**FY 2023 Comprehensive**

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

**State of Minnesota**

**Minnesota Department of Labor and Industry**

Occupational Safety and Health Division



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

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**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region 5**

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1. **Executive Summary**

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the State Plan’s performance for Fiscal Year (FY) 2023 and its progress in resolving outstanding findings from previous FAME reports. This report assesses the current performance of the Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) 23(g) compliance program in the context of agreed upon monitoring measures.

A detailed explanation of the findings and recommendations of the MNOSHA performance evaluation is found in Section III, Assessment of State Plan Progress and Performance. The FY 2022 Follow-up FAME contained one finding and three observations. In this report, all four have been closed. One new observation has been identified. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

The Minnesota Occupational Safety and Health Strategic Management Plan for FY 2019 to FY 2023 established three strategic goals: 1) Reduce occupational hazards through compliance inspections; 2) Promote a safety and health culture through compliance assistance, outreach, cooperative programs, and strong leadership; and 3) Strengthen and improve MNOSHA’s infrastructure. The FY 2023 Performance Plan provided the framework for accomplishing the goals of the strategic plan by establishing specific performance goals for FY 2023.

In the FY 2023 State OSHA Annual Report (SOAR), MNOSHA provided information that outlines their accomplishments toward meeting their Five-Year Strategic Management Plan. The information has been reviewed and analyzed to assess their progress in meeting performance plan goals. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, 12 of 15 annual performance goals have been met or exceeded. Goals not met during the year included a reduction in the five-year average total recordable case rate and percent programmed inspections. Additionally, the number of people attending outreach and training events continued to be lower than projected with no discernible cause.

Notably, MNOSHA has also been working diligently to hire and train new staff to fill vacancies resulting from promotions and retirements and to build back up staffing levels that had waned due to increased personnel costs and stagnant funding levels in past years. During FY 2023, hiring practices were modified and 13 safety and health investigators were hired. A safety director level position was added to oversee the safety compliance activities and the health unit was further expanded. A new unit was formed which will focus on ergonomics and warehousing in line with recent state legislation and the national emphasis program for warehousing and distribution center operations.

Quarterly monitoring team meetings were held during FY 2023, at which time the State Activity Mandated Measures (SAMM) report and the State Indicators Report (SIR) were reviewed and discussed with MNOSHA compliance staff. The FY 2023 SAMM is Appendix D of this report.

**II. State Plan Background**

1. **Background**

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

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

Nicole Blissenbach has served as DLI Commissioner since August 2022. James Krueger is the Director of the OSH Compliance Division and Ryan Nosan is the Director of the WSC Division within DLI. The FY 2023 grant included funding totaling $10,773,310 and full-time equivalent (FTE) staffing of 78.07 positions. The State Plan’s expected staffing level is 31 safety investigators and 12 health investigators. MNOSHA allocated funding for 38.95 safety and 13.92 health positions.

1. **New Issues**

None.

**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 four-person OSHA team, which included a whistleblower supervisor, was assembled to conduct a virtual on-site case file review during the timeframe of February 5 - 9, 2024. A total of 186 safety, health, and whistleblower protection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2022, through September 30, 2023). The selected population included:

* Twenty (20) fatality inspection case files
* Seventeen (17) complaint and referral inspection case files
* Forty-eight (48) programmed and unprogrammed inspection case files
* Fifteen (15) phone/fax complaint and referral files
* Twenty-five (25) whistleblower investigation case files
* Sixty-one (61) screened and closed whistleblower case files

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

* State Activity Mandated Measures Report (Appendix D)
* State Information Report
* Mandated Activities Report for Consultation
* State OSHA Annual Report
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Full case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2023 State Activity Mandated Measures Report and includes the FRL for each measure.

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

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

a) Training

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

In addition to MNOSHA’s internal training program, investigators attend courses at the OSHA Training Institute (OTI) to obtain specific instruction based on discipline and need. During FY 2023, 18 OTI courses were attended by 42 staff members either virtually or in person. MNOSHA hosted two OTI courses in Minnesota: accident / incident investigations and investigative interviewing techniques. Additional internal training topics covered during FY 2023 included right-to-know, asbestos, hazardous waste operations and emergency response (Hazwoper), and new state legislation.

b) OSHA Information System

Through FY 2023, Minnesota used Informix-based software for enforcement information management and data processing, which is called MOOSE, for MNOSHA Operations System Exchange. It provides MNOSHA with real time information and data processing. At the start of FY 2016, MOOSE began interfacing with the OSHA Information System (OIS). Management reports, equivalent to those available from OIS, are used by MNOSHA management to track complaints, accidents, assignments, inspections, abatement, debt collection, and other issues of interest.

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

Similar to OIS, MOOSE allows the user to generate form letters which may then be printed, signed, and mailed to the recipient. Although MOOSE acts as MNOSHA’s electronic case file, signed letters are not routinely saved back into the system. Within the case files reviewed for FY 2021: twenty-five (25) no citation letters to the employer, four inspection results letters to the complainant, 16 letters to next-of kin, two penalty letters to the employer, four receipt of letter of contest confirmations, one petition for modification of abatement letter, and 10 nonformal complaint/referral letters were not saved final in MOOSE with a signature. This concern was noted as an observation in the FY 2021 Comprehensive FAME Report and continued in the FY 2022 Follow-up FAME Report (FY 2021-OB-01, FY 2022-OB-01). Throughout that time, MNOSHA has been working to replace MOOSE with OSHAExpress which can more easily accommodate scanned, final letters. MNOSHA’s use of OSHAExpress began October 2, 2023. Consequently, Observation FY 2022-OB-01 is closed.

c) State Internal Evaluation Program Report

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

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

1. Environmental Scanning

2. Organizational Analysis

3. Identify Target Areas

4. Current Workforce Analysis

5. Future Workplace Analysis

6. Gap Analysis and Strategy Development

7. Develop and Implement an Action Plan and Communication Strategy

8. Monitor Plan and Evaluate Results

MNOSHA’s Compliance Directives Coordination Team (DCT) is charged with coordinating and managing the MNOSHA internal information system. The DCT consists of three management analysts and a director. This group monitors federal standard/policy activity and coordinates updates to all relevant MNOSHA standards, directives, and policies accordingly. MNOSHA adopts federal standards by reference and/or develops Minnesota specific standards when necessary to support MNOSHA program goals. During FY 2023, six MNOSHA directives were revised and issued to staff.

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

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

d) Staffing

Management and administration of the OSH Compliance Division is the responsibility of the OSHA Management Team (OMT). The OMT includes the compliance director, the training / outreach / partnerships director, the health director, and eight supervisors. The total complement of the OSH Compliance Division was 76.67 FTE for FY 2022 and 78.07 FTE for FY 2023.

For FY 2023, the benchmark for safety was 31 positions with 33.95 of the 38.95 (87%) allocated positions filled. The benchmark for health was 12 positions with all 13.92 positions filled (116% of the benchmark).

MNOSHA typically has two safety and health professionals on duty to answer questions received primarily through phone calls and emails. The information requested covers a wide variety of topics and MNOSHA continues to use investigative staff to answer most of the calls.

**2. ENFORCEMENT**

a) Complaints

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

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

Following complaint inspections by OSHA, complainants are mailed a letter informing them of the inspection and indicating whether citations were issued. The letter addresses each complaint item with reference to the enclosed citation or a sufficiently detailed explanation of why a citation was not issued. Since 2016, MNOSHA has been mailing a copy of the citation to the complainant. The cover letter does not mention the specific complaint items, but complainants are invited to contact the investigator with any questions they may have regarding the inspection.

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

Minnesota adopted the revisions to 29 CFR 1904.39 requiring an employer to report work-related hospitalizations, amputations, and losses of an eye and modified ADM 3.16 to incorporate the employer reports of injuries and illnesses. ADM 3.16 contains a flow chart with the criteria to be used in determining whether an inspection is conducted. If a determination is made to conduct an inspection, it is done in accordance with ADM 3.18 Serious Injury Inspection Procedures. Prior to and during FY 2023, reports of serious injuries and illnesses that were not inspected were handled similarly to nonformal complaints as outlined in ADM 3.16.

During FY 2023, MNOSHA received 1,769 complaints, of which 340 (19%) were formal and 1,429 (81%) were nonformal. The average number of days to initiate a complaint inspection in FY 2023 was 4.06, well below the negotiated standard of nine days (SAMM 1). The average number of days to initiate a complaint investigation was 1.10, below the negotiated standard of two days (SAMM 2). OSHA randomly selected 17 complaint and referral inspections and 15 nonformal complaint and referral investigations for review during this evaluation of the MNOSHA program.

MNOSHA receives approximately 1,000 complaints filed through OSHA’s website each year. Complainants are required to enter an email address in the online complaint form. Providing a mailing address is optional; however, MNOSHA has declined to provide information to complainants by email due to their data practice requirement for the attached letter to be encrypted. MNOSHA has found this to be confusing to complainants.

Two of the 13 (15%) onsite complaint inspections reviewed for FY 2019 lacked evidence/documentation that the result of the inspection was mailed to the mailing address provided by the complainant. MNOSHA was encouraged to be diligent in attempting to obtain a mailing address from the complainant and in documenting when the attempts are unsuccessful to ensure the complainant has been provided the opportunity to be informed. Subsequently, five of the nine (56%) onsite complaint inspections reviewed for FY 2021 lacked evidence/documentation that an attempt was made to obtain a mailing address from the complainant and/or the complainant was informed that information would not be provided by email. In the case files reviewed for FY 2023, with minimal exception, a copy of the citation was mailed to the complainant. Consequently, Finding FY 2022-01 is closed.

b) Fatalities

A total of 24 fatalities were inspected by MNOSHA in FY 2023, down from 47 fatalities during the previous year. DLI’s Injury Notification Template is provided to OSHA for information and tracking of all fatalities. During FY 2023, all fatalities were responded to within one workday (SAMM 10).

Fatality information is recorded in MNOSHA’s MOOSE. All fatalities are entered into the Fatality/Serious Injury Log. A supervisor who determines if the fatality falls within MNOSHA’s jurisdiction reviews each entry. The supervisor can assign a fatality for inspection from the log, at which time an Accident/Event record is generated. When jurisdiction cannot be determined from the initial information, an inspection is opened.

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

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

• Citations and notification of penalty

• Notices of hearings

• Complaints and answers

• Settlement agreements

• Orders and decisions

• Notice of appeals

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

MNOSHA Instruction ADM 3.19 Fatality Investigation Procedures requires a condolence letter be sent to the NOK. After issuance of the initial letter, MNOSHA generally does not attempt to verbally communicate with the NOK unless they contact MNOSHA. Contact is kept at the supervisory/management level. In all 20 (100%) of the fatality cases reviewed for FY 2023, initial and closing letters were sent to the NOK. MNOSHA is encouraged to ensure a copy of the final signed letters are maintained in the electronic casefile.

c) Targeting and Programmed Inspection

MNOSHA focuses its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. MNOSHA has a specific administrative instruction that outlines its policies for inspection targeting annually, ADM 2.1 Scheduling Plan for Programmed Inspections. During FY 2023, approximately 57% of MNOSHA’s 1,318 inspections were programmed, which was less than the projected 82% (SIR 1). However, 94% of all programmed inspections were conducted in the emphasis industries which far exceeded their goal of 65% (SOAR, Goal 1.3b).

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

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

Data from Minnesota’s Department of Employment and Economic Development was utilized to develop a local planning guide. Employers with North American Industry Classification System (NAICS) codes identified in the state’s Strategic Management Plan receive priority for an inspection. Other local emphasis programs (LEPs) include, but are not limited to: foundries, healthcare, meat packing, serious injury, grain facilities, agriculture, hexavalent chromium, isocyanates, schools and other state and local governments, injury tracking application, and investigator-observed imminent danger.

MNOSHA’s procedures for scheduling construction inspections are also outlined in ADM 2.1. The primary scheduling methods for construction inspections are a Dodge list of the major projects in the state and activity generated inspections. Under the activity generated inspections LEP, an inspection may be opened if the site has at least one of the listed activities being conducted (safety or health) or characteristics of the site.

Of the 750 programmed inspections opened in FY 2023, 741 were coded as programmed planned, while nine were coded as programmed related (Scan Data report).

The FRL for percent in-compliance for safety inspections is +/- 20% of 31.73%, which equals a range of 25.38% to 38.08%. The MNOSHA State Plan’s percent in-compliance for safety is 34.40%, which is within the expected range. The FRL for percent in-compliance for health inspections is +/- 20% of 43.82%, which equals a range of 35.06% to 52.58%. The MNOSHA State Plan’s percent in-compliance for health is also within the expected range at 42.75% (SAMM 9).

d) Citations and Penalties

In MNOSHA’s Field Compliance Manual (FCM), Chapters 5 and 6 contain the requirements and policies for citations and penalties, respectively. The citations and penalties proposed for issuance are reviewed at multiple levels in MNOSHA’s management system prior to issuance. MNOSHA typically does not group violations.

During FY 2023, MNOSHA investigators conducted 1,318 inspections where 2,219 hazards were identified and cited. Approximately 65% of the inspections resulted in violations and the average number of serious/willful/repeat violations per inspection with violations was 2.06 (SAMMs 5, 7, and 9).

In 10 of the 85 (12%) inspection files reviewed for FY 2021, information in the file appeared to show one or more items were not proposed for citation issuance, and no information was present to explain why a citation item was not appropriate. In the 85 inspection files reviewed for FY 2023, only two instances (2%) were found by the review team. MNOSHA has shown progress in this area and Observation FY 2022-OB-02 is closed.

The average current penalty per serious violation in the private sector during FY 2023 was $1215 (SAMM 8: 1-250+ workers). The FRL is -25% of $3625.21, which equals $2718.91. Penalty levels are at the core of effective enforcement, and State Plans are therefore required to adopt penalty policies and procedures that are “at least as effective as” (ALAE) those contained in the FOM, Chapter 6 – Penalties and Debt Collection. During FY 2023, the Minnesota State Plan completed the legislative changes to increase maximum penalties; however, the higher penalties did not go into effect until October 1, 2023, and are not reflected in FY 2023 data. This topic is addressed further under Standards and Federal Program Change (FPC) Adoption below.

e) Abatement

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

MNOSHA has a management system in place to control past due abatement. MNOSHA ADM 3.4 Abatement Verification includes definitions for certification of abatement and documentation of abatement, as well as guidance on when each type of abatement verification is required. Identical to OSHA, MNOSHA’s abatement documentation standard (5210.0532 subp. 3) and ADM 3.4 require abatement documentation, such as written, video graphic, or photographic evidence in certain circumstances. When abatement documentation is necessary, MNOSHA identifies this requirement in the citations.

A violation can be considered corrected during the inspection (CDI) when the investigator observes the correction to the specific violation while onsite. Additionally, OSHA requires that the violation worksheet contains information on how the violation was abated. This policy is outlined in the FOM. During the FY 2023 review, no concerns were noted with the use of CDI to close abatement.

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

MNOSHA’s follow-up inspection policy is slightly different from OSHA’s. In addition to follow-ups being scheduled for inspections as the result of an employer’s failure to submit timely progress reports outlining abatement, or when the investigator recommends a follow-up inspection, MNOSHA identifies specific citation outliers. In Minnesota, a follow-up inspection may be scheduled when an inspection results in at least five citations that are serious, willful, or repeat and are not immediately abated, with at least one citation rated in greater severity and probability. MNOSHA initiated 17 follow-up inspections during FY 2023, which accounted for approximately 1% of the total inspections.

f) Worker and Union Involvement

Minnesota Statute 182.659 and Chapter 3 of the MNOSHA Field Compliance Manual (FCM) contain requirements and policies for the investigator to involve employees and employee representatives throughout the inspection. The narrative and violation worksheets in the case files reviewed for FY 2021 contained descriptions of information from workers relating to violations. However, field notes contained minimal information documented at the time of interviews in 18 of the 85 (21%) inspection files. In some cases, the information was limited to employee name, title, and union local number. The concern was noted as an observation in the FY 2021 and FY 2022 FAME reports. MNOSHA reiterated documentation expectations with staff, and progress was shown in the content of field notes within the case files reviewed for FY 2023. Consequently, Observation FY 2022-OB-03 is closed.

Chapter 1 of the MOOSE Manual for Inspection Files contains instructions to indicate contact with the union representative(s) or explain their absence. In cases where citations are issued, the authorized employee representatives are also mailed a copy of the citation.

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

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

**3. REVIEW PROCEDURES**

1. Informal Conferences

MNOSHA’s review procedures are organized slightly differently than OSHA’s. Instead of conducting an informal conference before the expiration of the contest period, a citation must be contested before an informal conference is held. As previously noted, employers, employees, and authorized employee representatives have 20 calendar days from the date of receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty, and/or abatement date. The notice must be filed on a form provided by the Commissioner and contesting parties must serve a copy of the notice on affected employees.

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

1. Formal Review of Citations

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

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

MNOSHA’s management or principal investigator also discusses penalty reduction and reclassification reasoning with employers during settlement conferences and documents the reasons for the changes in the memorandum. In the cases reviewed during the FY 2023 audit, a majority of the changes were penalty reductions for settlement purposes. The FRL for percent penalty retained is +/- 15% of 71.84%, which equals a range of 61.06% to 82.62%. The Minnesota State Plan retained 93.10% of penalties, which is well above the FRL and a positive outcome (SAMM 12).

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

1. Standards Adoption

During FY 2022 and FY 2023, six applicable standards were required to be adopted, including the annual adjustments to civil penalties, COVID-19 Emergency Temporary Standard, and the Final Rule to Improve Tracking of Workplace Injuries and Illnesses. Two of the six rules were not adopted timely by Minnesota.

MNOSHA continues to provide timely notification to OSHA regarding all state-initiated standard changes. During FY 2023, Minnesota proposed and adopted six modifications to existing statutes and added two new statutes. Most notably, Minnesota added 182.6256 Warehouse Distribution Safety and 182.677 Ergonomics, and conformed to OSHA’s maximum penalties with annual adjustments based on the consumer price index. No changes to Minnesota Rules occurred during FY 2022.

**Table A**

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

| **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 | 1/10/2022 | Yes | Yes | 12/5/2021 | 01/03/2022 |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910(11/5/2021) | 1/7/2022 | 1/10/2022 | Yes | Yes | 1/24/2022 | 01/03/2022 |
| 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 | 1/31/2022 | Yes | No | 7/15/2022 | 7/1/2023 |
| 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 (r)(2/14/2022) | 4/14/2022 | 4/15/2022 | Yes | No | 8/14/2022 | 11/21/2022 |
| 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 | 3/7/2023 | Yes | No | 7/15/2023 | 7/1/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses29 CFR 1904(7/21/2023) | 9/21/2023 | 9/21/2023 | Yes | No | 1/21/2024 | 12/18/2023 |

1. Federal Program Change (FPC) Adoption

Eight of ten (80%) FPC responses were submitted timely. OSHA encourages the State Plan to prioritize timely responses. For those FPCs that the state did not adopt, the topics were not adopted due to the state having a pre-existing directive that addressed the issues. To access these documents, please visit http://www.osha.gov/stateplans/adoption. For specific information on the state’s policy as it relates to these items, please contact MNOSHA Compliance at 651-284-5050.

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Changes (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 | 3/17/2023 | Yes | No | 7/30/2023 | 3/17/2023 |
| National Emphasis Program on Warehousing and Distribution Center OperationsCPL 03-00-026(7/13/2023) | 9/11/2023 | 10/3/2023 | Yes | No | 1/9/2024 | 10/1/2023 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (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 StandardCPL 02-01-063(2/11/2022) | 7/3/2022 | 6/23/2022 | Yes | No | 11/3/2022 | 8/16/2021 |
| OSHA Whistleblower Investigations ManualCPL 02-03-011(4/29/2022) | 10/11/2022 | 10/26/2022 | No | N/A | 2/11/2023 | N/A |
| Severe Violator Enforcement Program (SVEP)CPL 02-00-169(9/15/2022) | 11/15/2022 | 11/3/2022 | Yes | No | 3/15/2023 | 11/30/2022 |
| Site-Specific Targeting (SST)CPL 02-01-064(2/7/2023) | 4/8/2023 | 4/3/2023 | Yes | No | 8/6/2023 | 4/3/2023 |
| National Emphasis Program – FallsCPL 03-00-025(5/1/2023) | 6/30/2023 | 6/20/2023 | Yes | No | 10/28/2023 | 6/20/2023 |
| Consultation Policies and Procedures Manual CSP 02-00-005(9/29/2023)  | 11/28/2023 | 10/27/2023 | Yes | Yes | 3/27/2024 | 10/27/2023 |

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (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 SystemsCPL 02-01-169(12/22/2021) | 2/22/2022 | 1/10/2022 | No | N/A | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related HazardsCPL 03-00-024(4/8/2022) | 6/8/2022 | 6/8/2022 | No | N/A | N/A |

**Table E**

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

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| MN 182.661 subd 3c – Contestation of abatement time | 7/1/2023 | 7/1/2023 |
| MN 182.676 – Safety Committees | 7/1/2023 | 7/1/2023 |
| MN 182.659 subd 1 – Authority to inspect  | 7/1/2023 | 7/1/2023 |
| MN 182.66 subd 4 – Classification of citation data | 7/1/2023 | 7/1/2023 |
| MN 182.659 subd 8 – Protection from subpoena  | 7/1/2023 | 7/1/2023 |
| MN 182.666 – Penalties | 7/1/2023 | 7/1/2023 |
| MN 182.6256 - Warehouse Distribution Worker Safety | 7/1/2023 | 8/1/2023 |
| MN 182.677 – Ergonomics | 7/1/2023 | 1/1/2024 |

**5. Variances**

There were no variance requests received or variances granted during fiscal years 2022 and 2023.

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

MNOSHA’s state and local government worker program operates identically to the private sector program. As with the private sector, state and local government employers can be cited with monetary penalties. The penalty structure is the same. In FY 2023, MNOSHA conducted 65 inspections of state and local government workplaces, 4.93% of the total inspections conducted in Minnesota. This number is higher than the SAMM 6 FRL of +/- 5% of 3.00%, which equals 2.85% to 3.15%. This metric does not yet rise to the level of an observation. During the FY 2023 review, three inspection case files and one nonformal complaint file were reviewed. There were no apparent differences between the state and local government and private sector case files.

**7. WHISTLEBLOWER Program**

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

Accordingly, this review followed the guidelines, procedures, and instructions of OSHA CPL 02-03-011 Whistleblower Investigations Manual (WIM), and 29 CFR 1977. MNOSHA’s supervisor was consulted for information as necessary during the review.

During FY 2023, MNOSHA docketed 44 cases for investigation and closed 37 cases. This represents a decrease in new cases from FY 2022, when 56 cases were opened, and 46 cases were closed.

Investigative File Review

The cases reviewed were selected from those with final determinations during the review period and the selections were based on type of determination and the investigator of record. Twenty-five (25) of the 37 (68%) closed investigations were reviewed, including those with non-merit/dismissed, settled other, settled, merit, and withdrawn determinations.

A review of the Whistleblower State Plan Investigation Data report for the review period indicated that of the 37 cases completed, six (16%) were withdrawn, 23 (62%) were dismissed, and eight (22%) had merit. Of the merit cases, two were litigated, two were settled, and four settled among the parties. The percentage of cases completed within 90 calendar days was 3%.

Complaint Intake and Screening

MNOSHA follows ADM 3.6 for complaint intake and screening. During FY 2023, all complaints were screened by the investigators and are tracked in MOOSE. Notes regarding the intake information and the reason the complaint is screened and closed are entered into MOOSE. On occasion, a complainant may disagree with the investigator’s determination that the complaint is inappropriate for investigation. The investigators document whether the complainant was in agreement with the disposition of their complaint.

OSHA’s WIM requires that a letter to the complainant be generated for all screened and closed complaints. MNOSHA’s policy is to offer to send the complainant a letter confirming that the case is inappropriate for investigation, and to document the complainant’s response to the offer. If requested, the complainant is sent a letter explaining the determination and providing an opportunity to request a review within 15 days. During the review period, MNOSHA screened and closed 445 complaints.

During the review, 61 screened and closed cases were reviewed. MNOSHA categorizes the cases as follows: outreach, referral, or screen and close. Inconsistencies between investigators in applying the category were present in the FY 2023 cases reviewed, however this does not appear to be cause for concern moving forward. In October 2023, MNOSHA developed guidance for the investigators to determine which category to use. Additionally, in approximately January 2024, the program began assigning the intake and screening of complaints to one investigator.

Complainant Statement and Witness Interviews

MNOSHA utilizes a Complainant’s Statement form filled out by the investigator after the initial phone intake with the complainant. The Complainant’s Statement form includes a narrative of the allegation and is mailed with the complainant’s acknowledgement letter which includes dual filing rights. The complainant is asked to fill in any incomplete sections of the form, review the narrative of the allegation, provide any additional written documentation, and sign to verify it is accurate. When the complainant does not return the signed statement within the allotted time, the case is dismissed for lack of cooperation prior to docketing.

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

Prior to beginning interviews with witnesses, Minnesota Statute § 13.04, subd. 2, requires the individual be given certain information referred to as the “Tennessen Warning.” Included is information on confidentiality of the witness’s statement. MNOSHA’s ADM 3.6 directs the investigator to read the warning to non-management witnesses. During the FY 2023 review, with few exceptions the information was given to non-management witnesses and to complainants prior to rebuttal interviews.

Docketing and Respondent Notification

After MNOSHA receives the completed Complainant’s Statement form, a docket and notification letter is sent to the respondent. The respondent is given 10 days to submit their response and supporting documentation. Unlike MNOSHA, OSHA encourages sharing of documents directly between the parties and requests rebuttals to the information in writing. MNOSHA is encouraged to adopt these practices in order to streamline the process.

The case is assigned to an investigator as one becomes available. The assignment is tracked in MOOSE.

Final Investigation Report

MNOSHA has declined to change the name of the report to Report of Investigation as OSHA did in order to be consistent with other federal agencies. MNOSHA only prepares a Final Investigation Report (FIR) when the complaint resulted in a full field investigation. Complaints that are closed for lack of cooperation, settlement, or withdrawals are closed with a memorandum to the supervisor or OMT Director. The FIR follows the criteria provided in OSHA’s WIM.

MNOSHA utilizes a written determination that adequately sets forth the determination and provides the respective party their right to request review of MNOSHA’s finding. MNOSHA sends the written determination by both regular U.S. mail and certified mail with a request for a return receipt. On occasion a party receives the letter by regular mail and attempts to change the outcome of the decision by providing additional information. If the party does not accept delivery of the certified mail, MNOSHA does not have documentation of receipt. MNOSHA is encouraged to utilize email with a server receipt unless the complainant specifically requests hardcopy correspondence by U.S. mail or other tracked delivery service.

Settlements

OSHA’s WIM contains instruction that settlement agreements must not state or imply that OSHA or DOL is party to a confidentiality agreement. OSHA discloses settlement agreements to the public upon request in accordance with the Freedom of Information Act (FOIA), unless one of the FOIA exemptions applies. Similarly, MNOSHA Instruction ADM 3.7 Data Practices and Release of Case File Information states that settlement agreements must be released. MNOSHA Instruction ADM 3.6 includes a template settlement agreement. In one of the cases reviewed containing a settlement agreement between the parties, terms of the agreement were redacted prior to entry into the file. All settlement agreements should be reviewed in their entirety to ensure that the terms are not repugnant to the Act. MNOSHA may utilize the department’s attorney to conduct the review, in which case confirmation of appropriateness of the settlement terms should be placed in the file. OSHA also encourages MNOSHA to revisit ADM 3.7 regarding redactions specific to whistleblower files.

Timeliness

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

During FY 2023, 3% of docketed cases were closed within 90 days, which is a decrease from 9% in FY 2022 (SAMM 14). Of the cases completed during the year, the average number of days to complete was 689, up 20% from 572 days in FY 2022 (SAMM 16). MNOSHA primarily focused on the oldest cases with a first in, first out type of approach. Additionally, in the last couple years, the unit staff including the supervisor position have experienced a high turnover rate as individuals are promoted or reassigned. MNOSHA currently has four whistleblower investigators on staff, one of which is focused on intaking and screening complaints. Cases are assigned as an investigator becomes available. At the close of FY 2023, MNOSHA had 118 cases pending investigation. The cases had been open an average of 560 days.

MNOSHA is encouraged to take steps including but not limited to the following, to reduce the current backlog of pending cases and improve timeliness of new complaints:

* Evaluate pending cases to determine the current status and appropriateness for investigation;

* Evaluate and select new cases for immediate assignment;
* Verbally open the investigation with respondents to obtain contact information;
* Implement supervisory review at multiple stages during the process to ensure decisions are appropriate, the case is progressing, and the file is accurate and complete;
* Utilize technology (ex. email) to correspond with the parties; and
* Implement document sharing between the parties.

**Observation FY 2023-OB-01:** During FY 2023, 3% of docketed whistleblower investigation cases were closed within 90 days. The average number of days to complete the investigations was 689.

**Federal Monitoring Plan FY 2023-OB-01:** OSHA will discuss and evaluate MNOSHA’s progress during quarterly monitoring meetings.

OSHA IT Support System (OITSS) Information

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

MNOSHA does not enter administratively closed complaints into the OITSS Whistleblower application which was noted as a finding in the FY 2012 FAME and revisited during the FY 2013 onsite review. MNOSHA and OSHA signed a memorandum of understanding affirming MNOSHA’s agreement to provide data related to administratively closed cases entered into MOOSE upon OSHA’s request. During the FY 2023 review, 61 administratively closed cases were reviewed.

MNOSHA entries into the OITSS for docketed cases include party information and investigation information, and do not include case comments or additional tracking.

MNOSHA does not always use the same date for the determination and the letters to the parties, as OSHA does, when for instance the letters are delayed by a weekend or the supervisor’s availability. Although MNOSHA’s practice is different from OSHA’s, it does not appear to be a concern due to the reason for the difference. MNOSHA is encouraged to show consistency between determination and letter dates. Similar to inspection files, letters saved in MOOSE did not contain signatures.

On October 2, 2023, MNOSHA began using OSHAExpress which more closely aligns with OIS.

Program Management

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

In 11 of the 25 (44%) whistleblower cases reviewed, the case file contained unreadable, inaccurate, and/or missing information. The need for accurate records should be impressed on the investigators and OSHA recommends that the unit supervisor provide oversight at multiple stages during the process to ensure decisions are appropriate, the case is progressing, and the file is accurate and complete.

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

No CASPAs were received regarding MNOSHA during FY 2023.

**9. Voluntary Compliance Program**

Voluntary Protection Program (MNSTAR)

Six voluntary protection program (MNSTAR) site evaluations conducted in Minnesota in FY 2023 resulted in recertification at full STAR status. Three new sites were added, and one site withdrew leaving a total of 35 participating sites at the end of FY 2023. MNOSHA Instruction ADM 3.28 MNSTAR Voluntary Protection Program outlines how the state administers the program. MNOSHA’s instruction follows OSHA’s CSP 03-01-003 Voluntary Protection Programs (VPP): Policies and Procedures Manual (April 18, 2008). The State Plan declined to adopt revisions contained in OSHA’s CSP 03-01-005 (January 30, 2020). Applicants must meet the criteria contained in the MNOSHA Voluntary Protection Program instruction. In addition to requiring the company’s injury and illness rate be below the national average for the industry, MNSTAR applicants’ rates must also be below the state averages for the industry.

Partnerships

MNOSHA Directive ADM 3.27 MNOSHA Strategic Partnership Plan is consistent with OSHA Strategic Partnership Program for Worker Safety and Health CSP 03-02-003 (November 6, 2013). MNOSHA maintained a Partnership begun during FY 2021 with the Department of Transportation and private sector construction companies regarding an extensive highway interchange project which is expected to continue through the fall of 2024. Two long term Partnerships remained active during the year. MNOSHA’s Partnerships are an extended voluntary cooperative relationship between MNOSHA and groups of employers, employees, employee representatives and interested stakeholders designed to encourage, assist, and recognize efforts to eliminate serious hazards and achieve a high degree of worker safety and health.

Alliances

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

Two Alliances with state and local government entities, including Minnesota State (formerly known as Minnesota State Colleges and Universities) and Minnesota Municipal Utilities Association (MMUA), remained active during FY 2022 and FY 2023. There were no new Alliances established during FY 2023.

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

MNOSHA conducted 120 onsite consultation visits in state and local government during FY 2022, which exceeded the grant projection of 45 visits. A total of 101 of the 103 (98%) initial visits were coded as high hazard visits, as defined by MNOSHA’s high hazard emphasis program. Of the 452 serious hazards identified and closed during the year, eight (1.77%) corrections were verified untimely (MARC report dated November 17, 2022).

During FY 2023, MNOSHA conducted 157 state and local government consultation visits, which is 262% of their grant projection of 60 visits. A total of 70 of the 72 (97%) initial visits were coded as high hazard. During FY 2023, 217 serious hazards were corrected and closed. All of the hazards were verified corrected in a timely manner (MARC report dated November 16, 2023).

| **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 2022-OB-01 | Within the case files reviewed for FY 2021 and FY 2023, letters to the employer, complainant, and next-of-kin were not routinely saved in MOOSE as final with a signature. |  | Closed |
|  | FY 2022-OB-02 | In ten of the 85 (12%) inspection files reviewed, information in the file appeared to show one or more items were not proposed for citation issuance, and no information was present to explain why a citation item was not appropriate. |  | Closed |
|  | FY 2022-OB-03 | Field notes contained minimal information documented at the time of employee interviews in 18 of the 85 (21%) inspection files reviewed. |  | Closed |
| FY 2023-OB-01 |  | During FY 2023, 3% of docketed whistleblower investigation cases were closed within 90 days. The average number of days to complete the investigations was 689. | OSHA will discuss and evaluate MNOSHA’s progress during quarterly monitoring meetings. | New |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status** **(and Date if Item is** **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01  | Five of the nine (56%) onsite complaint inspections reviewed for FY 2021 lacked evidence/documentation that an attempt was made to obtain a mailing address from the complainant and/or that the complainant was informed information would not be provided by email.  | Attempt to obtain a mailing address from the complainant and inform the complainant information will not be provided by email, and document when the attempts are unsuccessful to ensure the complainant has been provided the opportunity to be informed.  | MNOSHA now asks for the complainant’s mailing address and informs that refusal to provide such information will lead to a nonresponse.  | March 4, 2024 | Closed |

| SAMMNumber | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 4.06 | 9 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 2.64 | 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) | 1.10 | 2 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 1.05 | 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) | 97.22% | 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) | 2.06 | +/- 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) | 1.61 | +/- 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 | 4.93% | +/- 5% of3.00% | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 2.85% to 3.15%. |
| 7a | Planned v. actual inspections (safety) | 1,162 | +/- 5% of 1,000 | 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 950 to 1,050 for safety. |
| 7b | Planned v. actual inspections (health) | 156 | +/- 5% of 200 | 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 190 to 210 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,215.00 | +/- 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. |
| 8a | Average current serious penalty in private sector (1-25 workers) | $924.00 | +/- 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. |
| 8b | Average current serious penalty in private sector (26-100 workers**)** | $938.54 | +/- 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. |
| 8c | Average current serious penalty in private sector(101-250 workers) | $1,971.11 | +/- 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. |
| 8d | Average current serious penalty in private sector(greater than 250 workers) | $2,926.50 | +/- 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. |
| 9a | Percent in compliance (safety) | 34.40% | +/- 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) | 42.75% | +/- 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) | 41.01 | +/- 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) | 64.67 | +/- 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 | 93.10% | +/- 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 | 1.03% | +/- 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%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 14, 2023, as part of OSHA’s official end-of-year data run.