# FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

Wyoming Occupational Safety and Health Administration

(Wyoming OSHA)



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**Occupational Safety and Health Administration**

**Region VIII**

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## Executive Summary

The primary purpose of this report is to assess the Wyoming State Plan’s (Wyoming OSHA’s) progress in Fiscal Year (FY) 2022 in resolving outstanding findings from the previous FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

Among the State Plan’s accomplishments during FY 2022 was addressing outstanding abatement of open inspections and phone/fax investigations. A significant amount of effort reduced the numbers of open inspections and phone/fax investigations by over 50% at the end of FY 2022 compared to the numbers at the end of FY 2021. Wyoming OSHA also increased the number of inspections performed during FY 2022 by 18.4% from the previous fiscal year.

While the State Plan developed a plan for the resolution of abatement and the closure of cases, challenges remained, including limited opportunities to perform health inspections. The number of health inspections was down from previous fiscal years, principally because the State Plan’s health inspections were driven by unprogrammed activity. Also, Wyoming OSHA lacked health-related local emphasis programs (LEPs), which limited opportunities for traditional health inspections, such as those addressing airborne contaminants or noise. While the State Plan attempted to address the OSHA Regional Office’s concern regarding health inspection activity, unfortunately, the COVID-19 pandemic continued to impact the State Plan’s ability to conduct general industry inspections.

In FY 2022, Wyoming OSHA and the OSHA Regional Office facilitated a partnership in which State Plan compliance safety and health officers (CSHOs) shadowed OSHA health compliance officers in Colorado during industrial hygiene monitoring or sampling. This partnership was in addition to a similar, ongoing arrangement in which health compliance officers from Wyoming OSHA shadowed Utah State Plan (UOSH) health compliance officers.

The State Plan responded quickly after receiving the FY 2021 Comprehensive FAME Report to address the two findings and three observations. Wyoming OSHA was able to begin corrective action on the two findings and three observations by December 2022. Wyoming OSHA provided training to staff and managers and ensured that policies were implemented appropriately, enabling closure of two observations. The remaining two findings and one observation underwent process improvement, and the State Plan trained its staff. These two findings and one observation from last year’s FAME Report are continued until OSHA may conduct a review of case files in the FY 2023 Comprehensive FAME process. No additional findings or observations were noted.

## State Plan Background

Wyoming OSHA is housed within the Wyoming Department of Workforce Services. The State Plan designee is Jason Wolfe, who also serves as the Workforce Standards Administrator of the Office of Standards and Compliance. Karen J. Bebensee is the Deputy Administrator of Wyoming OSHA. The main office is in Cheyenne, with field offices in Casper, Gillette, Sheridan, and Rock Springs.

The program, funded through the 23(g) grant, consists of the enforcement, whistleblower, and cooperative programs (including the Voluntary Protection Program and Partnerships), as well as state and local government consultation. A separate 21(d) cooperative agreement funds private sector consultation. The State Plan closely mirrors the federal program with some differences that allow for the accommodation of unique state demands and issues. The enforcement program maintains jurisdiction over safety and health issues for workers in the private sector, as well as for those in state and local government workplaces. Wyoming OSHA enforces unique regulatory standards for oil and gas well drilling and servicing, including anchor testing, drill-stem testing, wireline operations, hydraulic fracturing, and mobile pumping.

The State Plan was benchmarked for six safety compliance officers and two health compliance officers. At the end of FY 2022, there was a total of seven CSHOs on board; one of the safety compliance officer positions was filled by the whistleblower investigator. In addition to the seven CSHOs, management and staff consisted of a deputy administrator, compliance program supervisor, consultation program area director, program operations manager, one compliance assistance specialist, one whistleblower investigator, two administrative personnel, and an accountant. Wyoming OSHA had 16 workers providing 13.10 full-time equivalents to the program.

Wyoming OSHA’s federal final base funding award in FY 2022 was $677,000, which the State Plan matched and additionally contributed $611,177. One-time only funding of $24,780 was provided by OSHA and matched by the State Plan in late FY 2022, bringing the total funding amount to $2,014,737. Wyoming OSHA’s total contribution of 65.2% was slightly less than that of FY 2021, when the State Plan’s contribution was 67.4%.

The State Plan achieved 92.6% of its inspection goal of 188 inspections. The inspection total, 174 inspections, consisted of 163 safety inspections and 11 health inspections. In total, 213 compliance interventions, including 174 inspections, 13 state and local government consultation visits, and 26 compliance assistance activities, took place during FY 2022. These interventions identified and abated 276 hazards. Approximately 2,873 employees were impacted through compliance assistance activities.

Wyoming OSHA historically has excelled with penalty retention. For FY 2022, the State Plan retained 96.8% of the penalties assessed in citations issued.

The State Plan has two safety-related LEPs which address construction hazards and oil and gas drilling and servicing hazards. Programmed safety inspections accounted for 58.3% of safety inspection activity during FY 2022. Programmed health inspections accounted for 9.1% of health inspections in FY 2022 as the only health-related programmed inspection was a site-specific targeting (SST) inspection. For Wyoming OSHA, 8.5% of all inspections were SST inspections.

#### New Issues

None.

## Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

* State Activity Mandated Measures (SAMM) Report (Appendix D)
* State Information Report (SIR)
* State and local government 23(g) consultation program data
* State OSHA Annual Report
* OSHA Information System (OIS) Inspection Summary Reports
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

#### Findings (Status of Previous and New Items)

The State Plan made progress addressing the previous two findings and three observations from the FY 2021 Comprehensive FAME Report. This Follow-up FAME Report contains two findings and three observations. Both findings were continued, two observations were closed, and one observation was continued. Appendix A describes new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plans. Appendix C describes the status of each FY 2021 finding and recommendation in detail.

##### **Completed Findings**

There are no completed findings from the FY 2021 Comprehensive FAME Report.

##### **Continued Findings**

**Finding FY 2022-01 (previously FY 2021-01):** The State Plan did not obtain complete abatement and review the abatement for phone/fax investigations to ensure timely closure of complaints. In FY 2021, 23 of 107 (21.4%) phone/fax investigations that had been open for at least 30 days and remained open at the end of FY 2021 did not have complete abatement, with 10 (9.3%) of those investigations being open since FY 2017 through FY 2020.

**Status:** In July 2022, the State Plan began reviewing OIS reports, such as the UPA Auditing Report, the UPA Tracking Report, and the SIR, on a weekly basis. Wyoming OSHA developed an operational strategy to include both compliance and administrative staff in obtaining abatement and closing cases. The State Plan provided training to most staff regarding Wyoming OSHA’s Rules of Practice and Procedure (ROPP) and its Field Operations Manual (FOM) concerning abatement and closure of phone/fax investigations.The State Planreduced the number of phone/fax investigations that had been open for at least 30 days from 107 phone/fax investigations at the end of FY 2021 to 49 phone/fax investigations at the end of FY 2022. While the State Plan reduced the number of open phone/fax investigations by 58 (54.2%), 12 of the 49 (24.5%) remaining open phone/fax investigations pre-date FY 2022. In addition to a review of OIS data, a case file review is necessary to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-02 (previously** **FY 2021-02):** In FY 2021, the number of open, non-contested cases with abatement incomplete for more than 60 calendar days has remained significantly high with 56 cases in 2019, 70 cases in 2020, and 49 cases in 2021.

**Status:** In July 2022, the State Plan began reviewing supporting OIS reports, such as the Abatement Tracking Report and the SIR, as well as the Open Inspection Report, on a weekly basis to manage abatement. Wyoming OSHA developed an operational strategy to include both compliance and administrative staff in obtaining abatement and closing cases. The State Plan provided training to most staff regarding Wyoming OSHA’s ROPP and its FOM concerning abatement and closure of cases.The State Planreduced the number of open, non-contested cases with abatement incomplete for more than 60 calendar days from 49 cases at the end of FY 2021 to 17 cases at the end of FY 2022. While the State Plan reduced the number of open cases by 32 (65.3%), 13 of the 17 (76.5%) remaining cases have citation issuance dates prior to FY 2022. In addition to a review of OIS data, a case file review is necessary to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

##### **New FY 2022 Findings**

There are no new findings in the FY 2022 Follow-up FAME Report.

#### Observations

##### **Closed FY 2021 Observations**

**Observation FY 2021-OB-02:** The State Plan does not have an adequate State Internal Evaluation Program (SIEP), as required by Chapter 6, Section III.B.1. of the State Plan Policies and Procedures Manual.

**Status:** During FY 2022, Wyoming OSHA developed a five-year plan to conduct SIEPs for areas of concern, including open, non-contested cases with abatement incomplete in excess of 60 calendar days (SIR 3b), number of valid complaints handled as a phone/fax which have been open more than 30 calendar days (SIR 9), case file closure, case file coding, Darden factor files, and policy and procedure availability. In FY 2022, the State Plan conducted a SIEP that addressed SIR metrics 3b and 9. This observation is closed.

**Observation FY 2021-OB-03:** In FY 2021, the State Plan did not ensure that settlement case files included documentation regarding why the settlement was fair and equitable in six (75%) of eight settled cases, as required by Chapter 6, Section XII of the Whistleblower Investigations Manual.

**Status:** During FY 2022, Wyoming OSHA modified its process for reviewing whistleblower case settlements and provided training to its whistleblower investigator. The process changes included documentation of review of third-party settlements, documentation of recommendations by the whistleblower investigator, and documentation of review by the deputy administrator. In FY 2022, seven of seven (100%) directly settled whistleblower cases contained documentation determining whether the settlement was fair and equitable. This observation is closed.

##### **Continued FY 2021 Observation**

**Observation FY 2022-01 (previously FY 2021-OB-01, FY 2020-OB-04, and FY 2019-OB-04):**  In FY 2021, the State Plan did not conduct follow-up inspections to confirm abatement for fatality inspections.

**Status:** During FY 2022, of the four work-related fatality inspections conducted, only one inspection resulted in a serious violation, so opportunities to perform follow-up inspections of fatality inspections were very limited. In fact, this case did not result in a follow-up inspection as the employer went out of business. Although the State Plan has trained its staff on follow-up inspections, a case file review is necessary to evaluate performance in relation to this observation which has been noted annually since the FY 2019 Comprehensive FAME Report. Please note that an observation has a lifespan of three years, after which it must be closed or raised to a finding. However, considering the limited opportunities for Wyoming OSHA to perform follow-up inspections to confirm abatement for fatality inspections in FY 2022, OSHA will allow a one-year extension. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will be continued.

##### **New FY 2022 Observations**

There are no new observations in the FY 2022 Follow-up FAME Report.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM 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 2022 SAMM Report and includes the FRL for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower Module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded in OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMMs 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans’ whistleblower programs for FY 2022.

The State Plan was outside the FRL on the following SAMMs:

#### SAMM 2 – Average Number of Workdays to Initiate Complaint Investigations

Discussion of State Plan Data and FRL: The negotiated FRL for the average number of workdays to initiate complaint investigations was one workday. The State Plan’s average number of workdays to initiate complaint investigations was 5.20, which was significantly above the FRL.

Explanation: Wyoming OSHA has consistently exceeded the negotiated FRL for the period FY 2020 through FY 2022. The negotiated FRL for each of the fiscal years was one workday. The OSHA Regional Office recognized that the FRL of one workday was not achievable by the State Plan and negotiated with the State Plan for a more reasonable FRL of five workdays for FY 2023. It should be noted that Wyoming OSHA’s number of workdays to initiate complaint inspections was approximately the same as or below the national average for FY 2020 through FY 2022. OSHA anticipates that Wyoming OSHA will meet the FRL for FY 2023 given the adjustment of the negotiated FRL. At this time, an observation is not justified.

#### SAMM 5b – Average Number of Violations per Inspection with Violations (Other)

Discussion of State Plan Data and FRL: The FRL for the average number of violations per inspection with violations (other) was a range of 0.72 to 1.08. The State Plan’s average number of violations per inspection with violation (other) was 0.49, which was below the FRL.

Explanation: Although Wyoming OSHA’s average number of other-than-serious (OTS) violations per inspection was below the FRL, the State Plan increased its average from 0.27 in FY 2021 to 0.49 in FY 2022, a move in the right direction. While an observation is not justified at this time, OSHA will continue to monitor this SAMM with the State Plan throughout FY 2023.

#### SAMM 6 – Percent of Total Inspections in State and Local Government Workplaces

Discussion of State Plan Data and FRL: The FRL for the percent of total inspections in state and local government workplaces was a range of 2.02% to 2.23%. The State Plan’s result of 2.87% was slightly above the FRL.

Explanation: In FY 2021, Wyoming OSHA and the OSHA Regional Office renegotiated the SAMM 6 FRL, going from 20.24% to 2.13%. The State Plan has exceeded the FRL for SAMM 6 ever since the renegotiation.

#### SAMM 7b – Planned v. Actual Inspections (Health)

Discussion of State Plan Data and FRL: The FRL for planned versus actual health inspections was a range of 14.25 to 15.75. The State Plan’s actual number of health inspections was 11, which was below the FRL.

Explanation: Wyoming OSHA achieved 73.3% (11 of 15) of its health inspection goal. The State Plan had limited opportunity to conduct health inspections, receiving few health-related complaints. It should be noted that in addition to an ongoing arrangement in which Wyoming OSHA health compliance officers shadowed UOSH health compliance officers, Wyoming OSHA CSHOs also shadowed OSHA health compliance officers during industrial hygiene monitoring or sampling in FY 2022. OSHA anticipates that the number of health inspections will increase as the Wyoming OSHA health compliance officers gain experience. However, this remains a concern with OSHA and will be monitored during quarterly meetings with Wyoming OSHA.

#### SAMM 9 – Percent in Compliance

Discussion of State Plan Data and FRL: The FRL for the percent in compliance for safety inspections was a range of 25.80% to 38.70%. The State Plan’s safety in-compliance rate was significantly above the FRL at 55.92%. The FRL for the percent in compliance for health inspections was a range of 35.54% to 53.30%. Wyoming OSHA’s health in-compliance rate was significantly above the FRL at 66.67%.

Explanation: The SAMM 9 metric is calculated based upon the number of inspections opened within the fiscal year and the number of inspections that are closed or issued with violations by the end of the fiscal year. In some years, the metric may present an incomplete picture when many cases remain open or have not yet issued violations by the end of the fiscal year. The safety inspection in-compliance percentage has been steadily increasing for the period FY 2020 though FY 2022. One factor that may impact the incompliance rate for safety inspections includes multi-employer worksites when inspections are opened with every employer onsite. High in-compliance percentages could mean that employers are providing safe and healthful workplaces. However, a high in-compliance percentage may also reflect a need to develop additional hazard recognition skills. A fourth factor may involve enforcement targeting efforts. With the State Plan’s enforcement activity driven by unprogrammed activity, complaint or referral allegations may be found to be unsubstantiated, resulting in in-compliance inspections and, thus, skewing the in-compliance percentage. The State Plan adopted the SST directive during FY 2021. There were 11 SST inspections conducted during FY 2022. Of those 11 inspections, seven inspections (63.6%) resulted in violations. OSHA believes that the State Plan should conduct additional programmed inspections to reduce its in-compliance rate for safety inspections.

Upon examination of the 11 health inspections performed in FY 2022, OSHA noted that the nine complaint or referral inspections adequately investigated the allegations. In these cases, the nature of the complaints, the majority being mold complaints, indirectly led to the high in-compliance percentage for health inspections. The remaining two health inspections, one an SST and the other a fatality investigation, both resulted in violations issued. There were no programmed health inspections, other than the SST inspection, conducted during FY 2022. Wyoming OSHA may have opportunities to increase the number of health inspections with violations through implementation of programmed health inspections, such as SST and respirable crystalline silica inspections. As previously mentioned, Wyoming OSHA CSHOs had shadowing opportunities with health compliance officers from both UOSH and OSHA in FY 2022. The safety and health inspection in-compliance percentages remain a concern for OSHA and will be monitored during quarterly meetings with Wyoming OSHA.

**SAMM 10 – Percent of Work-Related Fatalities Responded to in One Workday**

Discussion of State Plan Data and FRL: The FRL for the percent of work-related fatalities responded to in one workday was 100%. The State Plan’s percent of work-related fatalities responded to in one workday was 66.67%, which was significantly below the FRL.

Explanation: Wyoming OSHA responded to four of six (66.67%) work-related fatalities within one workday during FY 2022. The remaining two work-related fatalities were responded to within two workdays. In the first fatality case, the delayed response was due to severe weather. The delayed response for the second fatality case was due to limited resources; the CSHO assigned to investigate the fatality had to travel across the state from a field location to the worksite. Given these reasons and the fact that the fatalities in question were responded to within two workdays, an observation is not justified at this time.

#### SAMM 12 – Percent Penalty Retained

Discussion of State Plan Data and FRL: The FRL for the percent penalty retained was a range of 59.47% to 80.47%. The State Plan’s percent penalty retained was 96.77%, which was significantly above the FRL.

Explanation: Wyoming OSHA’s high penalty retention rate has consistently exceeded the FRL since FY 2020. In each of those fiscal years, the percent penalty retained was approximately 15% higher than the FRL. In FY 2022, this was due to the State Plan’s effective informal conference process, where only 1.39% of violations were vacated pre-contest and only 1.88% of violations were reclassified pre-contest. Wyoming OSHA’s ability to successfully settle cases during the informal settlement process was due to its CSHOs identifying hazards and developing case files that supported those violations. The State Plan’s effective settlement process resulted in the State Plan’s very high retention of penalties and violations.

#### SAMM 17 – Percent of Enforcement Presence

Discussion of State Plan Data and FRL: The FRL for the percent of enforcement presence was a range of 1.23% to 2.05%. The State Plan’s percent of enforcement presence was 1.01%, which was slightly below the FRL.

Explanation: While the State Plan’s SAMM 17 result was below the FRL for FY 2022, it was higher than the results for the previous two fiscal years when Wyoming OSHA met the respective FRLs. At this time, an observation is not justified.

### Appendix A – New and Continued Findings and Recommendations

FY 2022 Wyoming OSHA Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2021-# or**  **FY 2021-OB-#** |
| FY 2022-01 | The State Plan did not obtain complete abatement and review the abatement for phone/fax investigations to ensure timely closure of complaints. Twenty-three of 107 (21.4%) phone/fax investigations that had been open for at least 30 days and remained open at the end of FY 2021 did not have complete abatement, with 10 (9.3%) of those investigations being open since FY 2017 through FY 2020. | The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure. | FY 2021-01 |
| FY 2022-02 | The number of open, non-contested cases with abatement incomplete for more than 60 calendar days has remained significantly high with 56 cases in 2019, 70 cases in 2020, and 49 cases in 2021. | The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure. | FY 2021-02 |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 Wyoming OSHA Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 2021-OB-# or FY 2021-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-01 | FY 2021-OB-01  FY 2020-OB-04  FY 2019-OB-04 | In FY 2021, the State Plan did not conduct follow-up inspections to confirm abatement for fatality inspections. | The OSHA Regional Office will monitor Wyoming OSHA on a quarterly basis throughout FY 2023 to ensure the State Plan conducts follow-up inspections to confirm abatement for fatality inspections. | Continued |
|  | FY 2021-OB-02 | The State Plan does not have an adequate SIEP, as required by Chapter 6, Section III.B.1. of the State Plan Policies and Procedures Manual. |  | Closed |
|  | FY 2021-OB-03 | The State Plan did not ensure that settlement case files included documentation regarding why the settlement was fair and equitable in six (75%) of eight settled cases, as required by Chapter 6, Section XII of the Whistleblower Investigations Manual. |  | Closed |

### Appendix C - Status of FY 2021 Findings and Recommendations

FY 2022 Wyoming OSHA Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY 2021-01 | The State Plan did not obtain complete abatement and review the abatement for phone/fax investigations to ensure timely closure of complaints. Twenty-three of 107 (21.4%) phone/fax investigations that had been open for at least 30 days and remained open at the end of FY 2021 did not have complete abatement, with 10 (9.3%) of those investigations being open since FY 2017 through FY 2020. | The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure. | In July 2022, the State Plan began reviewing supporting OIS reports, such as the UPA Auditing Report, the UPA Tracking Report, and the SIR, on a weekly basis. The State Plan also trained its CSHOs on the guidance in its ROPP and the OSHA FOM. | February 22, 2023 | Awaiting Verification, March 2023 |
| FY 2021-02 | The number of open, non-contested cases with abatement incomplete for more than 60 calendar days has remained significantly high with 56 cases in 2019, 70 cases in 2020, and 49 cases in 2021. | The State Plan should evaluate the existing process for receiving and reviewing abatement to determine appropriate short-term and long-term modifications to expedite abatement and closure. | In July 2022, the State Plan began reviewing supporting OIS reports, such as the Abatement Tracking Report and the SIR, as well as the Open Inspection Report, on a weekly basis to manage abatement. The State Plan also trained its CSHOs on the guidance in its ROPP and Chapters 3, 6, and 7 of the OSHA FOM. | February 22, 2023 | Awaiting Verification, March 2023 |

### 

### Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 Wyoming OSHA Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 7.52 | 16 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 4.02 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 5.20 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 4.58 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | 100% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.72 | +/- 20% of  1.77 | 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 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.49 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 2.87% | +/- 5% of  2.13% | 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 2.02% to 2.23%. |
| 7a | Planned v. actual inspections (safety) | 163 | +/- 5% of  173 | 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 164.35 to 181.65 for safety. |
| 7b | Planned v. actual inspections (health) | 11 | +/- 5% of  15 | 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 14.25 to 15.75 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,838.67 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $3,026.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $5,319.57 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $0.00 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $6,879.67 | +/- 25% of  $6,725.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 55.92% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 66.67% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 66.67% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 54.12 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 76.44 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | 96.77% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 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 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | 1.01% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D are pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.