developed and implemented its own training program outlined in ADM 5.1 MNOSHA Investigator and Consultant Training Plan. A training and outreach director manages the training program. The training plan is comprehensive in nature, covering not only the information needed to conduct enforcement activities, but the routine administrative functions of MNOSHA. The equivalent of OSHA's Initial Compliance and Legal Aspects courses are covered at the state level. This facilitates and reinforces MNOSHA's policies and procedures for conducting an inspection and developing a legally sufficient case for the state. MNOSHA also provides training to develop soft skills, including conflict resolution, interviewing/investigation, organization, presentation, creating training techniques, and time management. The training instruction identifies the responsible party for conducting various aspects of the training and the period in which the training is completed. Some of the training is provided on line.

In addition to MNOSHA's internal training program, investigators attend courses at the OSHA Training Institute (OTI) to obtain specific instruction based on discipline and need. During FY 2021, three courses were attended through OTI covering respiratory protection, written communication, and interviewing techniques. Additionally, internal training topics included: ammonia refrigeration, asbestos, right to know, foundries, agriculture, grain handling facilities,

healthcare emergency temporary standard, face coverings, phones and language line, de-escalation, documentation, case law, litigation holds, telework, and self protection.

b) OSHA Information System

Minnesota uses Informix-based software for enforcement information management and data processing, which is called MOOSE, for MNOSHA Operations System Exchange. It provides MNOSHA with real time information and data processing. At the start of FY 2016, MOOSE began interfacing with the OSHA Information System (OIS). Management reports, equivalent to those available from OIS, are used by MNOSHA management to track complaints, accidents, assignments, inspections, abatement, debt collection, and other issues of interest.

MNOSHA operates as paperless as possible. The use of MOOSE is integral to the process. Complaint and fatality intake, assignments, case file processing, and many other operations are performed in MOOSE. Data is entered into the system in a timely manner.

Similar to OIS, MOOSE allows the user to generate form letters which may then be printed, signed, and mailed to the recipient. Although MOOSE acts as MNOSHA's electronic case file, signed letters are not routinely saved back into the system. Within the case files reviewed for FY 2021: twenty-five (25) no citation letters to the employer, four inspection results letters to the complainant, 16 letters to next-of kin, two penalty letters to the employer, four receipt of letter of contest confirmations, one petition for modification of abatement letter, and ten nonformal complaint/referral letters were not saved final in MOOSE with a signature.

**Observation FY 2021-OB-01:** Within the case files reviewed for FY 2021, letters to the employer, complainant, and next-of-kin were not routinely saved in MOOSE as final with a signature.

**Federal Monitoring Plan FY 2021-OB-01:** OSHA will discuss and evaluate MNOSHA's progress on this topic during quarterly monitoring meetings.

c) State Internal Evaluation Program Report

MNOSHA established goal #3 in their FY 2019 to FY 2023 Five-Year Strategic Management Plan as their workplace plan to address the state's internal evaluation program (SIEP). Projected Fiscal Year plans are identified in the program's annual grant applications. Summaries of the program's achievements in relation to their plan are provided in the SOAR.

MNOSHA reviews the rules for effectiveness, which include ongoing evaluation and development of rules, standards, guidelines, and procedures, including the following eight-step process for workplace development and retention planning:

1. Environmental Scanning
2. Organizational Analysis
3. Identify Target Areas
4. Current Workforce Analysis
5. Future Workplace Analysis
6. Gap Analysis and Strategy Development
7. Develop and Implement an Action Plan and Communication Strategy

## 8. Monitor Plan and Evaluate Results

MNOSHA's Compliance Directives Coordination Team (DCT) is charged with coordinating and managing the MNOSHA internal information system. The DCT consists of three management analysts and two management representatives. This group monitors federal standard/policy activity and coordinates updates to all relevant MNOSHA standards, directives, and policies accordingly. MNOSHA adopts federal standards by reference and/or develops Minnesota specific standards when necessary to support MNOSHA program goals. During FY 2021, 26 MNOSHA directives were revised and issued to staff. One new directive was issued entitled, Inspection Procedures for COVID-19 ETS.

MNOSHA utilizes extensively trained and experienced investigative staff to conduct internal reviews to ensure the MNOSHA program continues to follow the requirements of the OSHA program. The group holds board meetings to discuss cases throughout the inspection process, holds informal conferences with employers, addresses abatement, and provides feedback to staff. Internal performance is a monthly agenda item at OSHA Management Team (OMT) meetings, whereby reports are generated to facilitate review of the internal program components.

MNOSHA's supervisors conduct on-site quality assurance inspections with the investigators to ensure hazards are sufficiently documented and to coach investigators on hazards or industries that they may be less familiar.

### d) Staffing

Management and administration of the OSH Compliance Division is the responsibility of the OSHA Management Team (OMT). The OMT includes the compliance director, the training / outreach / partnerships director, and nine supervisors. The total complement of the OSH Compliance Division was 70.25 FTE for FY 2020 and 71.12 FTE for FY 2021.

For FY 2021, the benchmark for safety was 31 positions with 28.95 positions (93%) filled. The benchmark for health was 12 positions with 13.92 positions filled (116% of the benchmark).

MNOSHA typically has two safety and health professionals on duty to answer questions received primarily through phone calls and e-mails. The information requested covers a wide variety of topics, which is why MNOSHA continues to use investigative staff to answer a majority of the calls. During FY 2021, the task was completed by four to ten individuals each day due to the large volume of pandemic related inquiries and MNOSHA's continued commitment to respond within one day.

## 2. ENFORCEMENT

During FY 2021, MNOSHA conducted 1,219 inspections: 1,030 safety and 189 health. Of those, 787 were programmed, 285 were complaints and referrals, and eight were follow-ups. The total number of inspections decreased 14% from 1,419 in FY 2020 yet exceeded the projected 1,200 inspections for FY 2021. MNOSHA conducted 107% of the projected safety inspections and 79% of the projected health inspections. Considering the continued COVID-19 pandemic during FY 2021, this metric does not yet rise to the level of an observation. (Source: SAMM and SIR reports dated November 8, 2021, and Inspection Summary report dated March 7, 2022)

## a) Complaints

During FY 2021, MNOSHA received 1,363 complaints, of which 246 (18%) were formal and 1,117 (82%) were nonformal. The average number of days to initiate a complaint inspection in FY 2021 was 2.73, well below the negotiated standard of nine days. The average number of days to initiate a complaint investigation was 0.72, below the negotiated standard of two days. OSHA randomly selected 9 formal complaint inspections and 15 nonformal complaint and referral investigations for review during this evaluation of the MNOSHA program.

MNOSHA has its own complaint process specified in ADM 3.16 Administrative Procedures for Handling Complaints and Information Requests. The directive outlines the policies and procedures for processing formal and nonformal complaints.

MNOSHA considers electronic complaints obtained through the federal complaint system as formal complaints if the individual indicates they are a current employee or employee representative, and an electronic signature is provided. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items. In some instances, the complainant may elect to process the complaint nonformally to address the issue, such as in sanitation complaints or complaints with low severity.

Following complaint inspections by OSHA, complainants are mailed a letter informing them of the inspection and indicating whether citations were issued. The letter addresses each complaint item with reference to the enclosed citation or a sufficiently detailed explanation of why a citation was not issued. On September 12, 2016, Minnesota Rule 5210.0530 was adopted, directing MNOSHA to mail a copy of the citation to the complainant in a complaint inspection. In the cover letter, complainants are also invited to contact the investigator with any questions they may have regarding the inspection.

MNOSHA has declined to provide information to complainants by email due to their data practice requirement for the attached letter to be encrypted. MNOSHA has found this to be confusing to complainants. Rather, MNOSHA will attempt to obtain a mailing address from the complainant. Two of the 13 (15%) onsite complaint inspections reviewed for FY 2019 lacked evidence/documentation that the result of the inspection was mailed to the mailing address provided by the complainant. Subsequently, five of the nine (56%) onsite complaint inspections reviewed for FY 2021 lacked evidence/documentation that an attempt was made to obtain a mailing address from the complainant and/or the complainant was informed that information would not be provided by email.

MNOSHA's nonformal complaint processing also differs from the federal program as it relates to the outcome of nonformal complaint investigations. Chapter 9 of OSHA's Field Operations Manual (FOM) contains the requirement to advise the complainant of the employer's response, as well as the complainant's right to dispute that response, and if the alleged hazard persists, of the right to request an inspection. MNOSHA does not send a letter to the complainant at the conclusion of the investigation to inform them of the outcome. MNOSHA's acknowledgement letter to the complainant includes information regarding how a complainant may obtain a copy of the employer's response after the complaint is closed and becomes releasable as a public record.

MNOSHA receives approximately 750 to 1,000 complaints filed through OSHA's website each year. Complainants are required to enter an email address in the online complaint form.



Providing a mailing address is optional. However, the complainant is not informed that they will not receive correspondence from MNOSHA without one. As previously explained, MNOSHA has declined to send letters to complainants by email. MNOSHA is encouraged to be diligent in attempting to obtain a mailing address from the complainant and in documenting when the attempts are unsuccessful to ensure the complainant has been provided the opportunity to be informed.

On March 16, 2015, Minnesota adopted the revisions to 29 CFR 1904.39 requiring an employer to report work-related hospitalizations, amputations, and losses of an eye. MNOSHA modified ADM 3.16 to incorporate the employer reports of injuries and illnesses. ADM 3.16 contains a flow chart with the criteria to be used in determining whether an inspection is conducted. If a determination is made to conduct an inspection, it is done in accordance with ADM 3.18 Serious Injury Inspection Procedures. Reports of serious injuries and illnesses that are not inspected are handled similarly to nonformal complaints as outlined in ADM 3.16.

**Finding FY 2021-01 (Observation FY 2020-OB-01):** Five of the nine (56%) onsite complaint inspections reviewed for FY 2021 lacked evidence/documentation that an attempt was made to obtain a mailing address from the complainant and/or that the complainant was informed information would not be provided by email.

**Recommendation FY 2021-01:** Attempt to obtain a mailing address from the complainant and inform the complainant information will not be provided by email, and document when the attempts are unsuccessful to ensure the complainant has been provided the opportunity to be informed.

#### b) Fatalities

A total of 33 fatalities were inspected by MNOSHA in FY 2021, up from 29 during the previous year. DLI's Injury Notification Template is provided to OSHA for information and tracking of all fatalities. All but one of the 20 closed fatality cases reviewed were responded to within one day. In one case, an error was made in evaluating jurisdiction on a roadway project.

Fatality information is recorded in MNOSHA's MOOSE. All fatalities are entered into the Fatality/Serious Injury Log. A supervisor who determines if the fatality falls within MNOSHA's jurisdiction reviews each entry. The supervisor can assign a fatality for inspection from the log, at which time an Accident/Event record is generated. When jurisdiction cannot be determined from the initial information, an inspection is opened. In fourteen of the cases during the FY 2019 review, MNOSHA changed the inspection scope to 'no inspection' after a determination was made that MNOSHA did not have jurisdiction. In four of the fourteen cases, inspection activity was completed prior to receiving information from the coroner or medical examiner indicating the death was not work-related. MNOSHA changed the scope to 'no inspection' even when onsite activity had taken place, interviews were conducted, and/or evidence was collected. MNOSHA's policy is to change the scope to avoid skewing fatality data collected nationwide. In four of the 24 (17%) fatality case files reviewed, additional information was not obtained and/or considered before terminating the investigation and changing the inspection scope to no inspection. A similar concern was not found by the FY 2021 review team. Consequently, Observation FY 2020-OB-02 is closed.

In the fatality inspection case files reviewed, when the State Plan was not timely notified of a work-related death, the employer was cited for not reporting within eight hours.

Minn. Stat. 182.6545 requires MNOSHA make reasonable efforts to locate a deceased employee's next-of-kin and to mail them copies of the following documents related to the investigation:

- Citations and notification of penalty
- Notices of hearings
- Complaints and answers
- Settlement agreements
- Orders and decisions
- Notice of appeals

Under the statute, the next-of-kin also has the right to request a consultation with DLI regarding citations and notifications of penalties issued as a result of the investigation of the employee's death.

MNOSHA Instruction ADM 3.19 Fatality Investigation Procedures requires a condolence letter be sent to the next-of-kin. After issuance of the initial letter, MNOSHA generally does not attempt to communicate with the next-of-kin unless they contact MNOSHA. Contact is kept at the supervisory/management level. In two of the 24 (8%) fatality cases reviewed for FY 2019, a letter to the next-of-kin contained an error. One next-of-kin was notified there were no citations issued and was later sent a second letter that indicated there were citations issued. In the second case, the familial relationship was reversed when the letter referred to the death of a father rather than a son. In one of the 24 (4%) fatality cases reviewed, a letter was not sent to the next-of-kin. The FY 2021 review team found no errors in letters to the next-of-kin. Consequently, Observation FY 2020-OB-03 is closed.

#### c) Targeting and Programmed Inspections

MNOSHA focuses its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. MNOSHA has a specific administrative instruction that outlines its policies for inspection targeting annually, ADM 2.1 Scheduling Plan for Programmed Inspections. During FY 2021, approximately 65% of MNOSHA's 1,219 inspections were programmed, which was less than the projected 82%. However, 95% of all programmed inspections were conducted in the emphasis industries which far exceeded their goal of 65%.

MNOSHA has developed targeting lists to address Strategic Management Plan hazards and specific industries during programmed inspections. MNOSHA's program administration unit is responsible for collecting data and developing targeting lists for inspection under the various national and local emphasis programs.

MNOSHA participates in several national emphasis programs (NEPs), which include amputations, combustible dust, lead, process safety management (PSM) – ammonia, refinery and ethanol, respirable crystalline silica, construction planning guide, and trenching.

MNOSHA utilized data from Minnesota's Department of Employment and Economic Development to develop a local planning guide. Employers with SIC/NAICS codes identified in

the state's Strategic Management Plan receive priority for an inspection. Other local emphasis programs (LEPs) include, but are not limited to: foundries, healthcare, meat packing, serious injury, grain facilities, agriculture, hexavalent chromium, isocyanates, schools and other state and local governments, injury tracking application, and investigator-observed imminent danger.

MNOSHA's procedures for scheduling construction inspections are also outlined in MNOSHA's ADM 2.1. The primary scheduling methods for construction inspections are a Dodge list of the major projects in the state and activity generated inspections. Under the activity generated inspections LEP, an inspection may be opened if the site has at least one of the following activities being conducted (safety or health): demolition/renovation work; visible airborne dust; lined dumpsters; use of torches or applying open flame heat; internal combustion engines inside a structure; removal of exterior materials using dry methods; shrouded water tower or bridge work; frequent use of saws, grinders, or jackhammers; structures greater than 30 feet; buildings of greater than two stories or 20 feet in height; buildings of greater than 5,000 square feet; cranes in operation; multiple equipment (at least one earth moving); and roofing work with greater than 14 feet eave to lower level or 20 feet fall potential.

Of the 787 programmed inspections opened in FY 2021, 781 were coded as programmed planned, while six were coded as programmed related.

The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 31.65%, which equals a range of 25.32% to 37.98%. The MNOSHA State Plan's percent in-compliance for safety is 40.06%, which is higher than the FRL. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 40.64%, which equals a range of 32.51% to 48.77%. The MNOSHA State Plan's percent in-compliance for health is also higher than the expected range at 53.85%. During FY 2021, MNOSHA continued to experience a high frequency of imminent danger complaints in the construction industry. Approximately 72% of COVID-19 related inspections were in-compliance. Therefore, this metric does not yet rise to the level of a finding.

#### d) Citations and Penalties

In MNOSHA's Field Compliance Manual (FCM), Chapters 5 and 6 contain the requirements and policies for citations and penalties, respectively. The citations and penalties proposed for issuance are reviewed at multiple levels in MNOSHA's management system prior to issuance.

During FY 2021, MNOSHA investigators conducted 1,219 inspections where 1,672 hazards were identified and cited. Fifty-eight percent (58%) of the inspections resulted in violations and 72% of those violations were classified as serious. The average number of serious/willful/repeat violations per inspection was 1.83. In ten of the 85 (12%) inspection files reviewed, information in the file appeared to show one or more items were not proposed for citation issuance, and no information was present to explain why a citation item was not appropriate.

The average current penalty per serious violation in the private sector during FY 2021 was \$1,340.31 (SAMM 8: 1-250+ workers). The FRL is -25% of the three-year national average (\$3,100.37), which equals \$2,325.28. Penalty levels are at the core of effective enforcement, and State Plans are therefore required to adopt penalty policies and procedures that are "at least as effective as" (ALAE) those contained in the FOM, Chapter 6 – Penalties and Debt Collection. The Minnesota State Plan has not yet completed the legislative changes to increase maximum

penalties. This topic is addressed further under Standards and Federal Program Change (FPC) Adoption below.

**Observation FY 2021-OB-01:** In ten of the 85 (12%) inspection files reviewed, information in the file appeared to show one or more items were not proposed for citation issuance, and no information was present to explain why a citation item was not appropriate.

**Federal Monitoring Plan FY 2021-OB-01:** OSHA will discuss and evaluate MNOSHA's internal audits conducted in this area during quarterly monitoring meetings.

e) Abatement

MNOSHA continues to focus on abatement verification, in particular the number of cases more than 30 days past their abatement date.

MNOSHA has a management system in place to control past due abatement. MNOSHA ADM 3.4 Abatement Verification includes definitions for certification of abatement and documentation of abatement, as well as guidance on when each type of abatement verification is required. Identical to OSHA, MNOSHA's abatement documentation standard (5210.0532 subp. 3) and ADM 3.4 require abatement documentation, such as written, video graphic, or photographic evidence in certain circumstances. When abatement documentation is necessary, MNOSHA identifies this requirement in the citations. During the FY 2019 review, the abatement certification provided by the employer was not adequate to close the case in two of eight (25%) health inspection files with citations. In one case, the employer simply stated, "corrected." In the second case, the action taken did not abate the cited violation. No similar instances were found during the current review period. Consequently, Observation FY 2020-OB-04 is closed.

A violation can be considered corrected during the inspection (CDI) when the investigator observes the correction to the specific violation while onsite. Additionally, OSHA requires that the violation worksheet contains information on how the violation was abated. This policy is outlined in the FOM. During the FY 2021 review, no concerns were noted with the use of CDI to close abatement.

MNOSHA's regulations and written procedures for Petitions for Modification of Abatement Dates (PMA) are equivalent to federal regulations and procedures.

MNOSHA's follow-up inspection policy is slightly different from OSHA's. In addition to follow-ups being scheduled for inspections as the result of an employer's failure to submit timely progress reports outlining abatement, or when the investigator recommends a follow-up inspection, MNOSHA identifies specific citation outliers. In Minnesota, a follow-up inspection may be scheduled when an inspection results in at least five citations that are serious, willful, or repeat and are not immediately abated, with at least one citation rated in greater severity and probability.

MNOSHA's evaluation and decision regarding the reason to conduct a follow-up inspection was not noted in the one follow-up inspection reviewed for FY 2021.

f) Worker and Union Involvement

Minnesota Statute 182.659 and Chapter 3 of the MNOSHA Field Compliance Manual (FCM) contain requirements and policies for the investigator to involve employees and employee representatives during the inspection. This includes the opening conference, walk around, and closing conference. The narrative and violation worksheets in the case files reviewed for FY 2021 contained descriptions of information from workers relating to violations. However, field notes contained minimal information documented at the time of interviews in 18 of the 85 (21%) inspection files reviewed. In some cases, the information was limited to employee name, title, and union local number.

Chapter 1 of the MOOSE Manual for Inspection Files contains instructions to indicate contact with the union representative(s) or explain their absence. In cases where citations are issued, the authorized employee representatives are also mailed a copy of the citation. In five of the 25 (20%) FY 2019 files reviewed where employee representation applied, participation by a representative and/or mailing a copy of the citation to the representative were not consistently documented. In all 14 of the inspection files reviewed for FY 2021 where employee representation applied, the extent of participation was documented including when the representative was not available during the inspection. Consequently, Observation FY 2020-OB-05 is closed.

In accordance with MN Stat.182.661 and Minnesota Rules Chapter 5210, employers, employees, and authorized employee representatives have 20 calendar days from the date of receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty, and/or abatement date. The statute further requires that the notice be filed on a form provided by the Commissioner and that the contesting parties serve a copy of the notice on affected employees.

Additionally, Minnesota Rule 5210.0573 permits an employer, affected employees, or authorized representatives to request party status if one of the other parties contests the citation. Employees and authorized representatives are informed of this process on the Employee Notice of Contest form. By obtaining party status, affected workers or authorized representatives are involved in informal and formal settlements and formal hearings.

**Observation FY 2021-OB-03:** Field notes contained minimal information documented at the time of employee interviews in 18 of the 85 (21%) inspection files reviewed.

**Federal Monitoring Plan FY 2021-OB-03:** OSHA will discuss and evaluate MNOSHA's internal audits conducted in this area during quarterly monitoring meetings.

### 3. REVIEW PROCEDURES

a) Informal Conferences

MNOSHA's review procedures are organized slightly differently than the OSHA program. Instead of conducting an informal conference before the expiration of the contest period, a citation must be contested before an informal conference is held. As previously noted, employers, employees, and authorized employee representatives have 20 calendar days from the date of

receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty, and/or abatement date. The notice must be filed on a form provided by the Commissioner and contesting parties must serve a copy of the notice on affected employees.

MNOSHA has developed three official forms for an employer or employee to use when filing a notice of contest. Forms are mailed to the employer with the citation package when the citation notice is issued. The Employee Notice of Contest form is sent to the employer when an employee contest letter is received. The employee contest date is considered the date the original letter of contest is received by MNOSHA from an employee.

#### b) Formal Review of Citations

After receiving the properly filed notice of contest, MNOSHA will attempt to meet with the contesting party to discuss relevant matters pertaining to the conduct of the inspection, citations, means of correction, penalties, abatement dates, and safety and health programs. After the informal conference, recommended changes to the original citation will be accomplished through a Settlement Agreement and Order prepared by MNOSHA's legal counsel or the matter may be referred for hearing.

MNOSHA's management or principal investigator discusses interim worker protection measures with employers during settlement conferences prior to entering into an agreement where abatement dates are extended. Abatement information is included in the informal conference memorandum prepared following the conference.

MNOSHA's management or principal investigator also discusses penalty reduction and reclassification reasoning with employers during settlement conferences and documents the reasons for the changes in the memorandum. In the cases reviewed during the FY 2019 audit, a majority of the changes were penalty reductions for settlement purposes. The FRL for percent penalty retained is +/- 15% of the three-year national average of 69.08%, which equals a range of 58.72% to 79.44%. The Minnesota State Plan retained 91.13% of penalties, which is well above the FRL and a positive outcome.

## 4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

### a) Standards Adoption

During FY 2020 and FY 2021, five applicable standards were required to be adopted, including the annual adjustments to civil penalties, Beryllium, and COVID-19 Emergency Temporary Standard. Two final rules were not required to be adopted covering OSHA access to employee medical records and cranes and derricks in construction.

#### **Adoption of Maximum and Minimum Penalty Increases**

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See [81 FR 43429](#). As required by law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2022-01-13/2022-annual->

[adjustments-osh-civil-penalties; 87 FR 2328](#) (Jan. 14, 2022).

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHA's per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017.

MNOSHA State Plan is required to adopt maximum and minimum penalty increases that are at least as effective as the Agency's most recent increase issued in January 2022, without further delay. OSHA recognizes that the state has needed to implement legislative changes before this adoption can be completed. However, we are now five years past the initial adoption deadline. A letter to the MNOSHA State Plan informing that failure to adopt these increases would very likely result in a FAME finding and requesting that the State Plan respond with an action plan for completing the necessary legislative changes, was sent on September 3, 2021.

MNOSHA State Plan responded on October 1, 2021. This response included the following action plan: The Department of Labor and Industry (DLI) will continue to work with the legislature to pass the penalty conformance bill that was introduced in the 2020 legislative session. As of the writing of this report, the Commissioner of DLI has reached out to key members of the legislature to get a head start on passing the bill in this year's legislative session beginning January 31, 2022. Until an at least as effective maximum and minimum penalty levels are adopted, the following finding will remain open.

**Finding FY 2021-02:** MNOSHA State Plan has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Recommendation FY 2021-02:** MNOSHA State Plan should work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA's maximum and minimum penalty levels.

**Table A**  
**Status of FY 2020 and FY 2021 Federal Standards Adoption**

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	Pending			7/15/2020	
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	8/10/2020	Yes	Yes	1/14/2021	2/1/2021

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	11/4/2020	No	N/A	N/A	N/A
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	11/4/2020	Yes	Yes	2/27/2021	2/1/2021
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	11/4/2020	Yes	Yes	3/14/2021	2/1/2021
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	2/2/2021	Yes	No	7/14/2021	Pending
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/6/2021	Yes	Yes	7/21/2021	7/19/2021

MNOSHA continues to provide timely notification to OSHA regarding all state-initiated standard changes. Minnesota proposed and adopted the modification of one state rule during FY 2020. The Standard Industrial Classification List for A Workplace Accident and Injury Reduction (AWAIR) Act/program was updated within Minnesota Rule 5208.1500. No changes to Minnesota Rules occurred during FY 2021.

b) Federal Program Change (FPC) Adoption

Three of nine FPC responses were submitted timely. This may be attributed to supervisory and administrative personnel changes. OSHA encourages the State Plan to prioritize timely responses. For those FPCs that the state did not adopt, the topics were not adopted due to the state having a pre-existing directive that addressed the issues. To access these documents, please visit <http://www.osha.gov/stateplans/adoption>. For specific information on the state's policy as it relates to these items, please contact MNOSHA Compliance at 651-284-5050.



**Table B**  
**Status of FY 2020 and FY 2021 Federal Program Change (FPC) Adoption**

<b>FPC Directive/Subject</b>	<b>Response Due Date</b>	<b>State Plan Response Date</b>	<b>Intent to Adopt</b>	<b>Adopt Identical</b>	<b>Adoption Due Date</b>	<b>State Plan Adoption Date</b>
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/5/2020	Yes	No	6/10/2020	2/5/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	5/5/2020	Yes	No	8/4/2020	5/5/2020
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/14/2020	6/30/2020	No	n/a	10/14/2020	n/a
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	6/10/2021	No	n/a	n/a	n/a
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	5/11/2021	Yes	Yes	9/19/2021	5/11/2021
Compliance Directive for the Excavation Standard, 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	9/2/2021	No	n/a	n/a	n/a
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	5/5/2020	No	n/a	n/a adoption not required	n/a
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/11/2021	No	n/a	n/a adoption not required	n/a
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	9/15/2021	No	n/a	n/a adoption not required	n/a

**5. VARIANCES**

There were no variance requests received or variances granted during Fiscal Years 2020 and 2021.

A variance is an order issued by the Minnesota DLI to allow an employer to deviate from the requirements of a MNOSHA standard. Variances can be temporary or permanent. Variances are written to cover future activity by the employer and his or her employees. DLI can refuse to accept an application for a variance regarding a contested citation.

When OSHA grants variances covering several states, MNOSHA will honor a federal variance, if the following conditions are met: the employer has not applied to DLI for a separate state variance, the federal application included Minnesota, the federal standard from which the variance was granted has been adopted by MNOSHA without change, and DLI receives no objections to the variance.

## **6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM**

MNOSHA's state and local government worker program operates identically to the private sector program. As with the private sector, state and local government employers can be cited with monetary penalties. The penalty structure is the same. In FY 2021, MNOSHA conducted 39 inspections of state and local government workplaces, 3.20% of the total inspections conducted in Minnesota. This number is lower than the SAMM 6 FRL of +/- 5% of 3.67%, which equals 3.48% to 3.85%. This metric does not yet rise to the level of an observation. During the FY 2021 review, five case files were reviewed. There were no apparent differences between the state and local government and private sector case files.

## **7. WHISTLEBLOWER PROGRAM**

MNOSHA's Whistleblower Protection Program consists of an OMT director, one supervisor, and four investigators. Procedurally, the MNOSHA Whistleblower Protection Program adheres to MNOSHA ADM 3.6 Discrimination Complaint Handling Procedures, which provides guidelines for the investigation and disposition of retaliation complaints filed with MNOSHA.

Accordingly, this review followed the guidelines, procedures, and instructions of OSHA CPL 02-03-007 Whistleblower Investigations Manual (WIM), and 29 CFR 1977. MNOSHA's supervisor was consulted for information as necessary during the review.

During FY 2021, MNOSHA docketed 90 cases for investigation and closed 59 cases. This represents an increase in new cases from FY 2020, when 88 cases were opened, and 52 cases were closed. Fifty-four (54) cases were opened in FY 2019, prior to the COVID-19 pandemic.

### Investigative File Review

The cases reviewed were selected from those with final determinations during the review period and the selections were based on type of determination and the investigator of record. Twenty-five (25) of the 59 (42%) closed investigations were reviewed, including those with non-merit/dismissed, settled other, settled, and withdrawn determinations.

Cases are assigned for investigation after a response has been received from the complainant and the respondent has been notified of the complaint. An assignment memorandum is not produced, but the assignment is tracked in MOOSE. Whistleblower unit staff meets monthly to discuss cases and ensure cases are completed in a timely manner.

A review of the Whistleblower State Plan Investigation Data report for the review period indicated that of the 59 cases completed, four (7%) were withdrawn, 50 (85%) were dismissed, and five (8%) had merit. Two were settled and three settled among the parties. The percentage of cases completed timely was 36%.

### Complaint Intake and Screening

MNOSHA follows ADM 3.6 for complaint intake and screening. All complaints are screened by the investigators or the supervisor and are tracked in MOOSE. Notes regarding the intake information and the reason the complaint is screened and closed are entered into MOOSE. On occasion, a complainant may disagree with the investigator's determination that the complaint is inappropriate for investigation. The investigators document whether the complainant was in agreement with the disposition of their complaint.

OSHA's WIM requires that a letter to the complainant be generated for all screened and closed complaints. MNOSHA's policy is to offer to send the complainant a letter confirming that the case is inappropriate for investigation, and to document the complainant's response to the offer. If requested, the complainant is sent a letter explaining the determination and providing an opportunity to request a review within 15 days. During the review period, MNOSHA screened and closed 55 complaints.

Lastly, MNOSHA's instruction indicates that if a complainant does not wish to file at the time of initial contact with MNOSHA, they may leave their address to receive a letter confirming the 30-day filing time period.

### Case Activity Worksheet

The MNOSHA Whistleblower Program does not use Case Activity Worksheets generated by the OSHA Information Technology Support System (OITSS), Whistleblower Application. The program determined that they do not need the information contained on the form. While the Case Activity Worksheet is not provided to the respondent, a detailed allegation is incorporated into the respondent's notification letter.

### Complainant Statement and Witness Interviews

MNOSHA utilizes a Complainant's Statement form filled out by the investigator after the initial phone intake with the complainant. The Complainant's Statement form includes a narrative of the allegation and is mailed with the complainant's acknowledgement letter. The complainant is asked to fill in any incomplete sections of the form, review the narrative of the allegation, provide any additional written documentation, and sign to verify it is accurate. When the complainant does not return the signed statement within the allotted time, the case is dismissed for lack of cooperation. In contrast, OSHA considers the statement part of the complaint filing and doesn't docket the complaint until the statement is received. If the statement is not received by OSHA, the case is administratively closed. MNOSHA's current practice is not explicitly contrary to ADM 3.6; however, it does comparatively inflate the number of docketed and dismissed cases, as well as the timeliness of completed investigations, and should be changed.

Prior to beginning interviews with witnesses, Minnesota Statute § 13.04, subd. 2, requires the individual be given certain information referred to as the "Tennessee Warning." Included is

information on confidentiality of the witness's statement. MNOSHA's ADM 3.6 directs the investigator to read the warning to non-management witnesses. During the FY 2019 review, two of the 20 (10%) investigation files reviewed showed that the Tennessen Warning had been given to management and business owner witnesses. This concern was previously noted as an observation during the FY 2015 review and closed in the FY 2017 FAME report. No instances of providing the Tennessen Warning inappropriately were found in whistleblower protection cases during the FY 2021 review. Consequently, Observation FY 2020-OB-06 is closed.

MNOSHA does not require signed statements for witness interviews. Interviews are taped at the discretion of the investigator. Interviews are reduced to a memo to the file or transcribed at the discretion of the investigator. The word processing unit in DLI does all transcription.

#### Docketing and Respondent Notification

Once a complaint has been determined to be appropriate for investigation, the investigator will docket the complaint and send the docket and notification letter to the complainant. In addition to the Complainant's Statement form, the complainant's letter includes dual filing rights, and is sent via certified mail. After MNOSHA receives the completed Complainant's Statement form, a docket and notification letter is sent to the respondent. The respondent is given 10 days to submit their response and supporting documentation.

#### Final Investigation Report

MNOSHA has declined to change the name of the report to Report of Investigation as OSHA has done in order to be consistent with other federal agencies. MNOSHA only prepares a Final Investigation Report (FIR) when the complaint resulted in a full field investigation. Complaints that are closed for lack of cooperation, settlement, or withdrawals are closed with a memorandum to the supervisor or OMT Director. The FIR follows the criteria provided in OSHA's WIM. One area where MNOSHA differs is how case files are organized. While the FIR and memorandums outline the facts of the case, MNOSHA's files are not arranged in accordance with the WIM so that supporting exhibits are easily identified and referenced. Rather, contents of the files are scanned into MOOSE.

MNOSHA utilizes a written determination that adequately sets forth the determination and provides the respective party their right to request review of the MNOSHA finding. MNOSHA sends the written determination by both regular U.S. mail and certified mail with a request for a return receipt. On occasion a party receives the letter by regular mail and attempts to change the outcome of the decision by providing additional information. If the party does not accept delivery of the certified mail, MNOSHA does not have documentation of receipt. MNOSHA is encouraged to reconsider sending the decision by regular mail and/or utilize tracking provided online by the U.S. Postal Service to show receipt of the decision, if necessary.

#### Settlements

OSHA's WIM contains instruction that settlement agreements must not state or imply that OSHA or DOL is party to a confidentiality agreement. OSHA discloses settlement agreements to the public upon request in accordance with the Freedom of Information Act (FOIA), unless one of the FOIA exemptions applies. Similarly, MNOSHA Instruction ADM 3.7 Data Practices and Release of Case

File Information states that settlement agreements must be released. MNOSHA Instruction ADM 3.6 includes a template settlement agreement.

### Timeliness

The Occupational Safety and Health Act of 1970 (OSH Act) states the complainant shall be notified of the case determination within 90 days. However, 29 CFR 1977 indicates the deadline is a goal to strive to meet, not a requirement, as delays will occur.

MNOSHA currently has four whistleblower investigators on staff and continues to look for ways to expedite investigations. During FY 2021, 36% of docketed cases were closed within 90 days, which is a decrease from 48% in FY 2020. The average number of days to complete an investigation during FY 2021 was 244 days, an increase from 201 days in FY 2020. The topic is discussed during quarterly monitoring meetings throughout the year. MNOSHA emphasizes complete investigations, thorough final investigation reports, and careful supervisory review.

MNOSHA also reports that delays have occurred while attempting to contact witnesses for interviews. OSHA's WIM requires that the activity/telephone log include all telephone calls made, messages received, and written or electronic correspondence exchanged during the course of an investigation. Accurate documentation is both a helpful chronological reference for the investigator or other reader of the file, and a helpful resource to resolve any difference of opinion concerning the course of events during the processing of the case. MNOSHA's Discrimination MOOSE Manual describes the phone log tab as used to document all conversations with the parties or witnesses to the case. MNOSHA is encouraged to increase consistency between investigators as it appeared in some cases reviewed for FY 2021 that entries were missed.

### OITSS Information

Prior to each Fiscal Year, the State Plan submits a grant application, which contains a signed agreement, entitled 23(g) OSHA Restrictions and Conditions. The document states, in part, "Any State developing an alternative or supplemental system must continue to provide data to OSHA that are identical to that required by the federal Information System and that are submitted in the same manner and to the same extent as though continuing to participate in the federal system."

MNOSHA does not currently enter administratively closed complaints into the OITSS, Whistleblower Application, which was noted as a finding in the FY 2012 FAME and revisited during the FY 2013 onsite review. MNOSHA offered to enter administratively closed case information into OITSS, with OSHA's help, since MNOSHA would be entering the same data into both systems, creating a duplication of work. As an alternative, MNOSHA and OSHA signed a memorandum of understanding affirming MNOSHA's agreement to provide OSHA data related to administratively closed cases entered into MOOSE upon request.

MNOSHA entries into the OITSS for docketed cases include party information and investigation information, and do not include case comments or additional tracking. In six of the 25 (24%) cases reviewed for FY 2021, inconsistencies were found in date entries between MOOSE, statements, and OITSS. MNOSHA has expressed interest in utilizing a new whistleblower module expected within OIS in the coming months rather than continuing to enter information into two systems.

MNOSHA does not always use the same date for the determination and the letters to the parties, as

OSHA does, when for instance the letters are delayed by a weekend or the supervisor's availability. Although MNOSHA's practice is different from OSHA's, it does not appear to be a concern due to the reason for the difference. Similar to inspection files, letters saved in MOOSE did not contain signatures.

### Program Management

MNOSHA primarily relies on their MOOSE, not OITSS, for tracking and management of whistleblower protection activity. The MNOSHA management team reviews activity reports from MOOSE on a monthly basis. Effective procedures are also in place to review appealed cases. Requests for review must be submitted in writing. When a complainant requests an appeal (review), the MNOSHA Director and/or OMT Director review the file and appeal. If there is a dispute or question, regarding complaints that are screened and closed, the OMT Director is involved and additional investigation is conducted if necessary. All screened and referred complaints are tracked in MOOSE.

### Resources

Investigators are provided with computers, digital recorders, and personal protective equipment. Based on the current new caseload, staffing of four investigators appears to be adequate. As previously noted, MNOSHA continues to focus on reducing the backlog, while completing new cases in a timely manner, in order to raise the percentage of cases completed within 90 days.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

No CASPAs were received regarding MNOSHA during FY 2021.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

### Voluntary Protection Program (MNSTAR)

Fifteen (15) voluntary protection program (MNSTAR) site evaluations conducted in Minnesota in FY 2021 resulted in recertification at full STAR status. No new sites were added, and one site withdrew leaving a total of 34 participating sites at the end of FY 2021. MNOSHA Instruction ADM 3.28 MNSTAR Voluntary Protection Program outlines how the state administers the program. MNOSHA's instruction follows OSHA's CSP 03-01-003 Voluntary Protection Programs (VPP): Policies and Procedures Manual (April 18, 2008). The State Plan declined to adopt revisions contained in OSHA's CSP 03-01-005 (January 30, 2020). Applicants must meet the criteria contained in the MNOSHA Voluntary Protection Program instruction. In addition to requiring the company's injury and illness rate be below the national average for the industry, MNSTAR applicants' rates must also be below the state averages for the industry.

### Partnerships

MNOSHA Directive ADM 3.27 MNOSHA Strategic Partnership Plan is consistent with OSHA Strategic Partnership Program for Worker Safety and Health CSP 03-02-003 (November 6, 2013). MNOSHA entered into one new Partnership during FY 2021 with the Department of Transportation and private sector construction companies regarding an extensive highway interchange project which is expected to continue through the fall of 2024. Two long term Partnerships remained active during

the year and were administered appropriately by MNOSHA. MNOSHA's Partnerships are an extended voluntary cooperative relationship between MNOSHA and groups of employers, employees, employee representatives and interested stakeholders designed to encourage, assist, and recognize efforts to eliminate serious hazards and achieve a high degree of worker safety and health.

### Alliances

MNOSHA is not required to have an Alliance program similar to the OSHA Alliance Program CSP 04-01-002. However, MNOSHA's Workplace Safety Consultation (WSC) has administered a program since 2004. In October 2016, MNOSHA developed their own written program in response to updates made by OSHA. MNOSHA and Alliance participants work together to reach out to educate and lead Minnesota's employers and their employees in advancing workplace safety and health.

During FY 2020, an Alliance with Minnesota State Colleges was renewed performing hazard surveys and safety management assistance for campuses and campus safety representatives. One Alliance continued with the Minnesota Municipal Utilities Association (MMUA) focusing on assessing exposure to respirable crystalline silica during road maintenance and repair tasks.

Two Alliances with state and local government entities, including Minnesota State Colleges and Universities and MMUA, remained active during FY 2021. There were no new Alliances established during the year.

## **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

MNOSHA conducted 67 onsite consultation visits in state and local government during FY 2020, which exceeded the grant projection of 65 visits. A total of 51 (96%) of the 53 initial visits were coded as high hazard visits, as defined by MNOSHA's high hazard emphasis program. All of the 252 closed serious hazards were verified corrected in a timely manner. (Source: Mandated Activities Report for Consultation (MARC) dated November 9, 2020)

During FY 2021, MNOSHA conducted 82 state and local government consultation visits, which is 182% of their grant projection of 45. A total of 61 (97%) of the 63 initial visits were coded as high hazard visits. During FY 2021, 213 serious hazards were corrected and closed. All but one of the hazards were verified corrected in a timely manner. (Source: MARC report dated November 12, 2021)

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 MNOSHA Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	Five of the nine (56%) onsite complaint inspections reviewed for FY 2021 lacked evidence/documentation that an attempt was made to obtain a mailing address from the complainant and/or that the complainant was informed information would not be provided by email.	Attempt to obtain a mailing address from the complainant and inform the complainant information will not be provided by email, and document when the attempts are unsuccessful to ensure the complainant has been provided the opportunity to be informed.	FY 2020-OB-01
FY 2021-02	MNOSHA State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.	MNOSHA State Plan should work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels.	



## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2021 MNOSHA Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
	FY 2020-OB-01	Two of the 13 (15%) onsite complaint inspections reviewed for FY 2019 lacked evidence/documentation that the result of the inspection was mailed to the mailing address provided by the complainant.		Converted to Finding
	FY 2020-OB-02	In four of the 24 (17%) fatality case files reviewed for FY 2019, additional information was not obtained and/or considered before terminating the investigation and changing the inspection scope to no inspection.		Closed
	FY 2020-OB-03	In two of the 24 (8%) fatality cases reviewed for FY 2019, a letter to the next-of-kin contained an error; and in one case (4%), a letter was not sent to the next-of-kin.		Closed
	FY 2020-OB-04	In two of eight (25%) health inspection files with citations reviewed for FY 2019, the abatement certification provided by the employer was not adequate to close the case.		Closed
	FY 2020-OB-05	In five of the 25 (20%) files reviewed for FY 2019 where employee representation applied, participation by a representative and/or mailing a copy of the citation to the representative were not consistently documented.		Closed
	FY 2020-OB-06	Two of the 20 (10%) whistleblower protection cases reviewed for FY 2019 showed that the Tennessee Warning had been given to management and business owner witnesses.		Closed
FY 2021-OB-01		Within the case files reviewed for FY 2021, letters to the employer, complainant, and next-of-kin were not routinely saved in MOOSE as final with a signature.	OSHA will discuss and evaluate MNOSHA's progress on this topic during quarterly monitoring meetings.	New
FY 2021-OB-02		In ten of the 85 (12%) inspection files reviewed, information in the file appeared to show one or more items were not proposed for citation issuance, and no information was present to explain why a citation item was not appropriate.	OSHA will discuss and evaluate MNOSHA's internal audits conducted in this area during quarterly monitoring meetings.	New

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2021 MNOSHA Comprehensive FAME Report

FY 2021-OB-03		Field notes contained minimal information documented at the time of employee interviews in 18 of the 85 (21%) inspection files reviewed.	OSHA will discuss and evaluate MNOSHA's internal audits conducted in this area during quarterly monitoring meetings.	New
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## Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 MNOSHA Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
	None				

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MNOSHA Comprehensive FAME Report

### U.S. Department of Labor

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

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	2.73	9	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	2.22	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.72	2	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.69	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	98%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5a</b>	Average number of violations per inspection with violations by violation type (SWRU)	1.83	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
<b>5b</b>	Average number of violations per inspection with violations by violation type (other)	0.60	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
<b>6</b>	Percent of total inspections in state and local government workplaces	3.20%	+/- 5% of 3.67%	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

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MNOSHA Comprehensive FAME Report

### U.S. Department of Labor

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

				3.48% to 3.85%.
<b>7a</b>	Planned v. actual inspections (safety)	1,030	+/- 5% of 960	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 912 to 1,008 for safety.
<b>7b</b>	Planned v. actual inspections (health)	189	+/- 5% of 240	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 228 to 252 for health.
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,340.31	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$1,135.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$1,062.91	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$1,310.96	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$3,980.89	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
<b>9a</b>	Percent in compliance (safety)	40.06%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
<b>9b</b>	Percent in compliance (health)	53.85%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MNOSHA Comprehensive FAME Report

### U.S. Department of Labor

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

				review is from 32.51% to 48.77% for health.
<b>10</b>	Percent of work-related fatalities responded to in one workday	96.97%	100%	The further review level is fixed for all State Plans.
<b>11a</b>	Average lapse time (safety)	28.03	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
<b>11b</b>	Average lapse time (health)	39.29	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
<b>12</b>	Percent penalty retained	91.13%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
<b>13</b>	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	36%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	8%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	244	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.02%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled

## **Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report**

FY 2021 MNOSHA Comprehensive FAME Report

### **U.S. Department of Labor**

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

from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan OITSS report run on November 8, 2021, as part of OSHA's official end-of-year data run.