



DIVISION OF LABOR & INDUSTRY  
Matthew Helminiak, Commissioner  
10946 Golden West Drive, Suite 160  
Hunt Valley, MD 21031

August 23, 2022

Dear Mr. Rivera,

Thank you and your team for your cooperation both during the FY2021 enforcement year and the time since the Comprehensive Federal Annual Monitoring and Evaluation (FAME). We appreciate the productive relationship that MOSH has enjoyed with OSHA since our state plan began in 1973. Our goal is to not only be “at least as effective as” Federal OSHA, but to be a leader in the field of workplace safety and set a positive example for how to effectively ensure compliance with safety regulations and manage limited resources.

MOSH has worked to resolve the findings from the 2020 FAME and has made great strides to that effect. We appreciate OSHA recognizing this progress and closing several findings from the 2020 FAME. The 2021 FAME report, however, contains some findings and observations that create an impression of MOSH that is inaccurate and misleading.

Observation FY 2021-OB-01 claims that MOSH did not initiate enforcement action on 46 OSHA e-complaints alleging hazardous workplace conditions. Page 8 of the FAME acknowledges “MOSH provided an explanation for not addressing each complaint.” MOSH followed their Field Operations Manual (FOM) and provided a valid determination in each instance, but OSHA disagrees with MOSH’s determinations. MOSH is committed to following the law and the authorities granted it and will not subject employers or employees to investigative action that is not allowed under the MOSH authorizing statute.

Observation FY 2021-OB-03 says that MOSH did not document to show that a final next-of-kin (NOK) letter with the inspection results were sent to the family members of workers who were killed on the job, leaving the impression that MOSH did not make contact with the family members or provide inspection results. In these cases, however, MOSH went above and beyond just sending a letter and instead chose to make direct contact with the family members of the victim. MOSH leadership recognizes the seriousness of losing a family member and the delicacy of the situation and sometimes chooses to speak or meet directly with the family, often several times, in order to provide an explanation of the MOSH investigation and results. In some instances where a letter was not sent, a family member was a direct witness to the accident and/or already actively participated in the investigation. MOSH did explain the

investigation, but felt that a form letter was not warranted. Going above and beyond sending a form letter is a good thing, and should not be an observation. In order to codify the MOSH process, MOSH will revise the adoption of this voluntary instruction and make the NOK letter a “may” instead of a “shall”.

Observation FY 2021-OB-04 says that MOSH did not document and adequately perform inspections for two traffic-related fatalities. These two instances were discussed during the FAME review meeting. In both instances, MOSH did not have jurisdiction. Both sites were visited by thoroughly trained investigators. The issue is that MOSH did not complete a form in the operating system. To conclude that an investigation was not adequately performed is unsubstantiated.

Finding FY 2021-02 (note - FY 2021-03 is listed twice in the document. It is assumed that the first instance is meant to be FY 2021-02) correctly says that MOSH has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. MOSH provided a formal response and a detailed plan on adopting maximum penalties with legislative proposals this session. OSHA, despite accepting this formal response, still chose to make this a finding.

Finding FY 2021-03 correctly says that MOSH conducted 4.77% of their inspections in state and local government workplaces, less than the 8.4% that MOSH set as a goal. 8.4% is not a requirement, just a goal that MOSH voluntarily set for itself and in an area that OSHA itself does not cover. During FY 2021, many state and local government locations were closed or inaccessible due to COVID-19 restrictions, and MOSH focused its resources on the most vulnerable and those industries with active COVID concerns. Not meeting a voluntary goal, and Maryland’s public sector goal is one of the highest in the country, does not rise to the level of a finding. MOSH will revise the voluntary goal moving forward.

In conclusion, MOSH values the working relationship we have with the OSHA regional and national offices - in fact, many of our partners in these offices were once MOSH employees. We share the common goal of ensuring a safe and healthful workplace for our workers. The original OSHA act was written to encourage states to take responsibility for the safety of workers within their borders, and we can have different opinions of what is the best way to achieve our common goals. The states are required by our grant agreement to enforce standards that are “at least as effective as” OSHA, and MOSH believes we meet that goal.

Sincerely,

Matthew Helminiak  
Commissioner of Labor & Industry  
Maryland Department of Labor