**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

**Maryland Occupational Safety and Health (MOSH)**



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**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region III**

**Philadelphia, Pennsylvania**



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1. **Executive Summary**

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to evaluate the MOSH program’s performance during Fiscal Year (FY) 2023, and its progress in resolving findings identified during previous FAMEs. This FAME included an on-site comprehensive review of safety and health inspection files randomly selected from inspections recorded in the OSHA Information System (OIS) and electronic complaints (e-complaints) submitted through the OSHA website. OSHA also reviewed randomly selected whistleblower investigation cases as well as state and local government (SLG) consultation files. In addition, this report provides an overview of MOSH’s performance based on quarterly monitoring meetings, the FY 2022 State OSHA Annual Report (SOAR), and the FY 2022 End-of-Year (EOY) State Activity Mandated Measures (SAMM) Report.

MOSH covers 2.5 million workers in nearly 186,000 businesses in the state of Maryland. It initiated a new five-year strategic plan in FY 2023 and developed 10 performance goals designed to protect these workers. Its three strategic goals focus on improving workplace safety and health, promoting a workplace safety and health culture, and securing public confidence.

In FY 2023, OSHA continued one and identified two new findings. One observation was converted to a finding. MOSH adopted the maximum penalty increase (first adopted by OSHA in 2016) on April 9, 2024 (outside of the scope of this FAME). However, it has not adopted all FPCs timely or developed a strategy to adequately address all serious complaints it receives. Additionally, MOSH does not utilize OIS to record all complaints.

OSHA continued one previously identified observation for the number safety inspections conducted. Four new observations were identified and include accurate fatality/catastrophe coding, documenting work-related fatalities as ‘no inspection,’ not following its established settlement procedures, and whistleblower case file documentation.

OSHA closed four previously identified observations for communicating with the next-of-kin (NOK) in accordance with its procedures, documenting traffic-related fatality inspections, abatement verification, and complaint receipt date accuracy.

This report contains a total of four findings and five observations. Appendix A presents the new

and continued findings from this year’s evaluation. Appendix B presents the observations and

federal monitoring plans. Appendix C displays the status of the previous findings with the

associated corrective actions.

**II. State Plan Background**

1. **Background**

The Maryland Department of Labor (MDOL), Division of Labor and Industry (DLI), is the state agency designated by the governor to administer the MOSH program. The Maryland State Plan was initially approved on July 5, 1973, pursuant to Section 18 of the Occupational Safety and Health (OSH) Act. The State Plan was certified on February 15, 1980, and granted State Plan final approval on July 18, 1985.

MOSH operates under the authority of the MOSH Act, Labor and Employment Article, Section 5-101 through 5-901. During FY 2023, MOSH operated under the guidance of Tiffany P. Robinson who was appointed secretary of MDOL in July 2019 and served through January 2023. Portia Wu began serving as the Acting Secretary of Labor on January 18, 2023, and was appointed as Secretary of Labor on March 2, 2023. Devki K. Virk replaced Matthew Helminiak as Commissioner of DLI in May 2023. Michael Stracka departed MOSH in July 2021, leaving the assistant commissioner position currently vacant. Michael Penn, Chief of Compliance, has been delegated the authority to act as Assistant Commissioner until the position is filled. MDOL is headquartered in Baltimore. The DLI is located in Hunt Valley and consists of MOSH representatives stationed in different regional and field offices in Hunt Valley, Easton, Hagerstown, and Upper Marlboro.

MOSH is the agency responsible for ensuring that employers provide Maryland workers with workplaces free from recognized safety and health hazards. MOSH covers 2.5 million workers in nearly 186,000 businesses in the state of Maryland. MOSH’s Compliance Services Unit conducts occupational safety and health inspections for all SLG workplaces and private sector places of employment in the state of Maryland. However, MOSH does not inspect places of employment which fall under OSHA’s jurisdiction. OSHA’s jurisdiction includes federal workers, the United States Postal Service, private sector maritime activities (shipyard employment, marine terminals, and longshoring), and U.S. military bases. Additionally, MOSH’s Outreach Unit provides free training and education; and manages its cooperative programs.

MOSH operates a private sector on-site consultation project under Section 21(d) and an SLG consultation project under Section 23(g) of the OSH Act of 1970. MOSH’s Discrimination Unit investigates whistleblower complaints made by workers who feel that they have been retaliated against by their employer for making a safety and health complaint or exercising other protected activity. The Research and Statistics Unit provides MOSH with statistical data on occupational fatal and nonfatal workplace injuries and illnesses. Industries covered by MOSH include a combination of agricultural, manufacturing, construction, transportation, and trade and service industries. Like OSHA, MOSH has selected certain high hazard industries on which to focus its safety and health activities through the implementation of emphasis programs.

As a State Plan, MOSH has the authority to promulgate standards and regulations which maybe more stringent than OSHA’s standards. MOSH has multiple standards and regulations which differ from the federal program including, but not limited to: High Voltage Lines (Title 6), Fall Protection in Steel Erection (Code of MD Regulations (COMAR) 09.12.25), and Tree Care and Removal (COMAR 09.12.28). MOSH also made amendments to OSHA standards that are more stringent than OSHA’s such as: Occupational Exposure to Formaldehyde (29 CFR 1910.1048), Lead in Construction Work (29 CFR 1926.62), Excavations (Requirements for Protective Systems (29 CFR 1926.652), and Steel Erection (29 CFR 1926, Subpart R).

Based on its FY 2024 grant application, as of July 1, 2023, MOSH filled 74% of its compliance officer benchmark. MOSH overmatched the $4,808,100 federal award by $458,295, contributing to 52% of its funding at a state level in FY 2023.

1. **New Issues**

Six construction workers were killed on March 22, 2023 while working on the west side of Interstate 695 (Baltimore Beltway). Five of the deceased were employed by Concrete General, Inc. and one was employed by KCI Technologies. According to Maryland.gov, the Maryland Department of Transportation (MDOT) State Highway Administration (SHA) website, this project is designed to “reduce congestion along the west and north sides of the Baltimore Beltway.” MOSH investigated the incident at the worksite and issued a citation to Concrete General, Inc. and MDOT SHA for traffic signage and issued Hazard Alert Letters to all three employers.

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

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A five-person OSHA team, including a whistleblower regional supervisory investigator (RSI), was assembled to conduct the comprehensive on-site review. The case file review was conducted at the MOSH Hunt Valley Office from January 29 to February 2, 2023. A total of 157 safety, health, and whistleblower inspection files as well as 30 SLG consultation files were reviewed. OSHA also evaluated 89 e-complaints received by the Baltimore/Washington Area Office (BWAO) that were forwarded to MOSH.

The files were randomly selected from closed inspections conducted and complaints received during the evaluation period (October 1, 2022 through September 30, 2023). To evaluate a fatality-related observation identified in the FY 2021 FAME, closed fatality cases from October 1, 2021 through September 30, 2023 were reviewed.

OIS reports were used to generate a case listing for the safety, health, docketed whistleblower, and SLG consultation files. Because MOSH does not enter all administratively closed whistleblower cases in OIS, a log internal to MOSH was provided to OSHA so that cases could be randomly selected. Similarly, MOSH does not enter or process all safety and health complaints it receives in OIS; therefore, a spreadsheet was generated from the e-complaints forwarded to MOSH by email and by an unprogrammed activity (UPA) management report for all e-complaints transferred to MOSH.

The selected population included:

* Thirty-four (34) fatality inspection case files coded as fatality
* Thirty (30) case files coded as accident
* Sixty (60) programmed safety inspection files
* Three (3) programmed health inspection files
* Ten (10) docketed whistleblower files
* Twenty (20) administratively closed whistleblower files
* Thirty (30) SLG consultation files
* Eighty-nine (89) OSHA e-complaints (36 e-mailed and 53 transferred in OIS)

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 (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Comprehensive on-site case file review
* MOSH internal tracking systems

Each 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 MOSH’s FY 2023 EOY SAMM report and includes the FRL for each measure. Throughout the evaluation process MOSH was cooperative, shared information, and ensured staff was available to discuss cases, policies, procedures, and answer questions.

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

The Hunt Valley office maintains a safety lab designed for hands-on training as well as modern classrooms for internal and OSHA Training Institute (OTI) road courses. MOSH developed and implemented Instruction 15-11 describing a competency-based training program for MOSH compliance personnel. The training program outlines a two-phase approach to completing the mandatory training requirements: phase one includes initial courses and phase two includes technical courses. The instruction specifies that on-the-job training (OJT) is a necessary component of compliance officer development.

Compliance safety and health officers attended in-person and virtual OTI courses during FY 2023. Recently hired compliance safety and health officers (CSHOs) received in-house classroom training which included more than 15 sessions covering a range of topics such as the MOSH Act, laws, regulations, hazard recognition, citations, and case file development. MOSH personnel, including veteran CSHOs, consultants, supervisors, and managers provided classroom and practical instruction. In addition, staff meetings included tree care and heat stress training.

Four wage claims investigators and a unit manager from the DLI Employment Standards Unit assisting with MOSH whistleblower investigations received ongoing training throughout the year. An OSHA Region 3 whistleblower RSI was available to respond to questions throughout the year.

1. OSHA Information System

MOSH has agreed to either use OIS as its primary inspection, UPA, and whistleblower database or develop a substitute, alternative, or supplemental system that interfaces with OIS in agreement with the 23(g) OSHA Restrictions and Conditions contained in the FY 2023 grant application. However, it also retains external data tracking systems that documents information it does not enter into OIS as well as data that OIS does not capture. Therefore, MOSH is not able to utilize the full capability of reports available in OIS to internally evaluate its program by identifying deficiencies and areas of excellence. The reports may also be used to analyze trends so that MOSH can adjust to meet its established goals or develop new enforcement and outreach priorities related to safety and health. The reports provide an accurate assessment only when all necessary data is entered into OIS.

MOSH transitioned from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS during FY 2023 for entering docketed complaints. In FY 2023, OSHA was made aware that MOSH does not enter all administratively closed whistleblower complaints into OIS and OSHA requested clarification. MOSH indicated that all whistleblower complaints, including administratively closed complaints, are entered into a centralized internal tracking system. This tracking system does not interface with the OIS. MOSH demonstrated the use of its tracking system during quarterly meetings.

The Whistleblower Investigations Manual (WIM), an equivalency required FPC, indicates that complaints that are not filed within statutory time limits, fail to meet coverage requirements, or do not adequately contain all four elements of a prima facie allegation will be administratively closed. The WIM also describes the procedures for appropriately documenting administrative closures in OITSS – Whistleblower, now the OIS whistleblower module. MOSH’s procedures for handling administratively closed whistleblower complaints are addressed in Chapter X – Discrimination Complaints of the MOSH FOM, as modified by MOSH Instruction 23-2, which indicates that upon initial processing and evaluation a case number shall be assigned, and the complaint shall be recorded in the discrimination log.

In early FY 2024, OSHA Region 3 implemented a whistleblower pilot program whereby electronically filed complaints are transferred to MOSH through OIS. This process eliminates the duplicative administrative closure entries in OIS and provides a record of cases administratively closed by MOSH in OIS. However, administratively closed complaints received directly by MOSH are not entered into OIS but are entered into MOSH’s internal tracking system. Without a central repository for whistleblower complaints, OSHA and MOSH’s ability to run accurate and consistent whistleblower reports directly in OIS are limited.

**Finding FY 2023-03 -** *OIS Data Entry (Whistleblower Complaints)*

In FY 2023, MOSH did not record 64 of 65 (98%) administratively closed whistleblower complaints it received into OIS.

**Recommendation FY 2023-03**

MOSH should document complaints in OIS in accordance with the WIM and as agreed to by MOSH in Appendix H - *23(g) Assurances and Certifications, Non-Construction Programs (including Lobbying Certification) with 23(g) OSHA Restrictions and Conditions* - of the FY 2023 and FY 2024 grant applications.

During FY 2023, OSHA implemented a new OIS capability whereby safety and health e-complaints submitted through the OSHA on-line complaint system are imported directly into OIS. The BWAO receives all e-complaints directly in OIS and transfers safety and health complaints in MOSH jurisdiction into a MOSH OIS Reporting ID (RID). MOSH is also notified of each e-complaint by email simultaneously. A Manage UPA report determined that, in FY 2023, OSHA transferred 704 e-complaints to MOSH directly in OIS and that all transferred e-complaints remain in new status. MOSH did not a generate a UPA from the OIS e-complaints, whether valid or not. Rather, MOSH evaluated each associated e-complaint email and entered a new UPA into OIS if it determined the complaints were valid. No further action was taken on the original e-complaint transferred to MOSH in OIS. Beginning in FY 2024, MOSH began using the manage UPA feature in OIS to convert valid e-complaints transferred to the MOSH RID to generate a UPA. Prior to the OIS e-complaint implementation in FY 2023, OSHA forwarded 480 e-complaints directly to MOSH by email. Similarly, MOSH entered UPAs only for those it deemed valid.

In total, OSHA transferred or forwarded 1,184 e-complaints to MOSH in FY 2023. In addition, MOSH may receive complaints through the MOSH online complaint form, by phone, mail, or in-person. MOSH estimated that it received 1700 complaints in total. A UPA One-Liner report indicates that MOSH entered 425 UPA complaints into OIS. The FY 2023 end-of-year (EOY) SAMM report indicates that MOSH inspected 218 and investigated 149 complaints in total.

MOSH retains the authority to address certain complaints it considers not valid through its referral process at the discretion of the Assistant Commissioner. As a result of the complaint review, OSHA noted that SAMM #1A may not capture all inspected complaints due to the internal referral procedure that MOSH utilizes. To be captured by the SAMM algorithm, the UPA must be coded as a complaint. A UPA One-Liner report revealed that MOSH received 141 referrals in FY 2023. A review of the coding indicated that up to 67 referrals may be associated with complaints. Therefore, MOSH may have entered up to 492 UPA complaints in OIS, inspected up to 285, and investigated 149 of the complaints it received. MOSH did not enter a UPA for at least 692 of the OSHA e-complaints it received. MOSH estimated it received up to 1700 total complaints. Therefore, up to 1,208 of all the complaints it received were not entered into OIS. MOSH determined these complaints were not valid. OSHA notes that some of these complaints may be duplicates or have been returned to OSHA due to jurisdiction. Without a central repository, OSHA and MOSH’s ability to run accurate and consistent reports in OIS is limited.

**Finding FY 2023-04 -** *OIS Data Entry (Safety and Health Complaints)*

In FY 2023, MOSH did not record at least 692 of 1185 (58%) OSHA e-complaints, and up to 1,208 of all safety and health complaints it received into OIS.

**Recommendation FY 2023-04**

MOSH should document complaints in OIS in accordance with the MOSH FOM and as agreed to by MOSH in Appendix H - *23(g) Assurances and Certifications, Non-Construction Programs (including Lobbying Certification) with 23(g) OSHA Restrictions and Conditions* - of the FY 2023 and FY 2024 grant applications.

OSHA requested 34 fatality inspection case files by running a Scan Summary report of all inspections with an initiating type coded as fatality/catastrophe. Upon review of the case files, it was determined that six of the inspections did not result in a fatality or catastrophe and should have been coded as an accident. Similarly, the inspection initiating type of one case with the scope designated a ‘No Inspection’ was coded as an accident when it should have been coded as a fatality. OSHA will continue to evaluate fatality and accident coding for consistency accuracy.

**Observation FY 2023-OB-02** – *OIS Data Entry (Fatality/Catastrophe Coding)*

Six of 34 (18%) cases coded with a fatality/catastrophe inspection initiating type were not initiated due to a fatality or catastrophe.

**Federal Monitoring Plan FY 2023-OB-02**

OSHA will evaluate fatality and accident cases in FY 2024 to ensure that the cases are accurately coded.

OIS allows for UPAs to be identified as a complaint, FAT/CAT, or referral. The associated inspection may be coded as a complaint, FAT/CAT, referral, or accident. MOSH did not code UPA types or their corresponding inspection types in a specific, consistent manner. MOSH indicated it is evaluating its coding procedures to ensure uniformity.

1. State Internal Evaluation Program Report (SIEP)

MOSH does not develop an annual formal written SIEP report for the comprehensive evaluation of its internal operations. However, prior to issuance, MOSH reviews case files at the regional level and in its central office. An extensive review with central office staff is conducted prior to issuance of any citations associated with fatality or significant case. Mandated measures are reviewed quarterly and MOSH’s self-evaluation is reported to OSHA in the SOAR.

1. Staffing

In FY 2023, MOSH hired one administrative officer to serve as the Coordinator of Outreach and Training. A lead consultant was promoted to the consultation supervisor. In addition, MOSH hired six safety compliance officers and one new health compliance officer. MOSH lost two industrial hygienists, seven safety compliance officers, one program manager, one administrative specialist, and several administrative staff members. The program consistently and actively seeks to employ new staff.

As of July 1, 2023, MOSH was staffed with 66 full-time employees (FTEs). MOSH allocated 45 safety compliance officer positions and reported that it was staffed with 33 safety compliance officers. The MOSH safety compliance officer benchmark is set at 38. As of July 21, 2023, MOSH allocated 10 health compliance officer positions and reported that it was staffed with seven health compliance officers. The MOSH health compliance officer benchmark is set at 18. Four wage claims investigators and a unit manager from the DLI Employment Standards Unit assisted MOSH with whistleblower investigations.

**2. ENFORCEMENT**

a) Complaints

During FY 2023, OSHA implemented a new OIS capability whereby e-complaints submitted through the OSHA on-line complaint system are imported directly into OIS. All OSHA e-complaints are now transferred directly to a MOSH RID in OIS. Finding FY 2023-02 Identified thatMOSH did not enter at least 692 of the OSHA e-complaints and up to 1,208 of all the complaints it received into OIS.

As a follow-up to Observation FY 2022-OB-01, OSHA conducted an on-site review of 89 OSHA e-complaints that were transferred to MOSH either by email or directly in OIS. Of the 89 complaints, two were returned to BWAO due to jurisdiction and three were duplicates. Correcting for complaints returned to BWAO and duplicates, 84 complaints in MOSH jurisdiction were reviewed. Of the 84, 24% were inspected or investigated (11 were inspected and 9 were investigated) and 64 of 84 (76%) were determined to be not valid when received and evaluated. OSHA determined that 14 of 84 (17%) alleged serious hazards and that MOSH did not exercise its enforcement authority to address the alleged hazards. These complaints with alleged serious hazards were neither inspected nor investigated by MOSH. Upon review, MOSH later conducted an inspection for two and investigated one of the 14 identified by OSHA.

MOSH provided an explanation for not addressing each complaint. Some reasons MOSH does not validate these complaints include former employees selecting do not reveal my name on the complaint form with no response from the complainant after MOSH attempted to contact them to explain the MOSH ACT 5-209, the complainant withdrawing after they were informed their identities could not be protected in the event the employer inquired; no response from non-employee complainants after attempts to follow-up; and not meeting MOSH formality requirements. OSHA converted the associated observation to a finding.

**Finding FY 2023-02** (FY 2022-OB-01) *Complaint Enforcement*

Out of the sample of 84 complaints, MOSH did not initiate enforcement action on 14 of 84 (17%) alleging serious hazards.

**Recommendation FY 2023-02**

MOSH should develop a strategy to address occupational safety and health complaints alleging serious hazards in accordance with the MOSH FOM.

Appendix A of the MOSH ACT describes the program’s process to address complaints received from non-employees. The MOSH FOM states on Page IX-2 that: *Written and oral complaints filed by nonemployees as well as oral complaints filed by employees and unsigned written complaints filed by employees are considered non-formal complaints.*

Page IX-5 then states that: *all nonformal complaints shall receive a response. Upon receipt and evaluation of a nonformal complaint, the Compliance Manager, as soon as possible, shall prepare a letter to the employer advising of the complaint, informing of the standards allegedly violated, when necessary, and outlining the corrective action required. This letter shall be sent by certified mail with return receipt requested.*

MOSH believes, based on the MOSH Act 5-209, that it cannot protect the identity of non-employee complainants, and uses that as a rationale to dismiss those complaints – even those alleging serious hazards. In cases where the filer has selected “do not reveal my name” on the complaint form, MOSH to provides anonymity to current employees or authorized representatives. Where the filer is not a current employee or authorized representative, MOSH takes reasonable measures to protect their identity but, under law, confidentiality is not absolute in these cases. MOSH makes attempts to contact each filer who is not a current employee or authorized representative to advise them that, although reasonable measures will be taken to protect their identity, their name may not be withheld if an inquiry is made. These complaints remain in non-valid status unless or until those filers are made aware of their rights and consent to further action. Where MOSH receives no response from the complainant or the complainant withdraws their complaint after being notified that their identity may be revealed, MOSH does not validate the complaint and no further action is taken. The complaint is dismissed, preventing potential serious workplace hazards from being inspected or investigated. This could put workers’ safety and health in jeopardy.

In accordance with MOSH Act 5-209, MOSH utilizes its authority to determine if there are reasonable grounds to believe that imminent danger or a threat exists which are described with reasonable particularity, and utilizes its discretion to address non-valid complaints through self-referral. OSHA determined that MOSH may have inspected up to 67 complaints through a self-referral in FY 2023.

Federal OSHA protects the identity of all complainants to the fullest extent of the law, as described in Chapter 9 of the FOM: Complainant Protection. Identity of the Complainant. Upon request of the complainant, their identity will be withheld from the employer in accordance with Section 8(f)(1) of the Act. No information will be given to the employer that would allow the employer to identify the complainant.

The End-of-Year (EOY) SAMM report (Appendix D) indicated that MOSH averaged 3.44 workdays to initiate complaint inspections (SAMM #1A), falling within the five working day FRL. MOSH averaged 1.46 workdays to initiate complaint investigations (SAMM #2A), falling within the three working day FRL.

Of the 84 OSHA e-complaints that OSHA reviewed on-site, 19 were inspected or investigated. The remaining 65 were not considered valid and therefore were not entered into OIS. Upon further review, MOSH determined it was appropriate to inspect two and investigate one of the 65. OSHA identified that the receipt date entered in OIS did not match the actual receipt date for three of the 19 inspected or investigated complaints. MOSH clarified that the complaints were originally classified as not valid due to the complainant misidentifying the company name, a non-employee requesting anonymity, and a customer requesting an investigation. Once MOSH received new complaints satisfying its complaint requirements for inspection or investigation, the complaints were entered into OIS and the receipt date associated with the follow-up complaint was entered. OSHA closed the associated observation (Observation FY 2022-OB-02).

Based on the SAMM report, MOSH responded to all 26 complaints coded as imminent danger within one day meeting the SAMM #3 FRL which is fixed at 100%.

1. Fatalities

SAMM #10 indicates that MOSH investigated 13 work-related fatalities in FY 2023. MOSH inspected all 13 (100%) within one workday. The FRL is fixed at 100%.

OSHA reviewed 25 fatality case files. MOSH determined that it was either not appropriate to send or could not locate the NOK letter in five of the cases. The remaining 20 cases were associated with 28 fatalities. Two of the decedents in one case have the same NOK. MOSH provided the initial NOK for 21 of the 28 fatalities. MOSH did not provide a final NOK letter for any of the cases.

On November 15, 2022, MOSH issued Instruction 23-01 for communicating with victim’s family members. The instruction clarifies that MOSH may draft a letter to the NOK, when appropriate, informing them that MOSH has initiated an investigation. It also notes that upon completion of the investigation, the MOSH Chief of Compliance, or authorized representative, will make attempts to notify the NOK of the inspection findings and provide copy of the case file when requested. Due to MOSH’s updated policy, OSHA closed the associated observation (FY 2022-OB-03).

Employers are required to report all fatalities to MOSH within eight hours. In some cases, MOSH may not have jurisdiction. If an inspection is initiated, but the fatality incident is later determined not to be work-related, MOSH may document its on-site inspection activity with the scope designated as ‘No Inspection’ due to no jurisdiction.

A review of the FY 2022 and FY 2023 fatalities revealed that MOSH was notified of 12 accidents or fatalities resulting in a ‘No Inspection’ designation. One of the 12 was a work-related fatality occurring on June 13, 2022, and is associated with work conducted on or near a roadway. The inspection initiating type is coded as Accident. The file indicates that an employee was stuck by a vehicle while picking up temporary traffic control devices to deconstruct a lane closure. MOSH included interview statements in the case file. The same employer experienced a five-person fatality where work was being conducted on I-695 (Baltimore Beltway) on March 22, 2023. OSHA identified at least 12 fatalities related to work on or near the roadway in Maryland between FY 2022 and FY 2023. At least seven victims during this time were employed by the same company. MOSH investigated and determined that there were no violations related to the work being conducted. The fatality was the result of a hit-and-run driver.

A review of the 12 accidents and fatalities coded as no inspection also revealed two work-related workplace violence fatalities that occurred on October 8, 2021 and November 30, 2021 where the scope was coded as ‘No Inspection.’ OSHA also noted that the inspection initiating type is coded as Accident rather than Fatality/Catastrophe. Identifying work-related cases as a ‘No Inspection’ does not provide MOSH compliance staff the option to consider violative conditions; therefore, a new observation was identified. OSHA verified that MOSH documented all fatalities where work was conducted on or near roadways in FY 2022 and FY 2023 and closed the associated observation (FY 2022-OB-04).

**Observation FY-2023-OB-03 –** *No Inspection/In-compliance*

In FY 2022 and 2023, MOSH designated up to three work-related fatalities as no inspections.

**Federal Monitoring Plan FY 2023-OB-03**

In FY 2025, during the next comprehensive FAME, OSHA will review OIS reports, UPA files, and inspections files related to incidents and fatalities designated as No Inspection.

c) Targeting and Programmed Inspection

 Based on SAMM #7, MOSH conducted 1,236 total inspections during FY 2023 – accomplishing 82% of its goal. MOSH planned for 1,390 safety inspections and conducted 1,096 or 79% of its safety inspection goal. The FY 2023 FRL for safety is +/- 5% of the goal established in the FY 2023 grant application (1,390 inspections) or 1,320.5 to 1,459.5 inspections. MOSH conducted 140 health inspection in FY 2023, exceeding the FRL. The FRL for health is +/- 5% of the goal established in the FY 2023 grant application (117 inspections) or 111.15 to 122.85 inspections.

 MOSH has fallen below the FRL and has not met the number of planned safety inspections since FY 2018. Due to the impact of COVID-19 in the state, OSHA did not identify this as a finding in FY 2020 or FY 2021. OSHA continued the associated observation.

 **Observation FY 2023-OB-01** (Observation FY 2022-OB-06) – *Planned Inspections*

MOSH conducted 79% (1096 of 1390) of its planned safety inspections.

 **Federal Monitoring Plan FY 2023-OB-01**

 OSHA will continue to monitor the status of MOSH’s actual versus planned inspections.

 MOSH utilizes several targeting programs to identify and schedule programmed inspections. These include the use of OSHA’s National Emphasis Programs (NEPs) and Maryland-specific Local Emphasis Programs (LEPs) which address special emphasis hazards and industries in Maryland.

 MOSH has adopted LEPs for:

* Maryland High Hazard Industries
* Tree Care and Removal
* Health Hazards in Construction
* Electrical Hazards in Construction
* Crush-by/Struck-by in Construction
* Fall Protection in Construction
* Public Sector

MOSH participates in the OSHA exempted SIC/NAICS industry list as provided in the current Appropriations Act. The Federal Appropriations Act contains limits for OSHA activities where 23(g) grant funds are used on a year- by-year basis. Since these 23(g) grant funds are passed through OSHA to the State Plan, MOSH is held to the same restrictions and limits imposed on OSHA for the use of federal funds. The Appropriations Act limitations do not apply to 100% State Plan funds. MOSH Instruction, 14-9, describes the limitations or prohibitions of the use of federal funds for certain MOSH activities. MOSH utilizes 100% special funds on all inspections and investigations that are exempted under the federal constraints of the Appropriations Act.

In FY 2023, 67.88% of all safety inspections and 5.71% of all health inspections were programmed. Based on a Scan Summary report, MOSH conducted three programmed health and 760 programmed safety inspections. Of the 760 programmed safety inspections, 623 (82%) were associated with construction NAICS codes.

MOSH’s FY 2023 in-compliance rate identified in SAMM #9 for health cases was 18.02% and 19.72% for safety cases. The health in-compliance rate was below the FRL (+/- 20% of the three-year national average of 43.82% or 35.06% to 52.58%). The safety in-compliance rate was also below the FRL (+/-20% of the three-year national average of 31.73% or 25.38% to 38.08%), indicating that MOSH adequately targets inspections and that compliance staff is well-trained in hazard recognition. Case files that were identified as being in-compliance were found to be documented properly with no issues identified. Case files with citations issued included proper hazard identification and documentation with the correct standard for each violation noted.

In FY 2023, MOSH issued violations in 871 safety cases and 110 health cases. MOSH issued repeat violations in 14.48% of not-in-compliance cases. MOSH issued 43 willful violations with 29 classified as willful-serious in FY 2023. Percent of Enforcement Presence (SAMM #17), at 1.10% is inside the FRL established at +/- 25% of the three-year national average (0.93%), providing a range of 0.70% to 1.17%.

d) Citations and Penalties

During the on-site review, OSHA observed that MOSH’s case files were well-organized. Each file contained an extensive hazard description and well-developed employer knowledge gleaned from worker and management interviews. Most case files included numerous well-labeled photos. Based on the information and documentation contained in the reviewed case files, it appeared that citations were issued for apparent violations when appropriate. MOSH does not maintain its field notes in each case file but incorporates them into the narrative.

In FY 2023, MOSH issued 4,981 violations – 40.23% were serious and 10.32% were repeat. SAMM #5 clarifies that MOSH averaged 2.54 serious, willful, or repeat (SWR) violations per inspection, and 2.27 other-than-serious (OTS) violations per inspection, surpassing the FRL of +/- 20% of the three-year national average of 1.75 or 1.40 to 2.10 for SWR violations and +/- 20% of the three-year national average of 0.89 or 0.71 to 1.07 for OTS violations. Before issuing a citation, MOSH considers the gravity of the violation. To determine this, MOSH considers the severity of the injury or illness that could result from the alleged violation, and the probability that an injury or illness could occur as a result of the alleged violation. The case file review revealed that citation classification (severity/probability) was found to be in accordance with the MOSH FOM.

MOSH grouped citations where appropriate. The case file review did not note any major deviations from MOSH or OSHA policy. The MOSH FOM provides general and standard specific guidance for grouping violations. MOSH issued 514 repeat violations in FY 2023. The review indicated that MOSH cited repeat violations where it was appropriate. An extensive review with central office staff is conducted prior to issuance of any citations associated with fatality or significant cases. MOSH consults with the Office of the Attorney General when any questions or concerns arise prior to issuance of citations. According to OSHA’s definition, MOSH did not issue any significant cases in FY 2023.

In FY 2023, SAMM #11 provides that MOSH average safety lapse time was below the FRL (+/-20% of the three-year national average of 55.23 days or 44.18 to 66.28 days) at 43.96 days. MOSH average health lapse time fell within the FRL (+/-20% of the three-year national average of 69.72 days or 55.78 to 83.66 days) at 68.68 days.

SAMM #8 indicates that MOSH’s average current penalty in the private sector was $892.89, falling outside of the FRL (+/- 25% of the three-year national average of $3,625.21 or $2,718.91 to $4,531.51). Although MOSH’s penalties are significantly lower than the national average, SAMM #12 clarifies that it maintained 84.83% of its penalties, more than the FRL (+/-15% of the three-year national average of 71.84% or 61.06% to 82.62%).

1. Abatement

The FY 2023 EOY SIR identified 69 non-contested cases that were awaiting abatement verification for more than 60 days. This represents a significant decrease from the FY 2022 EOY SIR which identified 148 open non-contested cases with open abatement. OSHA closed the associated observation (FY 2022-OB-05).

OIS reports show that MOSH conducted 8 follow-up inspections and issued 36 failure-to abate (FTA) violations in FY 2023. MOSH policies and procedures outline when follow-up inspections are necessary.

The case file review revealed the MOSH often uses the corrected during inspection (CDI) and quick fix abatement codes when appropriate. The MOSH FOM permits CDI coding when abatement is witnessed by the compliance officer during the inspection.

1. Worker and Union Involvement

SAMM #13 indicated that in 100% of inspections (FRL fixed at 100%), MOSH included worker representation. During the on-site review, OSHA found that MOSH conducts interviews with workers on a consistent basis, and unions are provided the opportunity to participate in opening and closing conferences, as well as during the walkaround portion of inspections. SAMM #4 provides that MOSH was able to obtain entry at all sites (FRL fixed at zero).

Worker interviews are conducted to develop hazard descriptions and develop employer knowledge. Interview statements are documented in case files associated with incidents and fatalities. MOSH’s policies resemble OSHA’s policies. Under COMAR 09.12.20.F, if the employer contests, workers have the right to elect “party status” before the hearing examiner.

**3. REVIEW PROCEDURES**

1. Informal Conferences

MOSH follows the FOM guidance when determining penalty reductions during the informal conference. The MOSH conferee negotiates the amount of penalty reduction depending on the circumstances of the case, the financial condition of the employer, and what improvements in worker safety and health can be obtained in return.

During FY 2023, MOSH provided effective consideration to the gravity of violations, the size of the business being inspected, good faith of the employer, and the employer’s previous inspection history. In addition, MOSH considered the type, gravity, and severity of the violation when initially assessing penalty adjustment factors. MOSH provided justification for vacating and/or reclassifying violations and vacated or reclassified violations within reason. During the FY 2023 on-site review, there were no concerns with the changes made to citations during the informal conference. Noted changes were appropriate to the case.

SAMM #12 indicated that MOSH maintained 84.83% of its penalties – exceeding the FRL. Any modifications made to violations did not indicate any systemic problems within MOSH. The on-site review did not reveal any settlement pattern concerns. The FY 2023 EOY SIR indicated that MOSH vacated only 1.24% of violations pre-contest. Similarly, MOSH only reclassified violations in 0.53% of cases pre-contest. Likewise, the case file review did not reveal any issues with citation modification.

The MOSH FOM outlines MOSH pre-contest (informal settlement agreement) and post-contest (formal settlement agreement) procedures. The FY 2023 case file review revealed that MOSH held informal conferences beyond the 15-working day contest period in 22 of 57 of the cases settled informally. For these cases, informal conferences were held, on average, 45 days after receipt of citations. The case files for 10 of the 22 cases with an informal conference held outside the 15-working day period indicate that a Notice of Contest was received. Informal conferences were held within but were settled outside the 15-working day contest period for seven cases that were settled informally. All cases were identified as having been settled informally with an informal settlement agreement in OIS.

**Observation FY 2023-OB-04** - *Informal Settlement Procedures*

In 29 of 57 (51%) of case files with informal conferences, MOSH either held the informal conference or settled the case with an informal settlement outside of the 15 working day contest period and did not identify the disposition of the case as a formally settled contest.

**Federal Monitoring Plan FY 2023-OB-04**

OSHA will conduct a review of cases with informal conferences during the FY 2025 on-site review to determine if MOSH is following its settlement policy outlined in the MOSH FOM.

1. Formal Review of Citations

Per the MOSH FOM, the Assistant Commissioner/Authorized Representative is authorized to enter into Informal Settlement Agreements with an employer before the employer files a notice of contest. Citations will become final and unreviewable at the end of the contest period unless the employer either signs an informal settlement agreement approved by the Assistant Commissioner/Authorized Representative, or files a notice of contest. (See Observation FY 2023-OB-03.)

The employer may preserve the ability to litigate a case when it properly files a Notice of Contest with the Commissioner/Authorized Representative within 15-working days of receipt of the citation. When a case cannot be settled informally and the employer has submitted a Notice of Contest, the Commissioner/Authorized Representative notifies the Office of Administrative Hearing. The Commissioner/Authorized Representative also informs the employer of the time, place, and nature of the hearing as appropriate. Even after the employer has filed a notice of contest, the Assistant Commissioner/Authorized Representative may enter into a Formal Settlement Agreement in cases where a settlement appears probable without the need for participation of an attorney. Such settlement action is coordinated with the Office of the Attorney General.

The FY 2023 EOY SIR indicates that 13.18% (29 of 220) of violations in contested cases settled through the Office of the Attorney General are vacated. The national average is recorded at 15.30%. The SIR confirms that 8.38% (16 of 191) of violations in contested cases settled through the Office of the Attorney General are reclassified. The national average is recorded at 12.40%. It is anticipated that the pre and post contest metrics may shift if MOSH identifies the case disposition as outlined in its FOM. MOSH considered all but three of reviewed cases to have been settled informally.

The FY 2023 EOY SIR indicates that 82.24% of penalties are retained after a contest has been filed. The national average is reported at 66.14%. The review did not reveal concerns with the originally issued citations. In general, MOSH may amend or administratively vacate a citation when the citation was issued with an administrative or technical error, when previously unknown additional facts are presented, or when additional facts establishing that no employees were exposed to the hazard are identified. The MOSH FOM also defines the circumstances when citation amendment or administrative vacating is not justified. The case file review did not reveal any adverse decisions.

MOSH policy regarding the disclosure of documents is governed by the Maryland Public Information Act (MPIA) and the regulations adopted by DLLR (COMAR 09.01.04). MOSH policy is to disclose all documents to which the public is entitled under the MPIA and the regulations. All decisions were made available to the public and were consistent with federal procedures. OSHA is not aware of any inconsistency with federal precedence nor any poor-quality decisions.

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

1. Standards Adoption

State Plans are required to respond within 60 days of initial notification to declare whether they intend to adopt an OSHA change. According to 29 CFR 1953, when a federal change is identified as having the potential to impact the effectiveness of the State Plan, State Plans are required to either adopt the change identically or submit an alternative approach with a State Plan supplement that is at least as effective as the federal change.

Current legislation prevents MOSH from adopting FPCs within six months of OSHA promulgation when there is a delay in OSHA enforcement. In 2019, MOSH attempted to pass new legislation to address this but it was not passed. Regardless, MOSH has adopted all current FPC regulations except for the Final Rule to Improve Tracking of Workplace Injuries and Illnesses. OSHA will continue to monitor MOSH’s legislative action to address FPC adoption when there is a delay in OSHA enforcement.

MOSH plans to adopt the Final Rule to Improve Tracking of Workplace Injuries and Illnesses identically but must wait due to a moratorium on regulations during the current legislative session. The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn.

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 15, 2024, according to the Consumer Price Index (CPI). See 2024 Annual Adjustments to OSHA Civil Penalties, available at [2024 Annual Adjustments to OSHA Civil Penalties | Occupational Safety and Health Administration](https://www.osha.gov/memos/2024-01-08/2024-annual-adjustments-osha-civil-penalties); 87 FR 2328 (Jan. 8, 2024).

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.

A letter to MOSH informing that failure to adopt these increases would very likely result in FAME finding and requesting that MOSH respond with an action plan for completing the necessary legislative changes was sent on September 3, 2021. MOSH responded on October 1, 2021.

Upon review, OSHA was concerned that the response did not sufficiently outline an action plan for adoption, and a second letter to MOSH was sent on November 22, 2021. MOSH responded on December 1, 2021, and confirmed that increasing penalty amounts will require legislative changes to Labor and Employment Article, 5-810, Annotated Code of Maryland. DLI has submitted a legislative package to the governor’s office. MOSH adopted the maximum penalty increase on April 9, 2024. Finding FY 2022-02 was completed.

The new maximum penalty levels, which reflect OSHA 2024 maximum penalties, will be applied to MOSH inspections opened on or after July 1, 2024. The statute also requires the Commissioner of Labor and Industry to annually increase the maximum civil penalty amounts, starting in 2025, by an amount that reflects the percentage increase, if any, in the Consumer Price Index – Urban (CPIU) from the previous calendar year.

Federal OSHA’s 2025 CPI-U adjustment will be adopted by OSHA in January 2025. Therefore, between January 2025 and July 15, 2025, MOSH maximum penalties will fall below OSHA’s by the 2025 CPI-U adjustment factor (to be determined). By July 15, 2025, MOSH maximum penalties will align with OSHA’s. Each following year the adjustment will be increased in this manner. Consequently, MOSH maximum penalties will always be less than OSHA’s by the most recently adopted adjustment factor for the first 6 months of the year, and will align with OSHA’s for the remainder of the year, in agreement with the six-month adoption requirement.

The current status of FY 2022 and 2023 federal standards adoption are listed in Table A below. Standards that were not yet adopted but that were required to be adopted before FY 2022 are also included.

**Table A**

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

(May include any delinquent standards from earlier fiscal years)

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910, 15, 17, 18, 26, 28(11/5/2021) | 11/20/2021 | N/A | N/A | N/A | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910(11/5/2021) | 1/7/2022 | N/A | N/A | N/A | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 202229 CFR 1903(1/15/2022) | 3/15/2022 | 12/1/2021 | Yes | No | 7/15/2022 | 4/9/2024 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and ®(2/14/2022) | 4/14/2022 | 3/10/2023 | Yes | No | 8/14/2022 | 5/30/2021 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 202329 CFR 1903(1/15/2023) | 3/15/2023 | 12/1/2021 | Yes | No | 7/15/2023 | 4/9/2024 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses29 CFR 1904(7/21/2023) | 9/21/2023 | 12/19/2023 | Yes | Yes | 1/21/2024 |  |

1. Federal Program Change (FPC) Adoption

MOSH adopted all required FPCs except for the Field Operations Manual update and the Final Rule to Improve Tracking of Workplace Injuries and Illnesses. OSHA is currently reviewing all recently submitted FPC adoptions.

The status of all adoption required, equivalency required, and adoption encouraged FPCs is presented in Tables B and C below.

OSHA continued the associated Finding.

**Finding FY 2023-01** –*Federal Program Changes (FPCs)*

MOSH did not take action on nine FPCs within the required timeframes, with one remaining outstanding.

**Recommendation FY 2023-01**

MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes.

**Table B**

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

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program CPL 03-00-008(1/30/2023) | 3/31/2023 | 12/19/2023 | Yes | No | 7/30/2023 | 1/26/2024 |
| National Emphasis Program on Warehousing and Distribution Center OperationsCPL 03-00-026(7/13/2023) | 9/11/2023 | 12/19/2023 | Yes | No | 1/9/2024 | 1/26/2024 |

**Table C**

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

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Field Operations ManualCPL 02-00-164(4/14/2020) | 6/13/2020 | 2/17/2021 | Yes | No | 10/14/2021 |  |
| Compliance Directive for Cranes and Derricks in Construction StandardCPL 02-01-063(2/11/2022) | 7/3/2022 | 11/14/2022 | Yes | No | 11/3/2022 | 3/10/2023 |
| OSHA Whistleblower Investigations ManualCPL 02-03-011(4/29/2022) | 10/11/2022 | 11/14/2022 | Yes | No | 2/11/2023 | 1/19/2023 |
| Severe Violator Enforcement Program (SVEP)CPL 02-00-169(9/15/2022) | 11/15/2022 | 11/14/2022 | Yes | No | 3/15/2023 | 1/26/2024 |
| Site-Specific Targeting (SST)CPL 02-01-064(2/7/2023) | 4/8/2023 | 3/10/2023 | Yes | No | 8/6/2023 | 3/10/2023 |
| National Emphasis Program – FallsCPL 03-00-025(5/1/2023) | 6/30/2023 | 12/19/2023 | Yes | No | 10/28/2023 | 1/26/2024 |
| Consultation Policies and Procedures Manual CSP 02-00-005(9/29/2023)  | 11/28/2023 | 12/19/2023 | Yes | No | 3/27/2024 | 1/26/2024 |

**Table D**

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

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft SystemsCPL 02-01-169(12/22/2021) | 2/22/2022 | 11/15/2022 | No | N/A | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related HazardsCPL 03-00-024(4/8/2022) | 6/8/2022 | 11/14/2022 | Yes | No |  |

 **Table E**

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

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| Communicating with the Victim’s Family (23-1) | 11/15/2022 | 11/15/2022 |
| Civil Penalties for Citations Issued as Other-Than-Serious (23-8) | 3/10/2023 | 3/10/2023 |
| Guidelines for Handling Discrimination Complaints (23-2) | 1/19/2023 | 1/19/2023 |

**5. Variances**

MOSH variance provisions are described in Sections 5-318 through 5-327 of the MOSH Act and COMAR 09.12.20.17. There were no variances requested during the FY 2023 evaluation period.

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

SAMM #6 indicates that MOSH conducted 69 safety and health inspection in SLG workplaces. MOSH conducted 5.58% of its total inspection activity in SLG for FY 2023, more than the FRL (+/-5% of the 5.04% negotiated in the FY 2023 grant application or 4.79% to 5.30%). During the on-site review, serious violations were observed, and citations issued.

Although no penalties are assessed against SLG employers, MOSH has worked with these agencies to bring them into compliance with current safety and health standards. Abatement information is required from SLG entities and is reviewed and evaluated in the same manner as private sector abatement documentation.

**7. WHISTLEBLOWER Program**

The Whistleblower associated SAMMs (#’s 14, 15, and 16) are not being reported for FY 2023 due to the transition of whistleblower data from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system commonly referred to as IMIS, to the Whistleblower module in OIS, a modern data system.

The MOSH Whistleblower Unit was assisted with help from four wage claims investigators and one manager from the Division of Labor and Industry (DLI) Employment Standards Unit during FY 2023. The investigators were cross-trained and received ongoing formal and informal training to conduct whistleblower investigations for MOSH. In early FY 2024, OSHA Region 3 signed onto a whistleblower pilot program whereby electronically filed complaints are transferred to MOSH in OIS.

The investigative files selected contained 20 administrative closures, seven docketed dismissals, and three settled cases. The case file review revealed that MOSH lacked the required documentation. The WIM indicates that A Designation of Representative (DOR) form should be completed by Respondent’s representative to document Respondent’s representative’s involvement.

**Observation FY2023-OB-05** – *Whistleblower Case File Documentation*

Four of 10 (40%) docketed Whistleblower case files lacked DOR forms documentation.

**Federal Monitoring Plan FY 2023-OB-05**

OSHA will conduct a review of the Whistleblower case files in FY 2025 to determine if the required documentation is present.

Otherwise, the review determined that MOSH adheres to the instructions, policies and

procedures contained in the current WIM and supplemental guidance provided by the

Directorate Whistleblower Protection Program.

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

OSHA did not receive any CASPAs regarding MOSH program administration during FY 2023.

**9. Voluntary Compliance Program**

MOSH promotes and recognizes exceptional safety and health efforts through its voluntary programs. MOSH’s VPP recognizes mid-to-large size employers for developing a comprehensive safety and health management system that protects workers from harm. These VPP workplaces are recognized for their efforts in achieving an exceptional, progressive program that has management commitment and worker involvement, employs routine hazard identification, hazard control and safety, and health training.

MOSH’s VPP mirrors OSHA’s VPP with the exception that it only accepts employers who meet the STAR status – the federal program also allows for the MERIT designation to employers who are close but have not yet met the full criteria of the program. MOSH’s VPP also does not extend the program to mobile worksites. MOSH currently recognizes 19 VPP sites. MOSH did not add any new sites to the VPP in FY 2023. The VPP unit awarded one site reapproval and received one new application in FY 2021. Inspection deferrals are approved under VPP, which mirrors the federal policy. Worksites are removed from programmed inspection lists during participation in MOSH’s VPP.

MOSH also operates a Cooperative Compliance Partnership (CCP) for employers in Maryland that predates VPP in Construction. MOSH’s CCP seeks to establish a cooperative relationship with private sector companies who are committed to reducing injuries and illnesses and building a positive safety and health culture in the construction industry. Employers comply with requirements that go above and beyond the minimum standards and work together to address the complex safety and health issues related to larger construction activities with a mix of employers. One new partnership was signed in FY 2023, bringing the CCP total to 101.

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

According to the FY 2023 Mandated Activities Report for Consultation (MARC), the MOSH Consultation Program conducted 61 on-site consultation visits at state and local government workplaces in FY 2023. Fifty-six were reported as initial visits, five were reported as a follow-up visits. All hazards were abated within the required timeframe. MOSH met its projected goal of 61 total visits in state and local government workplace.

OSHA conducted an on-site review of 30 randomly selected SLG case files. The case file review found that the program administered the 23(g) public sector consultation program in an effective manner, including timely issuance of written reports, effective documentation of hazards, and management procedures to ensure serious hazards were corrected in a timely manner. No concerns were noted during the review period.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or** **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | *Federal Program Changes (FPCs)*MOSH did not take action on nine FPCs within the required timeframes, with one remaining outstanding. | MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes. | FY 2022-01FY 2021-01FY 2020-01FY 2019-01FY 2018-01FY 2017-01FY 2016-01FY 2015-01 |
|  FY 2023-02 | *Complaint Enforcement*Out of the sample of 84 complaints, MOSH did not initiate enforcement action on 11 of 84 (17%) alleging serious hazards.  | MOSH should develop a strategy to address occupational safety and health complaints alleging serious hazards in accordance with the MOSH FOM.  | FY 2022-OB-01FY 2021-OB-01 |
| FY 2023-03 | *OIS Data Entry (Whistleblower Complaints)*In FY 2023, MOSH did not record 64 of 65 (98%) administratively closed whistleblower complaints it received into OIS.  | MOSH should document complaints in OIS in accordance with the WIM and as agreed to by MOSH in Appendix H - *23(g) Assurances and Certifications, Non-Construction Programs (including Lobbying Certification) with 23(g) OSHA Restrictions and Conditions* - of the FY 2023 and FY 2024 grant applications. |  |

|  |  |  |  |
| --- | --- | --- | --- |
| FY 2023-04 | *OIS Data Entry (Safety and Health Complaints)*In FY 2023, MOSH did not record at least 692 of 1185 (58%) OSHA e-complaints, and up to 1,208 of all complaints it received into OIS.  | MOSH should document complaints in OIS in the MOSH FOM and in accordance with and as agreed to by MOSH in Appendix H - *23(g) Assurances and Certifications, Non-Construction Programs (including Lobbying Certification) with 23(g) OSHA Restrictions and Conditions* - of the FY 2023 and FY 2024 grant applications. |  |

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or** **FY 2022-OB-#** |
| --- | --- | --- | --- |

| **Observation #****FY 2023-OB-#** | **Observation#****FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-06 | *Planned Inspections*MOSH conducted 79% (1096 of 1390) of its planned safety inspections. | OSHA will continue to monitor the status of MOSH’s actual versus planned inspections. | Continued |
| FY 2023-OB-02 |  | *OIS Data Entry (Fatality/Catastrophe Coding)*Six of 34 (18%) cases coded with a fatality/catastrophe inspection initiating type were not initiated due to a fatality or catastrophe. | OSHA will evaluate fatality and accident cases in FY 2024 to ensure that the cases are accurately coded.  | New |
| FY 2023-OB-03 |  | *No Inspection/In-compliance*MOSH designated up to three work-related fatalities as no inspections.  | In FY 2025, during the next comprehensive FAME, OSHA will review OIS reports, UPA files, and inspections files related to incidents and fatalities designated as No Inspection.  | New |
| FY 2023-OB-04 |  | *Informal Settlement Procedures*In 29 of 57 (51%) of case files with informal conferences, MOSH either held the informal conference or settled the case with an informal settlement outside of the 15 working day contest period and did not identify the disposition of the case as a formally settled contest. | OSHA will conduct a review of cases with informal conferenced during the FY 2025 on-site review to determine if MOSH is following its settlement policy outlined in the MOSH FOM. | New |
| FY 2023-OB-05 |  | *Whistleblower Case File Documentation* Four of 10 (40%) docketed Whistleblower case files lacked DOR documentation.  | OSHA will conduct a review of the Whistleblower case files in FY 2025 to determine if the required documentation is present.  | New |
|  | FY 2022-OB-01FY 2021-OB-01 | *Complaint Enforcement*In FY 2021MOSH did not initiate enforcement action on 46 of OSHA e-complaints alleging serious and hazardous workplace conditions. | OSHA did not evaluate during FY 2022, but will conduct a review of OSHA e-complaints in FY 2023 to determine if MOSH initiated enforcement action in response to hazardous workplace allegations. | Converted to a Finding |
|  | FY 2022-OB-03FY 2021-OB-03 | *Next-of-Kin (NOK) Notification Documentation*In FY 2021, six of 14 (43%) fatality case files, there was no documentation showing that the final next-of-kin letter with the inspection results were sent to the family members. | OSHA did not evaluate during FY 2022. In FY 2023, during the next comprehensive FAME, OSHA will review fatality case files to determine if NOK letters with inspection results are sent to the family members at the conclusion of the fatality investigations. | Closed |
|  | FY 2022-OB-04FY 2021-OB-04 | *Fatality Documentation and Inspections*In FY 2021 MOSH did not document and adequately perform inspections on two traffic-related fatalities ensuring that commonly employed traffic safeguards were in place where work was being conducted on or near roadways.  | OSHA did not evaluate during FY 2022. In FY 2023, during the next comprehensive FAME, OSHA will review OIS reports, UPA files, and inspections files for MOSH’s roadway and work zone incident and fatality response and documentation.  | Closed |
|  | FY 2022-OB-05FY 2021-OB-05 | *Abatement Verification and Documentation*In FY 2021MOSH did not verify and document abatement for 148 non-contested inspection cases that have been open for more than 60 days. | OSHA did not evaluate during FY2022. OSHA will continue to monitor the status of open abatement for non-contested inspection cases in FY 2023.  | Closed |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status** **(and Date if Item is** **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01 | *Federal Program Changes (FPCs)*MOSH did not act on FPC directives within the required timeframes. | MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes. | MOSH will act on overdue FPCs. | N/A | OpenSeptember 30, 2023) |
|  FY 2022-02 | *Federal Program Change – Maximum Penalty Increase*MOSH has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | MOSH should work with its 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 federal OSHA’s maximum and minimum penalty levels. | MOSH adopted the maximum penalty increase.  | 4/9/2024 | Completed  |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023Further Review Level | FY 2023Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 3.44 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 2.89 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 1.46 | 3 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 0.10 | 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) | 2.54 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU.  |
| 5b | Average number of violations per inspection with violations by violation type (other) | 2.27 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 5.58% | +/- 5% of5.04% | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.79% to 5.30%. |
| 7a | Planned v. actual inspections (safety) | 1,096 | +/- 5% of 1,390 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,320.50 to 1,459.50 for safety. |
| 7b | Planned v. actual inspections (health) | 140 | +/- 5% of 117 | 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 111.15 to 122.85 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $892.89 | +/- 25% of $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
|  | **a**. Average current serious penalty in private sector (1-25 workers) | $758.00 | +/- 25% of $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04 |
|  | **b**. Average current serious penalty in private sector (26-100 workers**)** | $1,163.19 | +/- 25% of $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
|  | **c**. Average current serious penalty in private sector(101-250 workers) | $1,314.86 | +/- 25% of $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
|  | **d**. Average current serious penalty in private sector(greater than 250 workers) | $1,715.88 | +/- 25% of $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9 | Percent in-compliance (safety) | 19.72% | +/- 20% of31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in-compliance (health) | 18.02% | +/- 20% of43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 43.96 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 68.68 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 84.83% | +/- 15% of71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk around representation or worker interview | 100% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.  |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 1.10% | +/- 25% of0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |