**FY 2023 Comprehensive**

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

Massachusetts Department of Labor Standards

Workplace Safety and Health Program

(WSHP)



**Evaluation Period: October 1, 2022 – September 30, 2023**

**Initial Approval Date: August 18, 2022**

**State Plan Certification Date: N/A**

**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region I**

**Boston, Massachusetts**



**Contents**

1. **Executive Summary**………………………………………...………...….................. **3**
2. **State Plan Background**………………………………………………...................... 3
3. Background…………………………………………………………………........................... 3
4. New Issues……………………………………………………………………......................... 6
5. **Assessment of State Plan Performance**………………………………............ 6
6. Data and Methodology……………………………………………………….................... 6
7. Review of State Plan Performance …………………………………………............... 7
8. Program Administration……………………………………............................... 7
9. Enforcement………………………………………………………………...................... 8
10. Review Procedures……………………………………………………….................... 13
11. Standards and Federal Program Changes (FPCs) Adoption……………… 14
12. Variances…………………………………………………………………........................ 20
13. State and Local Government Worker Program…………………………….... 20
14. Whistleblower Program………………………………………………….................. 20
15. Complaint About State Program Administration (CASPA)…………….... 21
16. Voluntary Compliance Program………………………………………….............. 21
17. State and Local Government 23(g) On-Site Consultation Program…. 21
18. Status of Developmental Schedule………………………………………………... 22

**Appendices**

Appendix A – New and Continued Findings and Recommendations…………. A-1

Appendix B – Observations and Federal Monitoring Plans……………….......... B-1

Appendix C – Status of FY 2022 Findings and Recommendations…………..... C-1

Appendix D – FY 2023 State Activity Mandated Measures (SAMM)

Report…………………………………………………………........................ D-1

1. **Executive Summary**

The purpose of this report is to assess the Massachusetts Workplace Safety and Health Program’s (WSHP’s) activities for fiscal year (FY) 2023. On August 18, 2022, WSHP was approved by the Occupational Safety and Health Administration (OSHA) as a state occupational safety and health plan applicable only to state and local government workers.Thus, FY 2023 was WSHP’s first full year as a State Plan.

As a new State Plan, WSHP faced many challenges. One of WSHP’s biggest hurdles was learning OSHA’s online system for tracking and recording activity data. The State Plan devoted a great deal of time to training on this system and is committed to ensuring that personnel become adept at using it as quickly as possible.

Despite needing time to get up to speed, WSHP exceeded many expectations in FY 2023. For example, the State Plan achieved goals for inspections and consultation visits, ensured staff completed required training, met most performance metrics, and is well on its way to completing all 15 developmental steps within the allowable three-year timeframe.

WSHP made significant progress in FY 2023, but understandably, the State Plan experienced a steep learning curve during the first half of the fiscal year. Therefore, OSHA focused the case file review for this report solely on inspections from the third and fourth quarters of FY 2023 (whereas a comprehensive case file review would normally examine inspections from the entire fiscal year).

OSHA did not identify any concerns that rise to the level of a finding, but the case file review revealed a few issues with case file documentation that have resulted in observations in this report. One issue pertains to the violation worksheet, another relates to notes on worker interviews, and the third matter pertains to union involvement in inspections. All signs point to WSHP resolving these matters with ease as it continues to acquire more training and experience.

Appendix B describes observations and the related federal monitoring plans; this appendix lists three new observations. In summary, this report contains no findings and three new observations.

**II. State Plan Background**

1. **Background**

Massachusetts began conducting occupational safety and health inspections in 2012. The state used OSHA-modeled processes even though it was not an OSHA-approved State Plan. From 2012 through 2018, 18 work-related fatalities occurred in the state and local government workforce, highlighting the need for Massachusetts to become a State Plan state. In 2015, Massachusetts passed legislation requiring state agencies to comply with OSHA standards. This legislation was updated on March 9, 2018, to include all state and local government employers and became effective February 1, 2019. Under the Occupational Safety and Health (OSH) Act of 1970, state and local government workers are specifically excluded from federal coverage. These state and local government workers receive formal OSHA coverage only through an OSHA-approved State Plan.

In December 2020, the state began working with OSHA to draft a State Plan applicable only to state and local government employment. Final revisions to the Plan were completed in June 2022, and on August 18, 2022, OSHA granted Massachusetts initial approval of its developmental State and Local Government State Plan. A State and Local Government State Plan, such as WSHP, may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1956.10 and 1956.11 if it agrees to meet the criteria within a three-year period (see 29 Code of Federal Regulations (CFR) 1956.2(b)). The State Plan’s developmental schedule is discussed in detail later in this report.

The Executive Office of Labor and Workforce Development, Department of Labor Standards, implements Massachusetts’ State Plan through the WSHP. The WSHP Director is the State Plan designee. Staff are in the following offices throughout Massachusetts: Boston, Lawrence, Taunton, Springfield, and Westboro.

**Coverage**

According to the State Plan’s FY 2024 grant application, WSHP covered approximately 98,200 state workers and 335,700 local government workers in FY 2023. The State Plan also covered 2,141 state workplaces and 4,364 local government workplaces. Although WSHP’s coverage includes volunteers under the direction of a public employer or other public corporation or political subdivision, the State Plan’s coverage does not include students (except when employed or vocational/technical students when performing field work) or those incarcerated in public institutions. Private sector and federal government workers in the state remain under OSHA jurisdiction.

**State Plan Standards and Federal Program Changes (FPCs)**

When promulgating standards, WSHP follows its State Administrative Procedure Act (APA) and 950 CMR 20.00. The State Plan, under 454 CMR 25.00, incorporated the standards set forth under the OSH Act, including the General Duty Clause and OSHA’s occupational safety and health standards. WSHP will continue to adopt OSHA’s standards when promulgated to provide timely and effective worker protection. WSHP consults the governor’s advisory board (consisting of members from state agencies, municipal organizations, and labor unions) before promulgating occupational safety and health regulations and adopting regulations promulgated by OSHA.

**Enforcement**

In Massachusetts, 454 CMR 25.00 requires employers to comply with OSHA regulations and gives WSHP authority to enforce OSHA regulations at state and local government workplaces. Enforcement activities are conducted by industrial safety and health inspectors (ISHIs). When violations are identified, a Civil Citation and Civil Penalty is issued. However, a Civil Citation and Civil Penalty does not necessarily include a monetary fine.

The Massachusetts Field Operations Manual (MA FOM) is based on OSHA’s FOM but reflects differences between the State Plan and OSHA. OSHA has reviewed and approved most chapters of the MA FOM, but some modifications are still in progress.

**Consultation**

WSHP also uses the title “ISHI” for safety and health staff who conduct consultation activities. When hazards are identified, a Consultation Report is issued. Employers are required to provide documentation that corrective action was completed. ISHIs who conduct consultation activities do not share visit information with the enforcement side of WSHP.

**Retaliation Protections**

WSHP’s Anti-Retaliation Program is modeled after OSHA’s Whistleblower Protection Program. The State Plan’s anti-retaliation provisions are contained in 454 CMR 25.07 and 29 CFR 1977. WSHP has adopted OSHA’s Whistleblower Investigations Manual. Massachusetts also has a Whistleblower’s Protection Statute, M.G.L. c. 149, § 185, that prohibits retaliation through a right of private civil action.

**Voluntary and Cooperative Programs**

WSHP provides free, voluntary occupational safety and health training and consultation services for state and local government workplaces.The State Plan administers the Safety and Health Award for Public Employers (SHAPE) Program to recognize state and local government employers with an excellent safety and health program. This program is similar to the Safety and Health Achievement Recognition Program (SHARP) administered by 21(d) consultation programs for private sector employers.

**Staffing**

At the end of FY 2023, the State Plan had 15 personnel. This total included four supervisors (one program supervisor in charge of all staff and three field supervisors), 7.5 enforcement ISHIs, 0.5 whistleblower investigator, and three 23(g) consultation ISHIs. At full staffing (which must be achieved by the end of the three-year developmental period), WSHP will have four supervisors, 10 enforcement ISHIs, one whistleblower investigator, and four consultation ISHIs.

Staff are assigned across the state and do not have designated territories. ISHIs are not desginated as either “safety” or “health;” rather they are considered qualified to conduct inspections in both fields. Compliance assistance activity is assigned to either enforcement or consultation staff, depending on customer needs and geographic considerations. Anti-retaliation staff perform both inspection and whistleblower protection duties.

**Budget**

For the short period WSHP operated as a State Plan in FY 2022 (August 18, 2022, through September 30, 2022), its total funding was $410,223.50. This amount consisted of $409,406.34 ($204,703.17 in federal funds and $204,703.17 in state matching funds) plus an additional $817.16 contributed by the State Plan. Based on FY 2023 financial close-out forms, WSHP’s initial federal funding award was $1,171,000. The State Plan matched this amount and contributed an additional $1,371 for a total State Plan contribution of $1,172,371. Thus, WSHP’s final FY 2023 funding amount was $2,343,371.

1. **New Issues**

None.

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

1. **Data and Methodology**

OSHA has established a two-year cycle for the FAME process. FY 2023 was a comprehensive year, and as such, OSHA was required to conduct a case file review. From November 27 to 30, 2023, OSHA conducted an evaluation of WSHP’s enforcement and 23(g) consultation programs. OSHA’s team consisted of four personnel. The State Plan provided access to the selected case files electronically, and interviews were held via Microsoft Teams. OSHA reviewed 25 safety and health inspection case files selected randomly from a universe of 45 inspections that WSHP opened and closed from April 1, 2023, to September 30, 2023. As mentioned earlier, WSHP is a new State Plan; therefore, case files from the 86 inspections the State Plan opened and closed during the first two quarters of FY 2023 were not included in the review.

The selected population of case files consisted of:

* + - * Seventeen (17) programmed inspections
      * Four (4) complaint inspections
      * Four (4) referral inspections

During the review, OSHA interviewed the director, program supervisor, and three field supervisors who oversee staff in enforcement and the 23 (g) on-site consultation program. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as standard and FPC adoptions, inspection targeting, citation issuance, complaint processing, abatement tracking, outreach, and the 23(g) consultation program.

OSHA’s team conducted a remote evaluation of the State Plan’s Anti-Retaliation Program on January 10, 2024.   The team consisted of the Assistant Regional Administrator and a Regional Supervisory Investigator for OSHA’s Whistleblower Protection Program. OSHA interviewed the WSHP Director and two supervisors—one for enforcement and whistleblower and the other for workplace safety and health programs.  OSHA discussed investigations, the review of the determination, appeal rights, and staff training. There were no closed cases for review from FY 2023 or FY 2022.

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 (SAMM) Report (Appendix D)
* 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
* Case files reviewed from the third and fourth quarters of FY 2023
* OSHA Information System (OIS) Reports (Fatality/Catastrophe, Open Inspection, and Scan Summary)

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 2023 SAMM Report and includes the FRL for each measure.

1. **Review of State Plan Performance**
2. **PROGRAM Administration**

**Training** – WSHP adopted OSHA’s Mandatory Training Program for OSHA Compliance Personnel (TED 01-00-019). This directive has two phases. In Phase 1, the enforcement ISHI must complete eight courses within the first three years of employment. In Phase 2, a certain number of technical courses must be completed throughout the rest of the enforcement ISHI’s career. WSHP requires all staff (supervisors, enforcement and consultation ISHIs, and anti-retaliation investigators) to take the Phase I training courses, and in FY 2023, all staff met the Phase I training requirements. In addition, all consultation ISHIs completed Course #1500, Introduction to On-site Consultation.

Under OSHA’s Mandatory Training Program for OSHA Whistleblower Investigators (TED 01-00-020), all whistleblower investigators must complete Course #1420, Whistleblower Investigation Fundamentals, during the first year of their career as an investigator. Additional courses are prescribed by the directive for the second and third years of an investigator’s career. In FY 2023, WSHP’s anti-retaliation investigators completed at least two of the OSHA Training Institute’s four recommended whistleblower courses.

The SOAR contains a detailed list of staff training in FY 2023. WSHP also organized monthly internal workshops in FY 2023 to increase staff familiarity with enforcement. Among the topics covered were abatement tracking, handling complaints, and case file management.

**OIS** – Before becoming a State Plan, WSHP tracked activity using an internal database. Throughout FY 2023, OSHA staff trained WSHP on OIS terminology, processes, and modules. Although WSHP is still learning OIS, it has developed strong ties with OSHA personnel who may offer advice and guidance when necessary.

**State Internal Evaluation Program (SIEP) Report** – FY 2023 was WSHP’s first full year as a State Plan. As such, it focused on getting up to speed in many areas, such as OIS, staff training, and enforcement activities. The State Plan also made significant progress toward completing its developmental steps. Therefore, the development of a SIEP was not a priority for WSHP in FY 2023, which was acceptable.

**Staffing** – WSHP was staffed by 15 personnel in FY 2023, including supervisors and ISHIs (i.e., whistleblower investigators, inspectors, and consultants). By the end of the developmental period, WSHP plans to achieve the staffing level required in its developmental program.

**2. ENFORCEMENT**

a. Complaints

WSHP accepts complaints from any source: workers, representatives of workers, or members of the public. Complaints may be made in person, by telephone, or by email. A complaint form is available on WSHP’s website. If WSHP determines upon the receipt of a complaint that there are reasonable grounds to believe that unsafe or unhealthful working conditions exist, an enforcement ISHI shall be assigned to the case to determine if such a violation or danger exists. When contact information has been provided, WSHP will inform the individual who has made a complaint that an inspection will be scheduled and that the individual will be advised of the results. If WSHP determines there are no reasonable grounds to believe that a violation or danger exists, the worker or representative of the worker who alleged violations will be notified of such determination.

In the case of imminent danger, WSHP has the authority to issue a stop work order for violations of safety regulations. The attorney general may bring a civil action for declaratory or injunctive relief to enforce any order of WSHP. Upon discovering conditions or practices constituting an imminent danger, the enforcement ISHI will immediately address the issue with the state or local government employer and ask the employer to notify workers and remove them from exposure. If the employer does not or cannot voluntarily eliminate the hazard or remove affected workers from exposure, the enforcement ISHI will immediately notify the program supervisor. If necessary, the program supervisor will consult with WSHP’s general counsel, the Massachusetts State Police, and the attorney general and take action to eliminate the imminent danger to workers as soon as possible.

SAMMs 1 through 3 assess efficiency in handling complaints. SAMM 4 pertains to gaining access to the worksite.

**SAMM 1a - Average number of work days to initiate complaint inspections (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL for this measure was five work days. WSHP’s average in FY 2023 was 6.31 work days, which was outside (above) the FRL. This result was acceptable.

Explanation: WSHP’s average for SAMM 1a was higher than the FRL, but it was not high enough to warrant concern since WSHP faced a learning curve on many fronts.

**SAMM 2a**- **Average number of work days to initiate complaint investigations (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL was one work day. WSHP’s result of 1.46 work days was outside (above) the FRL but was acceptable.

Explanation: SAMM 2a pertains only to complaints that were handled by investigation (i.e., “inquiry”) and had no related inspection (MA FOM, Chapter 9). WSHP’s average was just a bit higher than the FRL of one work day, which was not concerning.

**SAMM 3 - Percent of complaints and referrals responded to within one work day (imminent danger)**

Discussion of State Plan Data and FRL: The FRL of 100 percent was fixed for all State Plans. In FY 2023, WSHP did not have any data to report for this measure, which was acceptable.

Explanation: The State Plan did not receive any imminent danger complaints or referrals in FY 2023.

**SAMM 4 - Number of denials where entry not obtained**

Discussion of State Plan Data and FRL: The FRL of zero was fixed for all State Plans. In FY 2023, WSHP’s result was zero, which was acceptable.

Explanation: WSHP did not have any denials of entry in FY 2023.

b. Fatalities

**SAMM 10 - Percent of work-related fatalities responded to in one work day**

Discussion of State Plan Data and FRL: The FRL of 100 percent was fixed for all State Plans. In FY 2023, WSHP’s result was zero. This outcome was acceptable.

Explanation: In FY 2023, the State Plan did not inspect any work-related fatalities.

c. Targeting and Programmed Inspections

WSHP selects establishments for planned programmed inspection based on two main factors: 1) industry focus, the type of industry that has the potential for work-related injury; and 2) injury focus, the occurrence of an actual work-related injury.

The following is a list of industries used for planned programmed inspections in FY 2023; each industry has a known pattern of fatality or work-related injury: crossing guards (police and school), drinking water facilities, municipal electric power and gas distribution, facility management, firefighting, healthcare and social services, parks and recreation, state parks, highway street construction, traffic details, K-12 schools, and sewage treatment. Inspections in each targeted industry are based on objective or neutral selection criteria developed by the State Plan, as required by the MA FOM, Chapter 2.

As part of its injury-focused planned program strategy, WSHP may access OSHA 300 Log data and worker’s compensation information from incidents resulting in more than six lost days. WSHP conducts on-site inspections after these incidents. WSHP has also compiled a list of several work-related injuries that will trigger a programmed inspection should the State Plan become aware of the injury.

As discussed later in this report, WSHP spent a lot of time in FY 2023 evaluating several emphasis program FPCs as a developmental step. As a new State Plan, WSHP is not yet fully up to speed with the guidance and requirements contained in these directives, which is understandable.

**SAMM 7- Planned v. actual inspections – safety/health**

Discussion of State Plan Data and FRL: In FY 2023, the FRL range was from 114.95 to 127.05 for safety and from 7.10 to 18.90 for health. WSHP conducted 176 safety inspections and 25 health inspections. Both results were outside (above) the FRL ranges and were positive.

Explanation: As a new State Plan, WSHP faced many challenges, including sending staff to training courses, which took time away from field work. Nonetheless, WSHP conducted 201 inspections, which was 145 percent of the goal of 139 inspections for FY 2023.

**SAMM 5 - Average number of violations per inspection with violations by violation type**

Discussion of State Plan Data and FRL: The FRL range for serious, willful, repeat, or unclassified (SWRU) violations was from 1.40 to 2.10 in FY 2023. WSHP’s average of 3.46 for SWRU violations was outside (above) the FRL range. The FRL range for other-than-serious (OTS) violations was from 0.71 to 1.07; in FY 2023, WSHP’s average of 0.86 for OTS violations was within the acceptable range. Both results were positive.

Explanation: SAMM 5 calculates the average number of SWRU violations, as well as the average number of OTS violations, per not in-compliance inspection. WSHP’s results for SAMM 5 indicate that the State Plan targeted the most hazardous worksites for enforcement activity and that enforcement ISHIs are adept at identifying and classifying violations.

**SAMM 9 – Percent in compliance**

Discussion of State Plan Data and FRL: The FRL was based on a three-year national average. In FY 2023, the FRL range was from 25.38 percent to 38.08 percent for safety and from 35.06 percent to 52.58 percent for health. WSHP’s in-compliance rate of 16.09 percent for safety inspections was outside (below) the FRL range, and its in-compliance rate of 48 percent for health inspections was within the FRL range; both in-compliance rates were positive outcomes.

Explanation: Low in-compliance rates indicate enforcement ISHIs are adept at identifying and citing violations.

d. Citations and Penalties

If an enforcement ISHI believes that a violation of a safety and health standard exists, the enforcement ISHI will issue a Civil Citation or Civil Penalty within 180 days of the opening conference. This report describes the nature of the violation, including a reference to the appropriate regulation, the corrective action to abate the violation, and an abatement date for each violation. WSHP’s enforcement ISHIs are responsible for making sure Civil Citation or Civil Penalty reports are issued timely.

The WSHP Director has the discretion to issue civil penalties of up to $1,000 per violation, pursuant to M.G.L. c. 149, § 6 and 454 CMR 29.04(2)(d). As mentioned earlier, a monetary penalty is not always a part of a Civil Citation and Civil Penalty. The MA FOM, Chapter 6 provides more information on WSHP’s penalty amounts for willful, serious, repeat, failure-to-abate, and OTS violations.

**SAMM 11- Average lapse time**

Discussion of State Plan Data and FRL: Lapse time is the number of work days from the opening conference date to the earliest issuance date. The FRL was based on a three-year national average. In FY 2023, the FRL range was from 44.18 to 66.28 for safety and from 55.78 to 83.66 for health. WSHP’s average of 20.82 for safety was outside (below) the FRL range, and its average of 33.33 for health was also outside (below) the FRL range. Both results were positive.

Explanation: In FY 2023, WSHP’s lapse times for safety and health in SAMM 11 were acceptable.

Next, although WSHP performed satisfactorily on the SAMMs, OSHA identified a few inadequacies with case file documentation. For example, in some case files for inspections that were not in compliance, the violation worksheet was not included in the case file or was not properly completed. As discussed in the MA FOM, Chapter 5, the violation worksheet is used to describe all relevant facts, and all information pertaining to how and/or why a standard is violated. Information that specifically identifies the hazard to which workers have been or could be exposed to should also be included on the violation worksheet, as well as several other factors related to the violation.

As a new State Plan, WSHP would benefit from additional training in this area. Nevertheless, the MA FOM, Chapter 5 lists all the information that should be documented in the violation worksheet.

**Observation FY 2023-OB-01:** In FY 2023, in 12 (71 percent) of 17 case files that had violations cited, the violation worksheet was not included in the case file or did not adequately describe all relevant facts pertaining to the violation, as required in the MA FOM, Chapter 5.

**Federal Monitoring Plan FY 2023-OB-01:** On a quarterly basis, OSHA will review the requirements for completing the violation worksheet, as required by the MA FOM, Chapter 5.

**Status FY 2023-OB-01**: This observation is new.

Also, OSHA identified a fair number of case files that did not properly document worker interviews. As discussed in the MA FOM, Chapter 5, “All necessary information for documenting violations shall be obtained during the inspection, (including but not limited to notes, audio/video recordings, photographs, employer and employee interviews and employer-maintained records).”

As mentioned previously, WSHP’s enforcement ISHIs have not yet completed all the courses in OSHA’s mandatory training program. Still, Chapters 3, 4, and 5 of the MA FOM provide guidance that can be used by enforcement ISHIs to conduct worker interviews, obtain statements, and take notes. For example, the MA FOM, Chapter 5, Section VII describes when interview statements should be obtained, note-taking for management interviews, and the language and wording of interview statements, etc. Information obtained from worker interviews is crucial to supporting violations, much like the violation worksheet. Therefore, OSHA will monitor this issue.

**Observation FY 2023-OB-02**: In FY 2023, in 14 (61 percent) of 23 inspection case files, WSHP did not properly document worker interviews, as required in Chapters 3, 4, and 5 of the MA FOM.

**Federal Monitoring Plan FY 2023-OB-02**: During quarterly meetings, OSHA will discuss the need for WSHP to follow the MA FOM’s guidance on worker interviews.

**Status FY 2023-OB-02**: This observation is new.

e. Abatement

WSHP offers appropriate abatement assistance during the walkaround to explain how workplace hazards might be eliminated. In some circumstances, the employer’s immediate correction or initiation of steps to abate a hazard during the inspection may result in a good faith reduction in any proposed penalty.

Covered employers must provide documentation of abatement, or a follow-up inspection may be scheduled after the abatement timeframe has expired. A written response from the employer will be evaluated by WSHP for completeness and appropriateness in relation to the report. If the written response is inadequate, a follow-up inspection can be scheduled after the abatement timeframe. The results of the follow-up inspection will then be documented in a report that includes any corrective measures taken by the employer. This report will be sent to the complainant if the original inspection was initiated by a complaint. The complainant may refute or question any abatement measure, per the MA FOM.

f. Worker and Union Involvement

During the walkaround inspection, representatives of the employer and workers are allowed to accompany the enforcement ISHI throughout the inspection process so long as they do not interfere in the conduct of the inspection or present a safety or health hazard.

**SAMM 13 – Percent of initial inspections with worker walkaround representation or worker interview**

Discussion of State Plan Data and FRL: The FRL of 100 percent was fixed for all State Plans. In FY 2023, WSHP’s result for SAMM 13 was 100 percent.

Explanation: In FY 2023, WSHP met the FRL of 100 percent.

In some of the case files where the enforcement ISHI noted that the union was present, OSHA could not determine the extent to which the union participated in the inspection (such as the opening conference, walkaround, or closing conference). Some case files were also missing the names, addresses, and phone numbers of the union representative(s). In the OIS Inspection Report under contact information, there is a section for union information, where the enforcement ISHI should include the name of the union representative(s) and mark their participation in the inspection (opening conference, walkaround, closing conference, etc.). The names, addresses, and phone numbers of authorized representatives of workers and names and addresses of all organized worker groups should also be included in the Narrative (MA FOM, Chapter 5). If a worker representative did not participate in the inspection even though they were given the opportunity to do so, the enforcement ISHI should explain this in the OIS Narrative.

**Observation FY 2023-OB-03**:In FY 2023, union participation in the inspection was not sufficiently documented in 11 (52 percent) of 21 case files, as required by the MA FOM, Chapter 5.

**Federal Monitoring Plan FY 2023-OB-03**: During quarterly meetings, OSHA will discuss the need for WSHP to follow the MA FOM’s guidance for documenting union participation in the inspection.

**Status FY 2023-OB-03**: This observation is new.

**3. REVIEW PROCEDURES**

a. Informal Conferences

The state and local government employer, worker, or worker representative may request an informal conference be held within fifteen business days of receipt of a Civil Citation and Civil Penalty to discuss any issues raised by an inspection, citation, penalty, or intention to appeal. The requesting party may attend the conference by right, and the other parties shall be afforded the opportunity to participate in the informal conference. Informal conferences can be held by any practical means, but meeting in person is preferred. The informal conference or any request for such a conference shall not operate as a stay of the contest period. The MA FOM, Chapter 8 discusses informal conferences and settlements in more detail.

b. Formal Review of Citations

Under the State Plan, the employer, worker, or worker representative may request an administrative hearing by submitting a written request to the director or their representative within 15 business days after the receipt of the Civil Citation and Civil Penalty. All administrative hearings shall be held in accordance with the state’s Standard Adjudicatory Rules of Practice and Procedure (M.G.L. c. 30A and 801 CMR 1.00). Any person, state and local government employer, or other entity aggrieved by the decision of an administrative hearing may request judicial review of the decision by the Superior Court with jurisdiction. The MA FOM, Chapter 7 describes the State Plan’s contest procedures*.* In FY 2023, WSHP did not issue any monetary penalties, and the State Plan did not have any contested cases.

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

a. Standards Adoption

Before receiving initial approval as a State Plan, WSHP had adopted OSHA’s standards as of the end of calendar year (CY) 2019. As a developmental step, WSHP was required to consider the adoption of standards issued between CY 2020 and its start-up date of August 18, 2022. These include two rules where adoption was required and two rules where adoption was encouraged. See tables A and B below for a discussion of these rules.

WSHP has the authority under M.G.L. c. 149, § 6½ to adopt alternative or different occupational health and safety standards where no federal standards are applicable to the conditions or circumstances or where standards that are more stringent than the federal are deemed advisable. New or modified standards may be requested through research and experience during inspections, a recommendation from the advisory board, or an interested person.

Emergency rulemaking procedures are in the State APA at M.G.L. c. 30A, § 2, 3, and 6 and 950 CMR 20.05. If OSHA promulgates an emergency temporary standard (ETS), WSHP will adopt and rely on OSHA’s findings of grave danger and reasonable necessity. WSHP would file emergency regulations within 30 days of the federal promulgation date unless an existing state standard is deemed to be at least as effective.

Per the State APA, such emergency temporary regulations may remain in effect no longer than three months from the date filed with the State Secretary or until superseded by a permanent regulation. During the three months covered by the emergency regulation, WSHP would proceed with the rulemaking process to adopt the ETS for a period equal to or exceeding OSHA’s ETS, and the State Plan would make an ETS permanent within three months of its effective date provided that the federal ETS remains in effect.

**Table A**

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

(This table includes 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 Standard  29 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 Standard  29 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 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | N/A | N/A | N/A | 7/15/2022 | N/A |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | N/A | N/A | N/A | 8/14/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | N/A | N/A | N/A | 7/15/2023 | N/A |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 10/20/2023 | Yes | Yes | 1/21/2024 |  |
| Final Rule on the Beryllium Standard for General Industry  29 CFR 1910 2020 884  (7/14/2020) | 9/14/2020 | 10/20/2023 | Yes | Yes | 1/14/2021 |  |
| Final Rule on the Beryllium Standard for Construction and Shipyards  29 CFR 1915, 1926 2021 965  (8/31/2020) | 10/30/2020 | 10/20/2023 | Yes | Yes | 2/27/2021 |  |

**COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910, 15, 17, 18, 26, 28 (11/5/2021); Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910 (11/5/2021):** The ETS for COVID-19 Vaccination and Testing was withdrawn. OSHA did not require WSHP to adopt these rules.

**Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard:** **COVID-19 Log and Reporting Provisions 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r) (2/14/2022):** This rule requires employers who must keep OSHA injury and illness records under 29 CFR 1904 to continue to maintain and make available a COVID-19 log and report to OSHA all COVID-19-related fatalities and hospitalizations. As part of its developmental program, WSHP began rulemaking in early 2024 to amend 454 CMR 25.00 so that certain provisions are consistent with the OSH Act and OSHA’s regulations. This rulemaking includes theCOVID-19 Log and Reporting Provisions in 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r) because WSHP will adopt OSHA’s current 1910 standards in full in this process.

It should be noted that the State Plan submitted drafts of its regulatory changes to OSHA for review in October 2023. OSHA completed its review in January 2024. Even though the advisory board cleared the proposed regulatory changes later that month, the process is lengthy and involves a public comment period, mandatory waiting periods, and a public hearing. At this point, the public comment period will probably be held in April 2024, followed by a public hearing in May 2024.

**Final Rules on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022 and 2023 29 CFR 1903 (1/15/2022) (1/15/2023):** As a State and Local Government State Plan, WSHP is not required to adopt rules pertaining to the annual adjustment to civil penalties and did not do so in FY 2023 and FY 2022.

**Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR 1904 (7/21/2023):** Under this rule, establishments with 100 or more workers in the highest-hazard industries must electronically submit information from their Form 300 Log and Form 301 Incident Report; establishments with 20 or more workers in certain high-hazard industries and establishments with 250 or more workers in industries that are routinely required to keep injury and illness records must continue to electronically submit information from their Form 300A Annual Summary; and establishments are required to include their legal company name in their submission.

WSHP was one month late in responding to this rule and has exceeded the adoption deadline of January 21, 2024.  However, in the process of amending 454 CMR 25.00, WSHP will also adopt OSHA’s current 1904 standards in full, including the Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR 1904.Therefore, OSHA is not concerned with WSHP’s lateness in adopting this rule.

**Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 2020 884 (7/14/2020) and Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 2021 965 (8/31/2020):** These standards will be adopted as part of the rulemaking to amend 454 CMR 25.00 because OSHA’s current 1910, 1915, and 1926 standards will be adopted in full in this process.

**Table B**

**Status of Federal Standards Where Adoption Was Encouraged**

(This table includes 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** |
| Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records  29 CFR Part 1913 2021 924  (7/30/2020) | 9/28/2020 | 10/20/2023 | No | N/A | 1/26/2021 | N/A |
| Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work  29 CFR Part 1926 2021 964  (9/15/2020) | 11/14/2020 | 10/20/2023 | No | N/A | 3/14/2021 | N/A |

**Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records 29 CFR Part 1913 2021 924 (7/30/2020):** This rule describes internal procedures for obtaining and using personally identifiable worker medical information. The State Plan did not adopt this rule.

**Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work**

**29 CFR Part 1926 2021 964 (9/15/2020):** OSHA revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications regarding the application of the standard to cranes and derricks used for railroad roadway work. WSHP did not adopt this rule.

b. Federal Program Change Adoption

State Plans must respond to FPCs with their intention to adopt identically, differently, or not adopt within 60 days of their effective date. State Plan adoption, either identical or different, should be accomplished within six months. WSHP was required to evaluate 46 active FPCs for adoption that were issued before its start-up date of August 18, 2022. The State Plan completed this lengthy process by October 2023. Overall, WSHP performed satisfactorily on FPC adoptions. Tables C through E show the status of WSHP’s adoption of FPCs issued in FY 2023 and FY 2022. The status of the State Plan’s adoption of FPCs issued beforeFY 2022 are not included in Tables C through E but are recorded in OSHA’s State Plan Application (SPA), a database that contains records of State Plan responses to and adoption of standards and FPCs.

**Table C**

**Status of FY 2022 and FY 2023 FPCs Where Adoption Was Required**

| **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 | 3/20/2023 | Yes | Yes | 7/30/2023 | 3/20/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 9/1/2023 | Yes | Yes | 1/9/2024 | 9/1/2023 |

**Table D**

**Status of FY 2022 and FY 2023 FPCs Where Equivalency Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 10/20/2023 | Yes | Yes | 11/3/2022 | 10/20/2023 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/7/2022 | Yes | Yes | 2/11/2023 | 10/11/2022 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/2/2022 | Yes | Yes | 3/15/2023 | 12/5/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 5/4/2023 | Yes | No | 8/6/2023 | 5/4/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 5/30/2023 | Yes | Yes | 10/28/2023 | 6/30/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 10/20/2023 | Yes | Yes | 3/27/2024 | 10/20/2023 |

**Table E**

**Status of FY 2022 and FY 2023 FPCs Where Adoption Was Encouraged**

| **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 Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 2/7/2024 | No | N/A | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 11/9/2023 | Yes | Yes | 11/9/2023 |

\*Note: WSHP’s response was delayed until FY 2024 due to an issue with the SPA. However, WSHP communicated its intent not to adopt this FPC via email on February 7, 2024.

**5. Variances**

WSHP did not have any variances in FY 2023 or FY 2022. As a developmental step, WSHP must amend 454 CMR 25.05 to modify variance requirements for consistency with the OSH Act. OSHA has approved WSHP's draft amendment. As mentioned earlier, the State Plan has begun the process for adopting this and other regulatory changes required by the developmental program.

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

WSHP is a State and Local Government Only State Plan.

**7. WHISTLEBLOWER Program**

WSHP has authority to remedy retaliation for a state or local government worker who files a complaint, institutes any proceeding, testifies, or exercises any rights afforded by 454 CMR 25.00, pursuant to 29 CFR 1977 as incorporated at 454 CMR 25.02 and 25.07. WSHP may seek a remedy for a state and local government worker who files a complaint for discharge or retaliation within 30 days after any alleged violation pursuant to 29 CFR Part 1977, in accordance with 454 CMR 25.07 and 25.02 and the MA FOM Chapter 9(I)(J)(2). The State Plan has adopted and will conduct inspections consistent with the OSHA Whistleblower Investigations Manual, CPL 02-03-007. Massachusetts also has a Whistleblower’s Protection Statute, M.G.L. c. 149, § 185, that protects state and local government workers and prohibits retaliation through a right of private civil action.

**Limited Time Within Which to File a Retaliation Complaint**

Any state or local government worker who believes that he or she been discharged or otherwise retaliated against in violation of 454 CMR 25.07 and the incorporated 29 CFR Part 1977 may, within 30 days after the alleged violation occurs, file a complaint with WSHP alleging retaliation. If WSHP pursues a retaliation complaint, procedures in 454 CMR 29.00 shall be followed pursuant to 454 CMR 25.05(1), along with applicable MA FOM, Chapter 9(I)(J)(2) procedures.

Any state or local government worker or former worker aggrieved of a violation of M.G.L. c. 149, § 185 may, within two years, institute a civil action in Superior Court. All remedies available in common law tort actions shall be available to prevailing plaintiffs, including reinstatement and back pay.

**Time Frame for Complaint Decisions**

Within 90 days of the receipt of a complaint filed under 454 CMR 25.07, WSHP shall notify the complainant of its determination, pursuant to 29 CFR 1977.16 as incorporated by 454 CMR 25.02. This determination does not preclude the complainant from filing a new retaliation complaint if the worker believes retaliation has occurred after the final determination or from pursuing private civil action.

**Compensatory Actions, Back Pay, Reinstatement**

If, upon investigation, WSHP determines that the provisions of 454 CMR 25.07 have been violated, an action shall be brought for all appropriate relief, including rehiring or reinstatement of the worker to his or her former position with back pay, pursuant to 29 CFR 1977.3 as incorporated by 454 CMR 25.02.

**Mechanism for Assuring No Further Retaliation Will Occur**

WSHP has a fine structure that can increase future fines up to the current maximum of $1,000 for each violation if further retaliation were to occur, pursuant to M.G.L. c. 149, § 6, 454 CMR 25.05(1), 454 CMR 29.04(2)(d), and MA FOM Chapter 9(II) procedures. Also, reinstatement and back pay, pursuant to 29 CFR 1977.3 as incorporated by 454 CMR 25.02, should act as disincentives for state and local government employers to violate 454 CMR 25.07(1) worker protections.

In FY 2023 and FY 2022, WSHP did not have any workplace retaliation cases filed under 454 CMR 25.07; therefore, OSHA did not conduct a case file review. Information pertaining to the Anti-Retaliation Program is detailed and accessible on the [State Plan’s website.](https://www.mass.gov/info-details/whistleblower-protection-from-workplace-safety-retaliation)

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

WSHP did not have any CASPAs in FY 2023 or FY 2022.

**9. Voluntary Compliance Program**

WSHP provides training, outreach, and technical assistance. As detailed in the SOAR, the State Plan conducted monthly webinars on various safety and health topics, made several in-person presentations for state and local government industry groups, exhibited at 27 trade shows, and provided training and assistance for employers on OSHA 300 Logs. Overall, WSHP exceeded its annual goals for outreach in FY 2023.

WSHP administers SHAPE to recognize employers who have exemplary workplace safety and health programs. This program is based on SHARP, which is administered by consultation programs funded under Section 21(d) of the OSH Act. The SHAPE qualification process follows the guidelines in the Consultation Policies and Procedures Manual, Chapter 8. WSHP did not have any SHAPE participants in FY 2023; the State Plan’s goal is to have at least one SHAPE participant by the end of FY 2027.

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

WSHP’s 23(g) Consultation Program projected a total of 39 visits (17 safety and 22 health) in FY 2023. Based on the OIS Consultation Metrics Report, the State Plan conducted 102 visits (35 safety, 45 health, and 22 both). The State Plan attributes this achievement to monthly webinars that market consultation, as well as the discussion about consultation services during the closing conference of each inspection.

In FY 2023, a small town requested consultation visits for 14 town sites. Having such a high number of consultation visits made it difficult for the town to meet the original 30-day due date for correcting some of the hazards cited. As a result, the State Plan’s result for MARC 4A, which measures the percent of serious hazards corrected within 14 days of the latest correction due date, was 86.11 percent. This outcome was outside (below) the reference of 100 percent and was not positive. This situation also affected the State Plan’s performance on MARC 4D, percent of serious hazards corrected within the original time or on site. WSHP’s percent of 52.78 was not positive because it was outside (below) the reference of 65 percent. However, WSHP’s outcomes for MARC 4A and 4D are not overly concerning because they were affected by the inability of one small municipality to promptly correct all hazards.

**11. STATus of developmental schedule**

As noted earlier, WSHP was approved as a Developmental Plan under the OSH Act of 1970 and OSHA regulations. This means that although some of the criteria set forth in 29 CFR 1956.10 and 1956.11 were not fully met at the time the approval was granted, August 18, 2022, the State Plan received initial approval with the condition that they meet these criteria or “developmental steps” within three years. As such, a developmental schedule has been established for WSHP which must be completed by August 18, 2025.

The table below summarizes WSHP’s developmental schedule and notes the progress that has been made so far in completing each step. Currently, OSHA does not foresee any obstacles to WSHP completing all developmental steps by the end of the three-year period.

|  |  |  |
| --- | --- | --- |
| **Step** | **Developmental Requirement** | **Status** |
| 1 | Amend 454 CMR 25.02 to clarify its rulemaking process with respect to OSHA standards. | Incomplete: WSHP expects to update this regulation in CY 2024. |
| 2 | Ensure that all federal policies designated as federal program changes that are currently in effect, including all federal directives designated as “adoption required” or “equivalency required” by OSHA, are adopted or have an at least as effective alternative. | Completed: 11/9/2023 |
| 3 | Amend 454 CMR 25.05 to modify variance requirements for consistency with the OSH Act. | Incomplete: WSHP expects to update this regulation in CY 2024. |
| 4 | Adopt 29 CFR 1905, OSHA’s regulation governing variances. | Incomplete: WSHP expects to update this regulation in CY 2024. |
| 5 | Amend 454 CMR 25.05 to accurately reflect Massachusetts’ policy that citations will be issued withing 180 days of the initiation (rather than completion) of the inspection. | Incomplete: WSHP expects to update this regulation in CY 2024. |
| 6 | Amend 454 CMR 25 Regulatory Authority to add a reference to authority in M.G.L. 149, s. 9, which provides the employer’s right to contest citations. | Incomplete: WSHP expects to update this regulation in CY 2024. |
| 7 | Adopt 29 CFR 1908, OSHA’s regulation governing consultation, as well as the Consultation Policies and Procedures Manual and any relevant directives, during the developmental period. | Incomplete: WSHP expects to update this regulation in CY 2024. |
| 8 | Complete a Massachusetts Technical Manual that is at least as effective as OSHA’s Technical Manual. | Completed: 11/4/2022 |
| 9 | Conduct hiring to achieve staffing goals outlined in the Narrative and the three-year staffing plan. | Incomplete: WSHP has met staffing goals for consultation and the Anti-Retaliation Program. WSHP needs to hire two enforcement ISHIs to meet this requirement. |
| 10 | Reorganize staffing pattern to ensure separation of consultation and enforcement personnel, consistent with 29 CFR 1908. This will include hiring three ISHIs who will perform consultation services and be part of a separate division under separate supervision. | Completed: Enforcement and consultation staff were separated as of 08/18/2022. The staffing level for consultation was complete as of 12/05/2022. |
| 11 | Adopt the Mandatory Training Program for OSHA Compliance Personnel Directive (TED 01-00-019).  Ensure currently employed personnel and prospectively hires receive training consistent with this directive. | Completed: WSHP adopted OSHA’s training directive as of 10/11/2022.  WSHP’s compliance with the OSHA’s training directive has been satisfactory. |
| 12 | Adopt the Mandatory Training Program for OSHA Whistleblower Investigators Directive (TED 01-00-020). Ensure that workers who will perform whistleblower investigations are trained consistent with this directive. | Completed: 10/11/2022 |
| 13 | Complete the transition to OIS. | Completed: WSHP began using OIS as of 10/4/2022. |
| 14 | Develop a five-year strategic plan and annual performance plan. | Completed: 8/18/2022 |
| 15 | Once OSHA’s review of the draft MA FOM is complete, WSHP will make any updates, as necessary, to ensure that the enforcement policies in its FOM are at least as effective as those in OSHA’s FOM. | Incomplete: In November 2022, OSHA approved the MA FOM; however, in June 2023, OSHA requested revisions. In November 2023, OSHA approved the second MA FOM. Over the course of WSHP’s first year as State Plan, further clarifications were identified, and WSHP decided to amend some sections pertaining to informal conferences in Chapter 6 and abatement extensions in Chapter 7. WSHP will submit these changes to OSHA once they are complete. |

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
|  | None. |  |  |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 |  | In FY 2023, in 12 (71 percent) of 17 case files that had violations cited, the violation worksheet was not included in the case file or did not adequately describe all relevant facts pertaining to the violation, as required in the MA FOM, Chapter 5. | On a quarterly basis, OSHA will review the requirements for completing the violation worksheet, as required by the MA FOM, Chapter 5. | New |
| FY 2023-OB-02 |  | In FY 2023, in 14 (61 percent) of 23 inspection case files, WSHP did not properly document worker interviews, as required in Chapters 3, 4, and 5 of the MA FOM. | During quarterly meetings, OSHA will discuss the need for WSHP to follow the MA FOM’s guidance on worker interviews. | New |
| FY 2023-OB-03 |  | In FY 2023, union participation in the inspection was not sufficiently documented in 11 (52 percent) of 21 case files, as required by the MA FOM, Chapter 5. | During quarterly meetings, OSHA will discuss the need for WSHP to follow the MA FOM’s guidance for documenting union participation in the inspection. | New |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
|  | None. |  |  |  |  |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 6.31 | 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) | 3.46 | 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 | 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) | 0.96 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | N/A | 100% | The further review level is fixed for all State Plans. |
| 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) | 3.46 | +/- 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) | 0.86 | +/- 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 | 100% | 100% | Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces. |
| 7a | Planned v. actual inspections (safety) | 176 | +/- 5% of  121 | 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 114.95 to 127.05 for safety. |
| 7b | Planned v. actual inspections (health) | 25 | +/- 5% of  18 | 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 17.10 to 18.90 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A | +/- 25% of  $3,625.21 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **a.** Average current serious penalty in private sector  (1-25 workers) | N/A | +/- 25% of  $2,348.03 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **b.** Average current serious penalty in private sector  (26-100 workers**)** | N/A | +/- 25% of  $4,167.28 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **c.** Average current serious penalty in private sector  (101-250 workers) | N/A | +/- 25% of  $6,052.04 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | N/A | +/- 25% of  $7,331.41 | N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average. |
| 9a | Percent in compliance (safety) | 16.09% | +/- 20% of  31.73% | 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) | 48.00% | +/- 20% of  43.82% | 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 | 0% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 20.82 | +/- 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) | 33.33 | +/- 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 | N/A | +/- 15% of  71.84% | NA – This is a State and Local Government State Plan and is not held to this SAMM.  The further review level is based on a three-year national average. |
| 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 | N/A | +/- 25% of  0.93% | NA – This is a State and Local Government State Plan and is not held to this SAMM.  The further review level is based on a three-year national average. |