**FY 2023 Comprehensive**

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

State of New York Public Employee Safety and Health (PESH) Bureau



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1. **Executive Summary**

The purpose of this report is to assess the New York Public Employee Safety and Health (NY PESH) State Plan’s performance for Fiscal Year (FY) 2023, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports.

NY PESH is responsible for protecting the health and safety of more than two million state and local government (SLG) workers in New York. NY PESH continues to have a presence in SLG workplaces through its inspection activity, partnerships, and outreach activity. FY 2023 was the second year of the NY PESH Five-Year Strategic Plan.

During FY 2023, 39 NY PESH compliance safety and health officers (CSHOs) conducted 869 inspections (555 safety and 314 health) compared to FY 2022 when 38 CSHOs conducted 667 inspections (29% increase). The number of enforcement inspections conducted in FY 2023 significantly increased from FY 2022, but NY PESH did not meet their annual performance goals.

NY PESH has been successful in recruiting and filling administrative and enforcement positions in the last two years after a long hiring freeze that was lifted in the Fall of 2021. Until the new staff is fully trained, the performance of the program will be impacted in regard to meeting their inspection goals.

During FY 2023, there was a 62% decrease in the number of consultation visits conducted by NY PESH to state and local government employers compared to FY 2022. NY PESH focused its resources on the enforcement programs and training of new staff over conducting consultation visits [FY 2023, NY State OSHA Annual Report (SOAR)].

Over the past two performance periods, in addition to providing consultation services, NY PESH conducted 530 compliance assistance activities for both enforcement and consultation reaching over 9,200 employers and 1,553,000 employees. Also, during FY 2022, NY PESH developed a directory to facilitate the dissemination of important program updates with SLG stakeholders including organized labor organizations. The first notice distributed with this system was related to NY PESH’s adoption of the Heat National Emphasis Program (NEP) (FY 2023, NY SOAR).

NY PESH received 37 discrimination/retaliation cases in FY 2023 compared to 40 cases in FY 2022. Eleven of these cases were dismissed as non-merit, and no cases were settled or determined to have merit. Twenty-six of the FY 2023 cases were pending at the close of the fiscal year compared to 48 at the end of the previous year. The cases are assigned to eight investigators who also conduct safety and health inspections.

During the FY 2023 performance period, NY PESH was responsive to OSHA, including providing requested information in a timely manner, actively participating in the regular quarterly meetings, and adopting most of the federal program changes (FPCs). However, the State Plan still has not adopted the FY 2015 Federal Standard for Occupational Injury and Illness Recording and Reporting Requirement, and the FY 2023 Federal Final Rule to Improve Tracking of Workplace Injuries and Illnesses. In FY 2024, NY PESH should prioritize adopting these standards so that (SLG workers have the same protection as workers covered by federal OSHA.

The number of Complaints About State Program Administration (CASPA) significantly increased since FY 2020. In FY 2022, the New York Regional Office received 20 CASPA requests and accepted five for investigation. In FY 2023, the New York Regional Office received 28 CASPA requests and accepted 15 for investigation. Most of the FY 2023 CASPAs received related to alleged deviations of PESH’s policies and procedures by the New York City District Office for inspections at the Metropolitan Transit Authority (MTA) facilities. There was one Significant CASPA in FY 2022 and none in FY 2023. The FY 2022 Significant CASPA (CASPA 2022-31-NY) was closed after hazard alert letters were issued.

During the performance period, OSHA received several petitions to decertify NY PESH. OSHA is currently reviewing the allegations to determine next steps. Decertification of NY PESH would leave New York’s SLG workers without occupational safety and health protections. Also, during the performance period, OSHA finalized a special study of the NYC District Office. OSHA initiated this special study in September 2022 because of the number of CASPAs being received, with the goal of determining if the allegations raised in the CASPAs were valid, if the complaints were being addressed in accordance with PESH policies and procedures, and to better understand the NYC office operations. In response to OSHA’s findings and recommendations, NY PESH has developed new directives, created a centralized intake unit, and conducted to staff to improve daily work processes.

The State Plan made progress to address the previous 10 findings and eight observations from the FY 2022 Follow-up FAME Report. In summary, this report contains a total of 22 findings and eight observations. The significant increase in the number of findings can be attributed to the results of the special study in combination of the FAME. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2022 finding and accompanying recommendation.

**II. State Plan Background**

1. **Background**

The New York Department of Labor administers the New York State Plan. Roberta Reardon, Commissioner of Labor, has full authority to enforce and administer all laws and rules protecting the safety and health of all SLG workers in the state and its political subdivisions. In addition to the State Plan’s enforcement responsibilities, NY PESH provides free on-site consultation and training services to state and local government agencies, upon request.

NY PESH consists of one central office in Albany, New York, and eight district offices located in Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City, and Brooklyn. The NY State Plan applies to all SLG employers in the state, including state, county, town, and village governments, as well as public authorities, school districts, and paid and volunteer fire departments.

Private sector enforcement is retained under federal jurisdiction while private sector consultative services are provided by the New York State Department of Labor-Division of Safety and Health (NYSDOL-DOSH) Consultation Services Bureau under Section 21(d) of the OSH Act.

The PESH ACT does not allow for the issuance of “first instance” monetary penalties for SLG employers found in violation of NY PESH standards. Per diem penalties can be assessed when failure-to-abate (FTA) notices are issued. The PESH Act does not contain statutory limitations of requiring that citations be issued within six months of exposure or opening the inspection, whichever is shorter.

In FY 2023, the New York State Plan was staffed with 39 \CSHOs (24 safety and 15 health). Eight of these CSHOs perform dual roles conducting both enforcement and whistleblower investigations. NY PESH does not maintain a separate unit for whistleblower investigators (FY 2023, NY SOAR).

NY PESH reported in July 2023 that there were 56.60 employees working in the program (FY 2024, Annual Performance Plan).

During FY 2023, there were 194 compliance assistance activities conducted by NY PESH consultants and 71 compliance assistance visits performed by NY PESH enforcement staff. The total number of compliance-assistance activities for FY 2023 was 265 – the same as FY 2022 (FY 2023, NY SOAR).

The New York State Plan operated with a federal base award of $4,295,600 in FY 2023 (FY 2023, 113 Form).

NY PESH was awarded $1,625,000 in funding on August 6, 2021, under the American Rescue Plan (ARP). During the first half of FY 2023, limited American Rescue Plan (ARP) COVID-19 grant funds were allocated to staff time associated with completing and reviewing COVID-19 cases. Fit testing equipment purchased in FY 2022 was received during the first quarter of FY 2023. By the close of the FY 2023 second quarter, in anticipation of the May 11, 2023, end of the federal declaration, and due to ongoing apparent endemic conditions, allocation of the ARP COVID-19 grant funds ceased. NY PESH initiated the closeout process and returned $1,445,711.83 of the $1,625,000 initial award (FY 2023, NY SOAR).

1. **New Issues**

**Decertification Petitions**

OSHA received four written petitions from workers requesting that OSHA’s Assistant Secretary initiate proceedings for withdrawing the approval of the NY PESH State Plan. These petitions included a statement of the grounds for initiating a withdrawal proceeding and included facts to support the petitions pursuant to 29 CFR 1955.

The New York Regional Office is working with OSHA’s National Office and the Solicitor’s Office to determine the appropriate actions to take in response to the petitions based on the options outlined in OSHA Standard 1955.5(b)(1) Petitions for Withdrawal of Approval.

**NY Special Study**

A special study of the NY PESH State Plan was initiated by OSHA on September 8, 2022, to investigate the operations of the New York District Office due to the numerous CASPAs being received. A draft report was issued to NY PESH on January 23, 2023. NY PESH responded to the report with written comments on March 3, 2023, and a final written report was issued on March 4, 2024. The findings and observations from this special study were incorporated into this FAME report. A single consolidated response will be required for all findings of both the FAME and special study.

Since the draft report was provided to NY PESH, the State Plan has developed directives on procedures for providing advance notice, case management, and fatality investigations. NY PESH created a centralized intake unit effective December 4, 2023 to process complaints and streamline complaint procedures. NY PESH conducted multi-day training sessions for all staff in May and October of 2023.

On March 6, 2024, OSHA transmitted the final FY 2022 Special Study Report to PESH which resulted in18 findings and five observations – 15 of which are incorporated as findings in this FAME report. The five observations from the special study were monitored by OSHA during this FAME cycle.

Findings that were common to the FAME are identified in the body of this document. Details about the findings can be found in the special study and PESH is required to provide a corrective action plan for the findings listed in this report.

**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, including a whistleblower investigator, was assembled to conduct a full on-site case file review at the Albany headquarters. The case file review was conducted at the New York State Plan office during the timeframe of December 4-7, 2023. NY PESH maintains both hard copied and electronic files. Finding #17 of the special study noted that there was not a shared drive in the NYC PESH office to maintain files. During the special study, this office struggled to assemble the files and provide all the requested information to OSHA. Electronic file receipt of files from this office requested for the FAME were received more expeditiously because the office has established a One drive for this office to upload files.

Additional whistleblower files were reviewed on January 30, 2024 at the Buffalo district office by the Whistleblower Assistant Regional Administrator and two whistleblower staff members. A total of 162 safety, health, and whistleblower inspection case files were reviewed. The safety and health closed inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2022 through September 30, 2023). Also, nine open files with open abatement exceeding 200 days were selected from the OSHA Information System (OIS) Open Inspection Report. The whistleblower files selected for review included both open and closed files from FY 2022 and FY 2023. The selected population included:

* Seven (7) closed fatality files
* Forty-two (42) closed safety files
* Thirty (30) closed health files
* Nine (9) open enforcement files with overdue abatement
* Ten (10) unprogrammed activities (UPAs) that were identified as fatalities that were closed without an on-site inspection.
* Ten (10) consultation files
* Forty-four (44) whistleblower 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) (SAMM)
* State Information Report (SIR)
* OSHA Information System (OIS)
* 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
* Fullcase file review

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

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

In FY 2023, enforcement and consultation staff attended in-person training at the OSHA Training Institute (OTI). OTI courses and number of staff in attendance (in parentheses) are noted below. New staff who were hired during the pandemic and attended virtual courses will be enrolled in the in-person versions of the virtual courses as soon as possible, pending availability and scheduling. This is to ensure that they are not disadvantaged and receive the same level of training as others. Additional internal staff training was conducted during May, July, and October 2023 (FY 2023, NY SOAR).

1000 Initial Compliance – (9)

1050 Into to Safety Standards for Safety – (14)

1230 Accident/Incident Investigation – (6)

1241 Intro to Health Standards – (2)

1260 Health Inspection Fundamentals – (1)

1280 Safety Awareness for IH – (2)

1310 Investigative Interviewing Tech – (10)

1410 Inspection Techniques and Legal Aspects – (8)

1421 Whistleblower Inv Fundamentals – (11)

1500 Intro to On-site Consultation – (2)

1530 State Plan Monitoring – (2)

2010 Hazardous Materials – (1)

2080 Cranes and Materials Handling in GI – (1)

2260 PRCS – (9)

2350 Expanded Health Standards – (3)

2450 SHMS – (1)

2540 Machine Guarding & LOTO – (1)

3010 Excavation, Trenching, & Soil Mechanics – (6)

3090 Electrical Standards – (2)

3110 Fall Protection – (2)

3220 Applied Welding Principles – (4)

3300 PSM 1 – (1)

3400 PSM 2 – (2)

1. OSHA Information System

NY PESH used OIS data for tracking purposes in FY 2022 and FY 2023. The FRL for average lapse time for safety in FY 2023 was +/- 20% of the three-year national average of 55.23 days which equaled a range of 44.18 to 66.28 days. During FY 2023, NY PESH’s average lapse time for safety citations was calculated at 101.64 days for safety which was substantially higher than the FRL. The FRL for average lapse time for safety in FY 2022 was +/- 20% of the three-year national average of 52.44 days which equaled a range of 41.94 to 62.90 days. In FY 2022, the average safety lapse time for citations was calculated at 85.06 days. The safety lapse time has increased in FY 2023 from FY 2022 (FY 2023, EOY SAMM Report).

The FRL average lapse time for health for FY 2023 was +/- 20% of the three-year national average of 69.72 days which equaled a range of 55.78 to 83.66 days. NY PESH’s average health lapse time was calculated at 110.49 days which was significantly above the FRL. The FRL for average lapse time for health in FY 2022 was +/- 20% of the three-year national average of 66.10 days which equaled a range of 52.88 to 79.32 days. In FY 2022, the average health lapse time for citations was calculated at 111.52 days. There has not been a significant decrease in average health lapse time in FY 2023 when compared to FY 2022 (FY 2023, EOY SAMM Report).

NY PESH recognizes that average lapse time for both disciplines is significantly higher than the FRL. In response to these observations, NY PESH developed a case management directive that became effective on July 15, 2023. This directive requires weekly meetings between supervisors and CSHOs to discuss casework. CSHOs are responsible for maintaining an accurate inventory of their work which includes feedback from supervisors. The goal of these meetings is to increase the quality of cases being issued and to ensure timely issuance of citations (FY 2023, NY SOAR)

Additionally, NY PESH established a directive effective on October 23, 2023 focusing on procedures for fatality inspections. This directive established a structured framework for fatality inspections and assigned one person identified as the enforcement case coordinator (EOC) to oversee all aspects of the fatality cases. Within this directive, there is a new requirement to issue violations on fatality cases within six months. Currently, the NY PESH Act does not contain a statutory requirement to issue citations within six months of exposure or opening the investigation (FY 2023, NY SOAR).

**Finding FY 2023-01 (Special Study Finding #12, FY 20222-01, FY 2021-01, FY 2020-OB-01, FY 2019-OB-01, FY 2018-OB-08): *Safety Lapse Time***

In FY 2023, the average safety lapse time (SAMM 11) for citations was calculated at 101.64 days which is above the FRL range of 44.18 to 66.28 days for safety.

**Recommendation FY 2023-01:** NY PESH should utilize the OIS reports including the SAMM Report to track lapse time and encourage CSHOs to issue simple inspections as soon as is practical to average out the lapse time associated with more complex inspections. In addition, NY PESH needs to fill both vacant CSHO and administrative positions to provide additional resources.

**Finding FY 2023-02 (Special Study Finding #12, FY 2022-02, FY 2021-02, FY 2020-OB-02, FY 2019-OB-02, FY 2018-OB-09): *Health Lapse Time***

In FY 2023, the average health lapse time (SAMM 11) for citations was calculated at 110.49 days which is above the FRL range of 55.78 to 83.66 days for health.

**Recommendation FY 2023-02:** NY PESH should utilize OIS reports including the SAMM Report to track lapse time and encourage CSHOs to issue simple inspections as soon as is practical to average out the lapse time associated with more complex inspections. In addition, NY PESH needs to fill both vacant CSHO and administrative positions to provide additional resources.

**Finding FY 2023-03 (Special Study Finding #3) *OIS* *Unprogrammed (UPA) Tracking Report***

The OIS UPA Tracking Report run on January 23, 2024, identified 12 UPAs being handled as phone/fax investigations that were overdue for responses from the employer to follow-up on the hazards alleged in the complaints. The OIS report shows the last action taken on these complaints was to forward a request to the employer to investigate and provide a response after investigating. The oldest two cases on this list date back to calendar year 2022.

There were 11 UPAs, including one fatality, identified on the OIS Tracking Report for all PESH offices that were received before the end of calendar year 2023 that had not been inspected as of January 24, 2024. The oldest UPA was received on June 24, 2020. Fifteen UPAs were received in January 2024 and were awaiting inspection.

The special study identified that there were 52 UPAs awaiting inspection in the NYC Office as of a December 7, 2023 OIS Tracking Report.

This report also identified 175 cases under the Complaints and Referrals tab that are awaiting other actions. These cases require OIS entries to be updated to ensure that the complaints are effectively managed and appropriate actions taken to resolve.

**Recommendation FY 2023-03:**Develop and implement procedures to ensure that complaints are entered correctly into OIS, evaluated by managers, opened and completed timely, to ensure adequate and timely abatement of hazards.

**Finding FY 2023-04 (FY 2020-01, FY 2019-01, FY 2018-01, FY 2017-01): *OIS Health Sampling Forms***

Six out of seven (86%) of the closed health inspections with sampling had either no OIS health forms in the file or incomplete sampling forms in the files to document the sampling performed. The four inspections with incomplete OIS forms were missing information such as the make and model of the instrument used, the pre and post calibration results, and actual sampling times. Two inspections had no OIS sampling forms in the file even though the narrative stated sampling was performed. The missing information on the forms could not be located in the field notes of the file.

**Recommendation FY 2023-04:** NY PESH should ensure that when sampling is performed complete data is entered in the OIS system and on the appropriate forms. NY PESH should consider retraining staff on the sampling information that needs to be documented in OIS and on the sampling forms.

c) State Internal Evaluation Program Report

Supervisors conduct field evaluations of CSHOs using a standard form entitled “Field Survey Assessment.” During the FAME, five random CSHOs were selected, and the latest assessment forms were requested for each of these CSHOs. NY PESH was able to show that three out of five of the CSHOs had received an assessment in either calendar year 2022 or 2023 using this form. Records for one CSHO showed an assessment in 2020 and records were not available for the fifth CSHO selected. There is no consistent procedure in place to ensure that annual field assessments are conducted for all CSHOs. All state recipients are expected to maintain a State Internal Evaluation Program as part of the State Plan monitoring system. This requirement is identified in #22 of the 23(g) Restrictions and Conditions in the annual 23(g) grant application.

d) Staffing

NY PESH has created a new organizational chart to reflect new positions that

have been created with the formation of a central complaint intake and a fatality processing

unit. This new organizational chart was provided on December 12, 2023, as requested during

the comprehensive on-site review. It identified a director, assistant director, one Program Manager 2 that oversees the entire PESH program, four Program Manager 1 positions, seven supervisory inspector positions, five administrative positions, 17 health inspectors, and 22 safety inspectors.

Seven inspectors share collateral duty between enforcement and whistleblower investigations. Effective January 1, 2024, the upstate Program Manager 1 will be supervising the whistleblower staff in addition to his enforcement supervision responsibilities. Also, effective January 1, 2024, two new staff dedicated to NY PESH’s whistleblower program were onboard and a third dedicated staff member is coming onboard in the near future. Two of the staff members will be stationed downstate and the third staff member will be centrally located upstate in Rochester. NY PESH has also designated counsel dedicated to working to resolve whistleblower files.

Three additional CSHO positions are in the process of being filled as noted in the FY 2023, NY

SOAR. NY PESH has lifted their hiring freeze and has been actively filling vacant positions at

all levels in FY 2022 and FY 2023. The FY 24 Annual Performance Plan submitted in July

2023 identified that there were 56.60 staff members onboard while the FY 2023 Annual

Performance Plan showed a total staffing of 49.55. This represents an increase of 7.05 staff

members in a year.

Based on a review of the newest organizational chart and the positions that were identified as

budgeted for being filled on the FY 2024 grant application that was submitted in July 2023, the

following vacancies were noted as of December 12, 2023:

* One Downstate Program Manager 2
* One supervisory position in the NYC and White Plains offices
* One safety enforcement inspector in Syracuse
* One health enforcement inspector in Syracuse
* Two administrative support positions, one in NYC, and one in Rochester

This list above represents the positions that were budgeted to be filled in the FY 2024 grant application but not all the vacant positions identified on the organizational chart included in the Annual Performance Plan. For example, each of the district offices is assigned an administrative support person, but no offices have this position filled and the grant application does not budget to fill these existing administrative vacancies in all the offices. The two administrative support positions listed above were budgeted to be filled in FY 2023 but were not filled. There were plans in the FY 2024 grant application to fill these positions.

The three management positions budgeted to be filled in the FY 2024 grant are new positions

that were not listed on the FY 2023 grant application. The FY 2023 grant application identified

three safety enforcement positions to be filled in the Syracuse District Office – two were filled

and one remains open. The health enforcement position in the Syracuse District Office identified above is an important position to fill because the newest organizational chart provided

identified no health enforcement positions filled in this office.

The FY 2024 NY PESH grant application did not identify vacancies in the consultation

program, but the FY 2023 NY SOAR identified five consultation vacancies and contributed

the 62% decline in visits to staffing shortages.

**Finding FY 2023-05 (Special Study Finding #18 FY 2022-04, FY 2021-04, FY**

**2020-03): *Staffing***

NY PESH contributed its 62% reduction in consultation visits from FY 2022 to a

reduction in consultation staff. NY PESH moved experienced consultation personnel to

training roles in FY 2023 to assist enforcement staff in meeting their annual performance goals

(FY 2023, NY SOAR).

In FY 2023, NY PESH saw a 29% increase in the number of enforcement inspections

Conducted, but the annual performance goal of 1,150 enforcement inspections was not met.

Additionally, the administrative positions identified as vacant on the FY 2023 and FY 2024

grant applications that had been budgeted for have existed for years.

**Recommendation FY 2023-05:** NY PESH should fill current staffing vacancies with qualified

staff to help meet the annual performance goals established for both consultation and

enforcement and improve metrics such as average lapse time and response to complaints.

1. **ENFORCEMENT**

a) Complaints

During FY 2023, PESH responded to 289 complaints compared to 215 complaints received in FY 2022, representing a 34% increase in complaints received. From FY 2019 to 2021, the number of complaints decreased, and then the trend reversed, steadily increasing over the last three years. The percentage of complaint inspections of the total yearly inspections has trended upward from 17% in FY 2017, 22% in FY 2018, 24% in FY 2019, 27% in FY 2020 and 2021, 32% in 2022, and 33% in 2023 (FY 2023, NY SOAR).

SAMM #1a, average number of workdays to initiate a complaint inspection (state formula), was reported at 22.7 days in FY 2023. The negotiated number of days to respond to complaints with an inspection is 10 days. In FY 2022, SAMM #1a was reported as 14.16 days which was slightly above the FRL of 10 days. The number of days to respond to a complaint with an inspection has increased in FY 2023 compared to FY 2022 (FY 2023 EOY SAMM). With the 34% increase in complaints and essentially the same number of CSHOs in FY 23 as in FY 2022, the increase in response time is most likely due to the increased volume of complaints received.

With the number of complaints increasing, to streamline the complaint intake process, NY PESH has established as of December 4, 2023, a centralized intake unit (CIU) to process all complaints received. The CIU includes a supervisor and several rotating CSHOs for complaint intake, review, process, and triage. The CIU team will be responsible for ensuring communication to complainants and employers is consistent and thorough. A toll-free number has been established (1-844-SAFE-NYS).

In response to CASPA 2023-39-NY and CASPA 2023-47, PESH has changed their policy effective September 2023, on accepting electronically signed complaints directly from the OSHA website. NY PESH is no longer forwarding a PESH-7 Form to be completed before accepting the complaint for processing. The electronically signed complaint is being evaluated and processed as appropriate upon receipt of the complaint. This will reduce processing time.

Additionally, PESH has updated the PESH-7 Form to enable it to be signed electronically. This will assist complainants in filing complaints and ensuring a signature is obtained. Also, PESH is now accepting email complaints, if the email and signature meet the minimum requirements of the PESH Act as detailed in the Field Operations Manual (FOM). This process change will ensure more timely processing and eliminate the need to send the PESH-7 Form to the complainant before processing. Also, NY PESH management now has the option of accepting anonymous complaints that allege serious hazards for immediate evaluation.

**Observation FY 2023-OB-01 (FY 2022-OB-08): *Timely Response to Complaints Requiring an Inspection***

SAMM #1a, average number of workdays to initiate complaint inspections (state formula) was reported at 22.7 days in FY 2023. The negotiated number of days to respond to complaints with an inspection is 10 days.

**Federal Monitoring Plan FY 2023-OB-01:** OSHA will monitor the New York State Plan during FY 2024 to identify possible causes of this disparity to ensure that complaint inspections are initiated within the negotiated review level. OSHA will gather information during quarterly meetings about the progress of the central intake unit in responding to complaints and streamlining the complaint intake process.

In FY 2023, the SAMM #2a, average number of workdays to initiate complaint investigations (state formula) was reported at 7.62 days which is above the FRL of one day. SAMM #2b, the federal formula for this metric reported 3.19 days. In FY 2022, SAMM #2a was reported at 7.18 days while SAMM #2b reported 3.0 days. The difference in the numbers reported between these two years is not statistically different.

Since during most of FY 2023, NY PESH required all complaints received to be signed before considering the complaint to be valid, meeting the one-day standard is difficult under the state formula. The state formula only counts the number of days from the date of receipt until the employer is contacted. The federal formula tracks the one-day response to the employer based on a number of dates including the date that a signature is received. Therefore, the federal formula considers a delay caused by the need to obtain a signature, before contacting the employer in the response date. State Plans have agreed to use the state formula rather than the federal formula for measurement of response time. However, comparing NY PESH to SAMM #2b considers the days required to secure a signature and is a fairer assessment of response time. SAMM #2b still exceeds the FRL for both FY 2022 and FY 2023.

The State Plan submitted a formal request to OSHA on January 10, 2023, to re-negotiate the FRL for SAMM #2a. OSHA has verbally told NY PESH that a final decision on re- negotiating this FRL will be made when the federal workgroup completes their review of the SAMMs and makes any recommended changes. Additionally, NY PESH is in the process of changing the FOM regarding the processing of complaints. OSHA would like to review those changes before changing the negotiated federal review level for this SAMM.. NY PESH handles the majority of their complaints by conducting an inspection. However, in FY 2023, NY PESH started to utilize the phone/fax procedure to evaluate complaints that allege less serious hazards and can be effectively handled through this investigation process, reducing the strain on resources.

**Observation FY 2023-OB-02 (FY 2022-OB-02, FY 2021-OB-02):** ***Timely Response to Complaints Requiring an Investigation***

SAMM #2a, average number of workdays to initiate complaint investigations (state formula) was reported at 7.62 days in FY 2023. The negotiated number of days to respond to complaints with an investigation is one workday.

**Federal Monitoring Plan FY 2023-OB-02:** OSHA will monitor the New York State Plan during FY 2024 to identify possible causes of this disparity to ensure that complaint investigations are initiated within the negotiated review level. OSHA will gather information during quarterly meetings about the progress of the central intake unit in responding to complaints and streamlining the complaint intake process.

**Observation FY 2023-OB-03: *Advising Complainants of Right to Appeal Decision on Invalid Complaint***

In two of 10 (20%) of the complaint files reviewed that the complaint was determined not to be valid, the correspondence to the complainant did not provide the complainant’s appeal rights. Additionally, the letter did not provide a copy of this appeals procedure. The information that must be included in the letter to the complainant when NY PESH decides to not act on a complaint is outlined in the PESH FOM.

**Federal Monitoring Plan FY 2023-OB-03:** OSHA will monitor the progress that NY PESH is making to standardize the complaint processing procedures during quarterly meetings.

**Observation FY 2023-OB-04: *Dismissing Complaints***

In two of the 10 or 20% of the complaint files reviewed that dismissed the complaint, the complaint was incorrectly determined not to be valid, even though it was a signed complaint from an employee or union representative. In one instance, a written signed complaint form was received from a union representative, alleging that upon request, injury and illnesses records were not provided. The reason given that the complaint was invalid was that this workplace condition did not have a direct relationship to safety and health protections. This exclusion is documented in the PESH FOM (page 257).

The purpose of maintaining these records is to track trends in injuries and illnesses in an effort to institute administrative and engineering controls to prevent future injuries and illnesses. These records are required to be maintained under Part 801, Recording and Reporting Public Employees’ Occupational Injuries and Illnesses.

Part 801.35, Employee Involvement, requires that union representatives be provided copies of injury and illness records upon request. NY PESH has an obligation to enforce this standard and investigate alleged violations of this regulation. This complaint should have been investigated and the FOM revised.

In the second instance, the complaint was determined to be invalid because there was an open inspection on the same subject of rats and rodents present in the facility. A review of the open inspection revealed that two notices of violations had been issued on the subject of this complaint and abatement for one of these notices was documented, before this new complaint was received. Since abatement was documented before this new complaint was received, NY PESH should have followed-up with the employer to determine the status of the outstanding, and the completed abatement, relevant to rat feces, and the establishment of a pest control program. This could have been accomplished by using the phone/fax investigation procedure.

**Federal Monitoring Plan FY 2023-OB-04:** OSHA will monitor NY PESH’s progress to standardize the complaint processing procedures during quarterly meetings. OSHA will monitor PESH’s progress in updating its FOM.

**Finding FY 2023-06 (Special Study Finding #2, Special Study Finding #15, FY 2022-OB- 04, FY 2021-OB-04): *Complaint Inspection Letters***

Five of 18 (28%) closed complaint files lacked evidence that the complainant was provided a complainant letter. In two of 13 (15%) of the complaint letters that were sent to complainants, s no reason was given as to why the complaint was not sustained. There was no evidence in the files that the narratives were forwarded.

**Recommendation FY 2023-06:**  NY PESH needs to follow its FOM when issuing letters to complainants and ensure that unsubstantiated allegations are explained in the letter or in the narrative.

**Finding FY 2023-07 (Special Study Finding #1): *Evaluating Hazards Raised in Complaints***

In six of 18 (33%) of the closed complaint files, the inspections did not evaluate all the hazards that were alleged in the complaint. For example, in one complaint, the source alleged a specific entry into a permit required confined spaces had occurred at a wastewater treatment facility. The inspection did not investigate that entry but determined that no entries were being made. There was no evidence in the file that the complainant was contacted to obtain information about the specific entry. In another complaint, the complainant alleged a foul odor in the workplace on the PESH-7 form but, this information was not transmitted to the OIS unprogrammed activity (UPA) form. Another example was a complaint was received that alleged fire fighters were not being provided adequate personal protective equipment. The allegation was vague, but an inspection was conducted before securing additional information. The inspection evaluated the availability of respirators and gloves only.

**Recommendation FY 2023-07:** NY PESH should develop and implement a strategy to ensure that all alleged and identified hazards are adequately addressed, and where apparent violations are not cited, an explanation should be included in the case file. Field staff should be provided hazard recognition training, and managers should review files to ensure all apparent hazards are addressed. Inspectors should be encouraged to document site conditions with digital photographs.

**Finding FY 2023-08 (Special Study Finding ##16, FY 2022-OB-03, FY 2021-OB-03): *Unprogrammed Activity Documentation***

In 11 of 17 (65%) of the UPAs that were not investigated, no contact sheet was included to document the important events of the file.

**Recommendation FY 2023-08:** NY PESH should follow the PESH FOM by developing and completing contact sheets for all case files.

b) Fatalities

PESH had 17 fatality and/or catastrophe (FATCAT) investigations in FY 2023 compared to 19 investigations in FY 2022 (FY 2023, NY SOAR). A review of the OIS Scan Summary Report run on January 9, 2024, showed that out of these 17 investigations there were two inspections identified as catastrophes. In addition to the fatalities investigated, NY PESH received notification of 10 fatalities in FY 2023 that were not investigated and were determined to be non-occupationally related deaths. NY PESH does not investigate every fatality that they are notified of by the employer.

In FY 2023, NY PESH responded 100% of the time to work-related fatalities within one day for the seven fatalities that met the criteria for reporting under SAMM #10. Eight of the 15 fatalities inspected were not included in SAMM #10 because either the fatality was not considered non-occupationally related or had occurred before October 1, 2022. Four out of the 15 fatality inspections that were investigated were determined to be non-occupationally related deaths.

Four of the 15 fatality investigations conducted in FY 2023 involved a fatality that occurred prior to the start of FY 2023. These were COVID-19-related deaths that had occurred in 2020, 2021, or 2022, and according to PESH, due to the large number of COVID-19 deaths reported, the four at issue were not investigated until FY 2023.

During this FAME, seven closed fatality inspections were reviewed. Additionally, 11 reports of fatalities that were not inspected and determined to be non-occupationally related deaths were reviewed. A review of these files revealed that a duplicate UPA was reported for the same death that occurred on September 19, 2023 (UPA #2084640 and #2085160.) Therefore, the review included 10 fatality UPAs that were classified as non-occupational.

**Finding FY 2023-09 (FY 2022-07, FY 2021-07): *Next-of-Kin Letters***

In four of the seven (57%) of the closed fatality inspections reviewed, there was no evidence in the files that both the initial notification of the inspection and the results of the inspection next-of-kin letters were sent to the families of the victims.

**Recommendation FY 2023-09:** NY PESH needs to follow its FOM regarding issuing letters to the families of victims. The issuance of both letters needs to be documented in the case files.

**Observation FY 2023-OB-05 *Case File Documentation for Fatalities Not Inspected***

NY PESH received notification of 10 fatalities that were closed without an inspection being conducted. All 10 of the files reviewed lacked an autopsy report or other documented medical evidence such as a death certificate that confirmed that the death was medically related and not occupationally related. In one file reviewed, UPA #2084640, there was a mention of obtaining an autopsy report, but none was obtained before closing the file. The following three examples illustrate the importance of obtaining autopsy reports or other medical documentation to confirm the verbal information being received from the employer and conducting inspections when additional information is needed:

For UPA #2044038, a young firefighter collapsed while directing traffic on the evening of June 10, 2023, at a fire scene. The file was closed based on a death-related to a sudden cardiac event. The possibility that heat may have caused this sudden heart event was not fully investigated. It is unknown from the file if the victim was wearing full turnout gear or not. An autopsy report would have confirmed the actual cause of death and ruled out heat as the cause of the sudden cardiac event.

Another example for UPA 1965657, a cleaner working in a hospital was found unresponsive in a hallway before work. The file was closed out based on the employer reporting that the death was related to a medical event. A copy of the employer’s investigation was not obtained before determining the death was not occupationally related. The actual medical event that caused the victim’s death was not identified in the file. The employer did not provide this information even though PESH did inquire.

The third example, UPA #2041251, involves a track worker that was found unresponsive in a parking lot. The worker was assigned to sweep the parking lot and repaint parking lines. The employer reported that a medical event caused the death. The actual medical event that caused the death was not identified in the file. A clear description of what the employee was doing right before collapsing was not obtained.

**Federal Monitoring Plan FY 2023-OB-05:**  OSHA will monitor NY PESH’s progress in developing written procedures on evaluating and documenting reports of fatalities that are not inspected.

c) Targeting and Programmed Inspection

During FY 2023, 39 PESH CSHOs conducted 870 inspections, as compared to FY 2022 when 675 inspections were conducted by 38 CSHOs. This represents a 29 percent increase in inspections. Twenty-four safety staff conducted 555 inspections, compared to 414 inspections in FY 2022 conducted by 26 safety staff. Fifteen industrial hygiene staff conducted 314 inspections, compared to 260 inspections in FY 2022 conducted by 12 industrial hygiene staff.

NY PESH’s inspection goals for both FY 2022 and FY 2023 were 700 inspections for safety and 450 inspections for health. NY PESH achieved approximately 76% of their inspection goal for FY 2023. NY PESH has hired new enforcement staff over the last two years. Training this new staff takes time and resources of senior CSHOs and management staff. This has a direct impact on meeting inspection goals.

This is the second year of the NY PESH Five-Year Strategic Plan. NY PESH focused its inspection resources within the following SLG agencies targeted for enforcement interventions (FY 2023, NY SOAR):

* + Police Protection – 47 inspections
  + Fire Service – 85 inspections
  + Nursing Care Facilities/Hospitals –14 inspections

In addition to focusing on the industries listed above, a secondary focus area of the five-year

strategic plan is to work with the New York State Department of Corrections

and Community Supervision (NYSDOCCS) in an effort to reduce elevated BLS injury and

illness rate trending. As a result of focused outreach, a partnership was formed with the

employer and representatives from their Workers’ Compensation insurance provider, the New

York State Insurance Fund (NYSIF). NYSIF completed the collection and compilation of

five years of loss data for NYSDOCCS. A meeting was held with representatives from

NYSDOCCS health and safety and NYSIF to review and discuss five-year claim loss data and

potential causal/contributing factors.

During FY 2023, there were 194 compliance assistance activities conducted by PESH consultants and 71 compliance assistance activities performed by PESH enforcement staff. The total compliance assistance activities for FY 2023 were 265 (the same as in FY 2022). The number of employers reached during these enforcement compliance assistance activities was 983, and the number of employees affected was 20,377. By contrast, the number of employers reached for consultation compliance assistance was 3,126 with 570,734 employees affected. The stakeholder directory developed in FY 2022 continued to be updated with additional contacts and used to disseminate notices on the Heat National Emphasis Program (NEP).

The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year

national average of 31.73% which equals a range of 25.38% to 38.08%. NY PESH’s

percent in-compliance for safety is 22.79% which is below the FRL. The FRL for percent

in-compliance for health inspections is +/- 20% of the three-year national average of

43.82% which equals a range of 35.06% to 52.58%. NY PESH’s percent in-compliance

for health is 42.97% which is below the FRL (SAMM #9).

**Finding FY 2023-10 (Special Study Finding #8): *Advanced Notice***

An OIS Inspection Address Notification Report, run on April 28, 2023, found that advanced notice was given 23 times in FY 2022 and 10 times through the end of April 2023. Advanced notice was given four times in the closed files reviewed with no explanation provided. The files were not marked in OIS as giving advanced notice, but the narratives and case contact sheets documented advanced notice.

**Recommendation FY 2023-10:** NY PESH implemented a directive that prohibits advanced notice without written approval and only under limited circumstances (effective on July 5, 2023). NY PESH needs to ensure that the directive is followed for all inspections. The cases found during the FAME were opened prior to this date.

d) Citations and Penalties

There were a total of 1,818 enforcement violations issued in FY 2023 compared to the 1,208

violations issued in FY 2022, representing a significant increase of 50.5 percent. The number

of violations per inspection was 2.1 in FY 2023, compared to 1.8 in FY 2022. This represents

a trend in the right direction.

Of the total number of violations issued during FY 2023, there were 22 failure-to-abate

(FTA), one willful, 15 repeat, 357 other-than-serious (OTS), and 1,445 serious violations. There were 366,455 employees covered by the inspections performed in FY 2023, with the significant increase largely attributed to the conduct of employer-wide inspections at larger employers, such as the Metropolitan Transportation Authority (MTA).

NY PESH’s violations continue to be above average. The FRL for the average

number of violations per inspection with violations by violation type is +/- 20% of the

three-year national average of 1.75 for serious/willful/repeat (S/W/R) violations which

equals a range of 1.40 to 2.10. NY PESH’s S/W/R average is 4.68 violations which is

above the FRL range. The FRL for OTS violations is +/- 20% of the three-year national average of 0.89 which equals a range of 0.71 to 1.07. NY PESH’s OTS average is 1.14 which is slightly above the FRL range (SAMM #5).

Violations for the most part appeared to be classified and grouped appropriately. NY PESH does not issue monetary penalties except in cases of FTA violations.

**Finding FY 2023-11 (Special Study Finding #4): *Pending Violations***

An OIS Open Inspection Report, run on November 20, 2023, identified NY PESH had 302 open inspections pending issuance. There were 153 inspections or approximately 50% of the open inspections with pending citations that were more than 180 days open. NY PESH does not have a six-month statute of limitations for issuing citations.

**Recommendation FY 2023-11:** To be more closely aligned with federal OSHA, NY PESH should strive to ensure that violations are issued within six-months of the opening conference or violative condition.

**Finding FY 2023-12: *Employer Knowledge***

In 16 of 38 (42%) of closed files with citations, the employer knowledge that was documented did not support that the employer had knowledge of the hazard or condition.

**Recommendation FY 2023-12:** Ensure that the employer knowledge documented on the violation worksheet supports that the employer had knowledge of the hazard or condition. Refrain from relying on “plain indifference” or “should have known” for employer knowledge. Consider utilizing NY PESH’s legal staff to provide retraining to CSHOs on what constitutes documentation of prima facie employer knowledge.

e) Abatement

PESH’s FOM, requires all inspections with violations issued to be followed up with an inspection, no later than 30 working days, after the latest abatement date issued for the initial inspection. A total of 22 follow-up inspections were reviewed during the FAME.

**Finding FY 2023-13: (Special Study Finding #13): *Timely Follow-ups***

Three of 22 (14%) follow-ups were not conducted within 30 working days of the latest abatement date from the initial inspection (OIS Entries). Special Study Finding #13 found that in six of the seven (86%) cases, follow-up inspections were not conducted timely. The FAME shows an improvement in this area.

**Recommendation FY 2023-13:**  NY PESH should follow its FOM and conduct follow-up inspections within 30 working days after the latest violation abatement date.

The special study finding #10 identified one file in the New York city office with a Petition for Modification of Abatement (PMA) that was approved without the request containing all the required elements listed in the NY PESH FOM. During this FAME, 12 files with PMAs were reviewed. Four of these 12 (33%) of the closed files with a PMA were approved without either adequate interim protections or the steps taken to comply to date to achieve abatement.

**Finding FY 2023-14: (Special Study Finding #10): *Processing PMAs***

Four of 12 (33%) of the closed files with an approved PMA were missing either adequate interim protections or the steps taken to comply to date to achieve abatement.

**Recommendation FY 2023-14:** NY PESH should follow the PESH FOM and ensure that all necessary steps are satisfactorily completed before approving the PMA.

**Finding FY 2023-15: (Special Study Finding #6, Special Study Finding #7, FY 2022-03, FY 2021-03): *OIS Open Inspection Report and Overdue Abatement***

The overdue abatement tab on the OIS Open Inspection Report, run on November 20, 2023, showed 86 inspections that had overdue abatement. The oldest file with overdue abatement had abatement that was 2,120 days overdue as of November 20, 2023.

This file was reviewed as part of the FAME to determine if this file remained open due to OIS entry errors or a lack of documented abatement. The employer has proposed an alternative abatement to address the hazard under the Alternative Compliance Agreement procedures in the NY PESH FOM. Upon receipt of this alternative abatement proposal, NY PESH is required to seek the services of their engineering services unit to review and schedule a meeting with the employer, any unions and NY PESH. There is no indication in the file that the engineering services unit has reviewed any proposal or scheduled a meeting. This violation was issued on September 13, 2017. Abatement is still outstanding.

In addition to this file, eight other files with open overdue abatement that was more than 200 days were reviewed. The file review showed that six of open nine (67%) files lacked abatement in the files to mark all items abated. Two of the files had evidence of abatement in the file but were not marked as abated and closed in OIS.

One case (Inspection #1390753) was settled by an Industrial Board of Appeals settlement on December 30, 2019. The settlement withdrew two citations, but OIS was not updated to reflect these two citations were withdrawn and consultation services were required as part of the settlement. The contest was also not noted in OIS which hindered tracking of this file. The file was not followed up on until August 2023 when a follow-up inspection was conducted. The follow-up found that all violations except for the two lockout/tagout citations that were withdrawn were abated. The follow-up inspection documented new exposures of the lockout/tagout standard, but new citations were not proposed before closing the follow-up.

Inspection #1227926, a fatality inspection, was settled during an informal settlement agreement in December 2019. There was no evidence in the file that the two serious citations issued were abated with documentation from the employer or a follow-up inspection.

Additionally, under the tab Citations not Received, on the OIS Open Inspection Report, there were 10 inspections with violations issued that were not updated in OIS to identify the citations were received. If OIS is not updated to reflect receipt of violations, abatement will not be tracked in the system and included in reports.

**Recommendation FY 2023-15:** NY PESH must enter all required data into OIS including contests. PESH should implement a process to ensure timely tracking and abatement of all hazards. The open files identified in this review and on the OIS Open Inspection report that still have open abatement need to be reviewed, the employer contacted to secure abatement and follow-ups scheduled as appropriate.

1. Worker and Union Involvement

The file review documented that union representatives were invited to participate in the opening conference, walkaround and closing conference. Union participation was documented in OIS and in the narrative of the files reviewed.

SAMM #13, percent of inspections with worker walkaround representation or worker interviews documented in FY 2023 was99.54%. The FRL is 100%. The difference between the number reported and the FRL is not statistically significant.

**Finding FY 2023-16: (Special Study Finding #9): *Documenting Employee Interviews***

In 57 of 79 (72%) of the closed files reviewed, the field notes did not document which employees were interviewed and the information obtained during these interviews to evaluate the working conditions and support any violations issued. OIS entries were made to indicate that employees were interviewed in these files, but the field notes did not provide details of these interviews.

**Recommendation FY 2023-16:** NY PESH should train CSHOs on the requirement to document employee interviews in field notes and ensure that supervisors check for documentation of employee interviews during the file review.

**Observation FY 2023-OB-06 *Mailing Violations to Unions***

Twenty-three of 35 (65%) of the closed files lacked an entry in the case contact sheet or other file notes that confirmed that the union received the citations. The case contact entries would state violations sent but did not specify to which individuals.

**Federal Monitoring Plan FY 2023-OB-06:**  OSHA will monitor through discussions at quarterly meetings.

**3. REVIEW PROCEDURES**

1. Informal Conferences

During FY 2022, seven informal conferences were conducted. NY PESH penalties billed during FY 2022 totaled $704,325. Penalty collection for the year totaled $76,548 (FY 2022 NY SOAR).

During FY 2023, nine informal conferences were conducted.  NY PESH penalties billed during FY 2023 totaled $2,150,813. Penalty collection for the year totaled $43,324 (FY 2023 NY SOAR).

1. Formal Review of Citations

Any investigation that is contested is turned over to the Industrial Board of Appeals (IBA). There were 15 Contested cases in FY 2023, 14 in FY 2022, and 13 in FY 2021 (FY 2023, NY SOAR).

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

1. Standards Adoption

In accordance with 29 CFR 1902, State Plans are required to adopt standards and federal

program changes (FPCs) within a six-month timeframe. State Plans that do not adopt

identical standards and procedures must establish guidelines which are "at least as

effective as" the federal rules. State Plans also have the option to promulgate standards

covering hazards not addressed by federal standards. During this period, NY PESH

responded in a timely manner to most requests with the required notice of intent to adopt.

Since NY PESH is a State Plan that covers only state and local government workers and does not issue first instance penalties, NY PESH is not required to adopt the OSHA regulation that annual updates the civil penalties based on inflation.

The adoption of FY 2015 Federal Standard Number 1904 – Occupational Injury and Illness Recording and Reporting Requirements and FY 2023 Final Rule to Improve Tracking of Workplace Injuries and Illnesses, 29 CFR 1904 is being addressed with completion expected in FY 2024 (FY 2023, NY SOAR). NY PESH did not adopt the 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).

NY PESH adopted the 2017 Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) effective March 8, 2023. Additionally, a correction in 12 NYCRR 800.5 related to the Permissible Exposure Limit (PEL) for Nitrogen Dioxide was completed in FY 2023.

**Finding FY 2023-17 (FY 2022-08, FY 2021-08, FY 2020-05): *Federal Standards Adoption***

NY PESH has not adopted all overdue FPCs.

**Recommendation FY 2023-17:** NYPESH should develop a strategy that ensures FPCs are adopted within the required timeframes.

Currently, the NY PESH Act only requires that employers report hospitalizations of two or more employees compared to the FY 2015 OSHA reporting requirements of one person hospitalized. There are no mandatory reporting requirements under the PESH Act for amputations.

b) Federal Program Change (FPC) Adoption

NY PESH adopted FPCs that were required to be adopted in FY 2022 and FY 2023. Regarding the adoptions that required equivalency, NY PESH did not adopt the OSHA Whistleblower Investigations Manual CPL 02-03-011(dated April 29, 2022). Instead, NY PESH provided intent to adopt an equivalent manual and provided a link to its (FOM Chapter X, Discrimination. A review of this chapter when compared to the OSHA Whistleblower Investigations Manual (WIM) CPL 02-03-011 found that the manuals were not equivalent. NY PESH does not want to establish a separate manual for whistleblower from their FOM. They plan to revise the entire FOM including the whistleblower manual.

The tables below provide a complete list of the federal directives and standards which

required action during this performance period:

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Adoption**

***(May include any delinquent standards from earlier fiscal years)***

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 11/10/2021 | N | 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 | 4/7/2022 | N | 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 | 4/7/2022 | N | 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 | 4/14/2022 | N | N/A | 8/14/2022 | Not adopted yet |
| 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 | 3/13/2023 | N | 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 | 9/27/2023 | Y | Y | 1/21/2024 | Not Adopted Yet |
| Occupational Injury and Illness Recording and Reporting Requirements NACIS Update and Reporting Revisions  29 CFR 1904  (9/19/2024) | 11/19/2014 | 10/27/2014 | Y | N | 3/19/2015 | Not Adopted Yet |

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC) Adoption**

***(May include any delinquent FPCs from earlier fiscal years)***

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| ***Adoption Required*** |  |  |  |  |  |  |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 3/31/2023 | Y | Y | 7/30/2023 | 3/31/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 9/13/2023 | Y | Y | 1/9/2024 | 9/13/2023 |
| ***Equivalency Required*** |  |  |  |  |  |  |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 7/1/2022 | Y | Y | 11/3/2022 | 7/5/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/11/2022 | N | N/A | 2/11/2023 | N/A |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 2/28/2023 | Y | Y | 3/15/2023 | 2/28/2023 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 4/3/2023 | N | N/A | 8/6/2023 | N/A |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/30/2023 | Y | Y | 10/28/2023 | 7/3/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 11/28/2023 | Y | N | 3/27/2024 | Not Adopted Yet |
| ***Adoption Encouraged*** |  |  |  |  |  |  |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 12/30/2021 | N | N/A | N/A-adoption not required | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 6/8/2022 | Y | Y | N/A-adoption not required | 6/8/2022 |

**5. Variances**

There were no variances issued in FY 2022 or FY 2023.

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

One hundred percent (100%) as measured by SAMM #6 of all inspections conducted by NY

PESH occurred within SLG workplaces during FY 2022 and FY 2023. The NY PESH Act does

not contain provisions for the issuance of monetary penalties for SLG employers found not to be

in-compliance with applicable standards on a first instance basis. NY PESH issues penalties for

Failure to Abate (FTA) violations only.

There were 15 contested cases in FY 2023, 14 in FFY 2022, and 13 in FY 2021. During FY 2023, nine informal conferences were conducted. NY PESH penalties billed during FY 2023 totaled $2,150,813. Penalty collection for the year totaled $43,324 (FY 2023, NY SOAR).

**7. WHISTLEBLOWER Program**

NY PESH received 44 discrimination complaints in FY22 and 40 in FY23. The complaints were

distributed among approximately 11 different investigators. There were 39 complaints

administratively closed and five closed docketed, 14 intake/screening pending and 26

investigations pending. New cases are being entered into OIS but open cases still exist on the

legacy database.

PESH investigates discrimination complaints against employees filed under 27-a.10 of the New

York State Labor Law. A total of 44 cases were audited during this FAME review that

encompassed FY2022 and FY2023 activity. The cases were retaliation complaints filed with NY

PESH and they were in various stages of the process, depending on the classification in the case

management systems. The cases by status were:

* Administrative Closures (18 Complaints)
* Intake/Screening Pending (15 Complaints)
* Pending Investigation (7 Complaints)
* Closed Docketed (4 Complaints)

The files reviewed were set up in two different manners. The traditional hard paper files and the

electronic file method. Paper files were haphazard with perhaps the exception of one or two

cases. Most of the cases reviewed never followed the case structure of either Chapter X, Section

G of the NYS FOM or of OSHA’s previous (CPL 02-03-007, dated 01/28/2016) and current

(CPL 02-03-011, dated 04/29/2022) Whistleblower Investigation Manuals (WIM) as it pertains

to left side/right side structure.

The electronic files that were hard paper files never followed the structure (left and right-side

division) of the previous WIM. NY PESH has not fully adopted or developed an equivalent procedure to the Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-09 (6/18/2020), nor do they follow the directive on the structure of the files. NY PESH indicated in the State Plan Application on September 16, 2020 that they would adopt this directive but not identically.

**Observation FY 2023-OB-07: *Adoption of Federal Whistleblower Manual***

NY PESH is overdue in adopting an ALAE Whistleblower Manual.

**Federal Monitoring Plan FY 2023-OB-07:** OSHA will monitor the progress of revising the whistleblower chapter in the NY PESH FOM during quarterly meetings.

**Finding 2023-18 (FY 2022-09, FY 2021-09): *Responding to Worker Retaliation Cases Timely***

During the audit period of FY 2022 and FY 2023, NY PESH’s averaged days to screen a case

was 55 days. There is a case currently pending intake from April of 2022 (669 days) and a total

of four cases pending intake from FY 2022. OSHA has a goal of 10 days or less to

screen a case.

For the 15 cases reviewed in the Intake/Screening Pending status, OSHA determined that 100%

of the complaints had excessive time in this status. This should be the shortest phase in the

processing of complaints. A determination should be made quickly if a case can be

administratively closed or needs to be docketed.

As of January 30, 2024, NY PESH had a total of 64 open complaints with 46 open docketed

cases. On average, a case is 954 days old by the time it is closed. The age of the docketed cases

is currently from 244 days to 2051 days, with an average day pending at 902 days and the

average age to close a case is 959 days.

**Recommendation FY 2023-18:**  NY PESH needs to ensure that investigators screen the cases

upon receipt, properly record the cases in OIS and work with the counsel’s office to close cases

timely.

Case File Documentation

The case file review noted the following:

* In 13 of the 18 (72%) of the Administrative Closure (AC) files, there was no documentation in the file that concurrence with the complainant was obtained before closing the case.
* In 10 of 18 (56%) of the AC files, there were no notes or memo’s indicating that the complainant was interviewed.
* In five of the 18 (28%) of the AC files, the activity log was either inadequate or missing altogether.
* In 12 of the 18 (67%) of the AC files, the files were poorly organized.

In nine of 18 (50%) of the AC files, there was no documentation of a tracked response to the

complainant, either by delivery/read receipt email or by tracked delivery of a hard copy of the

AC determination letter.

There were 15 cases reviewed in the Intake/Screening Pending phase. The overwhelming

observation on cases in this status is there appears to be no legitimate reason for cases to be in

this status. Cases should be immediately transitioned from the Intake/Screening Pending phase

to Administrative Closed or Pending Investigation phase. In most cases, this is a failure by the

investigator to adequately document this in OIS or OSHA Information Technology Support

System (OITSS).

There was no statement, questionnaire, or memo to file (MTF) indicating the complainant was

interviewed in five of 15 (33%) of the files in the Intake/Screening Pending phase. Additionally, 11 of 15 (73%) of these files were poorly organized and six of 15 (40%) were missing notes.

There was three of 15 (20%) of the cases in the Intake/Screening Pending phase that lacked

documentation of supervisory review.

Of the 11 full field investigations reviewed, OSHA determined that eight of 11 (73%) of the cases lacked proper documentation.

Both (100%) of the closed docketed cases that were withdrawn lacked proper case file

organization and documentation in the file. Supervisory review was not documented and there

was no evidence that the respondent was ever notified.

In addition, both of the closed docketed cases that had a determination were poorly documented and organized. There was no documentation of witness interviews.

In one of two (50%) of the closed docketed cases with a determination of no supporting evidence of the respondent’s position statement, it appeared there was no attempt to test the defense. There was also no indication that supervisory review was conducted for this case before closing.

For the full field investigation files that are still pending investigation that were reviewed, dates

and documentation were lacking in OIS.

**Finding FY 2023-19: *Case File Documentation in Whistleblower Files***

Case file documentation was missing in the case files reviewed as documented in the narrative of

the FAME.

**Recommendation FY 2023-19:** NY PESH needs to follow its FOM or adopt OSHA’s WIM as necessary. Standardization of forms and the information contained in those forms would also help in ensuring consistent investigations and meeting critical metrics.

**Finding FY 2023-20: *Lack of Investigative Steps***

In 11 of 15 (73%) of case files in the Intake/Screening Pending phase lacked substantial

investigative steps. They ranged from never contacting the complainant, not sending docket

letters, administrative closing letters or following-up with supervisors.

In nine of 11 (82%) of the full field investigation files reviewed, the files lacked substantial

investigative steps taken on a regular basis.

**Recommendation FY 2023-20:** NY PESH needs to follow their FOM to process whistleblower complaints effectively.

SAMMs#14, #15 and #16 were not measured during FY 2023 due to the transition of

whistleblower from OITSS to OIS.

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

The Regional Office received 28 requests for a CASPA in FY 2023. The Regional Office

accepted 15 CASPAs for investigation. None of the CASPAs accepted for investigated were

identified as significant CASPAs. There was one significant CASPA that was received in FY

2022. This CASPA (identified as CASPA 2022-31-NY) was closed after hazard alert letters were issued.

The CASPAs that were not accepted for investigation were not investigated for a number of reasons that included: allegations were too vague, a similar allegation was being addressed by another open CASPA, and that all administrative proceedings had not been exhausted before a CASPA was filed. All CASPAs that were not investigated were assigned a number, entered into the State Plan Application, tracked in an internal spreadsheet, all documents maintained in an electronic folder, and the source was provided with a letter explaining the decision for not investigating.

The 15 CASPAs that were assigned for investigated were responded to in a timely manner by NY PESH after receipt of the CASPA investigation letter. The source of the CASPA was provided a letter of acknowledgement. Three of the 15 CASPAs that were opened in FY 2023 have been closed. The other 12 CASPAs remain open pending either the completion of open inspections or investigation, securing abatement on notices of violations issued, adoption of the FY 2015 1904 Recordkeeping Reporting Rule, and filling staffing vacancies in the New York city district. NY PESH provides updates on the status of these actions and periodically meets with OSHA to review the outstanding CASPAs.

**9. Voluntary Compliance Program**

NY PESH does not administer a voluntary compliance program.

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

NY PESH’s SLG workers’ consultation program did not meet its Annual Performance Plan projections of 170 consultation visits in both FY 2022 and FY 2023 due to the impacts of staffing issues and the lack of requests. In FY 2022, NY PESH conducted 138 consultation visits which included 48 health, 87 safety, and three visits classified as both disciplines. There were 54 initial visits, 35 training and education, and three follow-up visits.

In FY 2023, NY PESH conducted 53 consultation visits which included 39 health, five safety, and nine visits classified as both disciplines. There were 34 initial visits, 19 training and education visits, and no follow-up visits. The goals for FY 2023 were 110 consultation safety visits and 60 health consultation visits totaling 170 visits for the fiscal year.

Of these 34 initial visits, there were 15 visits conducted in the construction sector, 10 visits in the service industry, two in the agriculture industry, and 25 classified as in other industries.

In FY 2023, a total of 75 serious hazards were documented which represented an average number of 4.69 serious hazards per initial visit (OIS Consultation Metrics Report). The Mandated Activities Report for Consultation (MARC) measure MARC #4a showed that 100% of all serious hazards were verified corrected within 14 days of latest correction date. The reference standard is 100%. No hazards were referred to enforcement.

During this case file review, 10 consultation files were reviewed. The case files were broken down as follows; seven initial and three training and education visits. The files were reviewed using the NY PESH Consultation Policies and Procedures Manual (CPPM) that is dated October 2021. This manual requires the use of FORM 33 only for comprehensive evaluations and if requested by the employer which differs from the requirements in the federal CPPM. None of the files reviewed contained a FORM 33 because the criteria established in the NY PESH manual was not met. Additionally, since this manual does not contain a deadline to issue the report, the date that the report was issued was not evaluated.

NY PESH’s consultation manual was reviewed during the FY 2022 Follow-up FAME and determined to contain specific elements that were not least as effective (ALAE) as OSHA’s federal CPPM CSP 02-00-004 dated March 19, 2021.

**Finding FY 2023-21 FY 2022-10, FY 2021-OB-08, FY 2020-OB-04, FY 2019-OB-04, FY 2018-OB-07): *Consultation Policies and Procedures Manual (CPPM)***

Specific elements must be implemented into NY PESH’s consultation manual of October 2021 to be at least as effective (ALAE) as OSHA’s federal CPPM. These elements include sharing the list of hazards with any union representatives including any updated lists, specifying when the Form 33 or an equivalent tool will be utilized and the responsibilities of the program manager to prioritize, schedule, and determine the scope of the visit, rather than the consultant as it is currently written.

**Recommendation FY 2023-21** NY PESH should implement these elements into its consultation manual to be ALAE as federal OSHA’s latest CPPM dated September 29, 2023.

**Observation FY 2023-OB-08 (FY 2022-OB-07, FY 2021-OB-07): *Consultation Case File Documentation***

Specifically, the consultation file review noted the following:

* Five out of 10 (50%) of the files reviewed had no evidence that a supervisor reviewed the file before it was closed.
* One of 10 (10%) of the files reviewed were incorrectly classified as an initial visit rather than a training and education visit. The consultant provided only training assistance during the visit.
* One of seven (14%) of initial visits did not issue a hazard notice to the employer for serious hazards noted in the report.
* Three of seven (42%) of initial visits lacked evidence that the serious hazards noted were corrected.
* Two of four (50%) of visits with sampling had either no sampling forms in the file or incomplete sampling forms.
* Two of seven (29%) of the initial visits were missing a report to the employer. The employer received an email from the consultant only, acknowledging that a visit was conducted.
* One of one (100%) of the files reviewed that requested an extension did not have an updated list of hazards issued to the employer after the extension was approved.
* Five of seven (71%) of the initial visits were missing evidence that three previous years and the current year of 300 logs were reviewed.
* One of three (33%) of training and education visits were missing confirmation of a hazard assessment being conducted within last the 12 months.
* One of three (33%) of training and education visits were missing a copy of the training program presented.

**Federal Monitoring Plan FY 2023-OB-08:** OSHA will monitor during quarterly meetings and by utilizing OIS reports. Specifically, OSHA will monitor NY PESH’s progress in establishing a fully separated consultation from enforcement section that will be staffed with Program Manager I devoted to overseeing the consultation program. NY PESH has committed to this organizational change and anticipates the change taking place in January 2024 (FY 2023, NY SOAR).

**Finding FY 2023-22 (Special Study Finding # 11): *Confidentially Between Consultation and Enforcement Activities***

The activities of enforcement and consultation are not conducted independently from each other.

For example, The NYC Office received a request for consultation services from the MTA East New York Depot in the spring of 2022 to assist with correcting the fire panels alleged to be impaired. The consultant and management met with MTA officials to discuss the consultation visit but a visit was not scheduled. This activity was entered as a compliance assistance activity. The consultant assigned to this consultation is the same person that issued the violations which is a direct conflict of interest.

**Recommendation FY 2023-22:** NY PESH should develop a policy designed to ensure that confidentiality is maintained between consultation and enforcement activities. PESH should properly charge time to align with the correct category in the 23(g).

**11. Private Sector 23(g) On-site Consultation Program**

This is a SLG State Plan. NY PESH does not operate a private sector 23 (g) program.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | *Safety Lapse Time*  In FY 2023, the average safety lapse time (SAMM 11) for citations was calculated at 101.64 days which is above the FRL range of 44.18 to 66.28 days for safety. | NY PESH should utilize the OIS reports including the SAMM report to track lapse time and encourage CSHOs to issue simple inspections rapidly as soon as is practical to average out the lapse time associated with more complex inspections. In addition, NY PESH needs to fill both vacant CSHO and administrative positions to provide additional resources. | Special Study Finding #12  FY 2022-01  FY 2021-01  FY 2020-OB-01  FY 2019-OB-01  FY 2018-OB-08 |
| FY 2023-02 | *Health Lapse Time*  In FY 2023, the average health lapse time (SAMM 11) for citations was calculated at 110.49 days which is above the FRL range of 55.78 to 83.66 days for health. | NY PESH should utilize the OIS reports including the SAMM Report to track lapse time and encourage CSHOs to issue simple inspections rapidly as soon as is practical to average out the lapse time associated with more complex inspections. In addition, NY PESH needs to fill both vacant CSHO and administrative positions to provide additional resources. | Special Study Finding #12  FY 2022-02  FY 2021-02  FY 2020-OB-02  FY 2019-OB-02  FY 2018-OB-09 |
| FY 2023-03 | *OIS UPA Tracking Report*  The OIS UPA Tracking Report, run on January 23, 2024, identified that there were 12 UPAs that were being handled as phone/fax investigations that were overdue for responses from the employer to follow-up on the hazards alleged in the complaints. The OIS Report shows the last action taken on these complaints was to forward a request to the employer to investigate and provide a response after investigating. The oldest two cases on this list date back to *calendar year* 2022. There were 11 UPAs including one fatality identified on the OIS Tracking Report for all PESH offices that were received before the end of calendar year 2023 that had not been inspected as of January 24, 2024. The oldest UPA was received on June 24, 2020. Fifteen UPAs were received in January 2024 and were awaiting inspection.  The special study identified 52 UPAs awaiting inspection in the NYC Office as of a December 7, 2023 OIS Tracking Report.  This report also identified 175 cases under the tab, Complaints and Referrals awaiting other actions. These cases require OIS entries to be updated to ensure that the complaints are effectively managed, and appropriate actions taken to resolve. | NY PESH should develop and implement procedures to ensure that complaints are entered correctly into OIS, evaluated by managers, opened and completed timely, to ensure adequate and timely abatement of hazards. | Special Study Finding #3 |
| FY 2023-04 | *OIS Health Sampling Forms*  Six out of seven (86%) of the closed health inspections with sampling had either no OIS health forms in the file or incomplete sampling forms in the files to document the sampling performed. The four inspections with incomplete OIS forms that were incomplete were missing information such as the make and model of the instrument used, the pre and post calibration results, and actual sampling times. Two inspections had no OIS sampling forms in the file even though the narrative stated sampling was performed. The missing information on the forms could not be located in the field notes of the file. | NY PESH should ensure that when sampling is performed complete data is entered in the OIS system and on the appropriate forms. NY PESH should consider retraining staff on the sampling information that needs to be documented in OIS and on the sampling forms. | FY 2020-01  FY 2019-01  FY 2018-01  FY 2017-01 |
| FY 2023-05 | *Staffing*  NY PESH has contributed the 62% reduction in consultation visits from FY 2022 to a reduction in consultation staff. Administrative positions that were intended to be filled in FY 2023 have remained open. | NY PESH should fill current staffing vacancies with qualified staff to help meet the annual performance goals established for both consultation and enforcement and improve metrics such as average lapse time and response to complaints. | Special Study Finding #18  FY 2022-04  FY 2021-04  FY 2020-03 |
| FY 2023-06 | *Complaint Letters*  In five of 18 (28%) complaint closed files lacked evidence that the complainant was provided a complainant letter. In two of 13 (15%) closed files of the complaint letters that were sent, no reason was given for why the complaint was not sustained. | NY PESH needs to follow its FOM when issuing letters to complainants and ensure that unsubstantiated allegations are explained in the letter or in the narrative. | Special Study #2  Special Study #15  FY 2022-OB-04  FY 2021-OB-04 |
| FY 2023-07 | *Evaluating Hazards*  In six of 18 (33%) of the closed complaint files, the inspections did not evaluate all the hazards that were alleged in the complaint. | NY PESH should develop and implement a strategy to ensure that all alleged and identified hazards are adequately addressed, and where apparent violations are not cited, an explanation should be included in the case file. Field staff should be provided hazard recognition training, and managers should review files to ensure all apparent hazards are addressed. Inspectors should be encouraged to document site conditions with digital photographs. | Special Study #1 |
| FY 2023-08 | *Unprogrammed Activity Documentation*  In 11 of 17 (65%) of the unprogrammed activities not investigated, there was no contact sheet to document the important events of the file. | NY PESH should follow the PESH FOM by developing and completing contact sheets for all case files. | Special Study #16  FY 2022-OB-03  FY 2021-OB-03 |
| FY 2023-09 | *Next-of-Kin Letters*  In four of seven (57%) of the closed fatality inspections reviewed, there was no evidence in the files that both the initial notification of the inspection and the results of the inspection next-of-kin letters were sent to the families of the victims. | NY PESH needs to follow its FOM regarding issuing letters to the families of victims. The issuance of both letters needs to be documented in the case files. | FY 2022-07  FY 2021-07 |
| FY 2023-10 | *Advanced Notice*  An OIS Inspection Address Notification Report, run on April 28, 2023, found that advanced notice was given 23 times in FY 2022 and 10 times through the end of April 2023. Advanced notice was given four times in the closed files reviewed with no explanation provided. | NY PESH has implemented a new advanced notice directive (effective on July 5, 2023) that prohibits advanced notice without written approval and under limited circumstances. NY PESH needs to ensure that the directive is followed for all inspections. The cases found during the FAME were opened prior to this date. | Special Study Finding #8 |
| FY 2023-11 | *Pending Violations*  An OIS Open Inspection Report, run on November 20, 2023, identified NY PESH had 302 open inspections pending issuance. There were 153 inspections (approximately 50%) of the open inspections with pending citations that were more than 180 days open. NY PESH does not have a six-month statute of limitations for issuing citations. | To be more closely aligned with OSHA, NY PESH should strive to ensure that violations are issued within six-months of the opening conference or violative condition. | Special Study #4 |
| FY 2023-12 | *Employer Knowledge*  In 16 of 38 (42%) of closed files with citations, the employer knowledge that was documented did not support that the employer had knowledge of the hazard or condition. | NY PESH should ensure that the employer knowledge documented on the violation worksheet supports that the employer had knowledge of the hazard or condition. Refrain from relying on using “plain indifference” or “should have known” for employer knowledge. Consider utilizing NY PESH’s legal staff to provide retraining to CSHOs on what constitutes documentation of prima facie employer knowledge. | New |
| FY 2023-13 | *Timely Follow-ups*  Three of 22 (14%) follow-ups were not conducted within 30 working days of the latest abatement date from the initial inspection (OIS Entries). The special study Finding #13 found that six of the seven (86%) of follow-up inspections reviewed were not conducted within 30 working days of the latest abatement date. The FAME shows an improvement in this area. | NY PESH should follow the FOM and conduct follow-up inspections within 30 working days after the latest violation abatement date. | Special Study Finding #13 |
| FY 2023-14 | *Processing PMAs*  Four of 12 (33%) of the closed files with an approved PMA were missing either adequate interim protections or the steps taken to comply to achieve compliance. | NY PESH should follow the PESH FOM and ensure that all necessary steps are satisfactorily completed before approving the PMA. | Special Study Finding #10 |
| FY 2023-15 | *Overdue Abatement*  The overdue abatement tab on the OIS Open Inspection Report, run on November 20, 2023, showed 86 inspections that had overdue abatement. The oldest file with overdue abatement had abatement that was 2,120 days overdue as of November 20, 2023. | NY PESH needs to enter all required data into OIS including contests and better utilize OIS reports to ensure timely tracking and abatement of all hazards. The open files identified in this review and on the OIS Open Inspection Report that still have open abatement need to be reviewed, the employer contacted to secure abatement and follow-ups scheduled as appropriate. | Special Study Finding #6  Special Study Finding #7  FY 2022-03  FY 2021-03 |
| FY 2023-16 | *Documenting Employee Interviews*  In 57 of 88 (65%) of the closed files reviewed, the field notes did not document which employees were interviewed and the information obtained during these interviews to evaluate the working conditions and support any violations issued. OIS entries were made to indicate that employees were interviewed in these files, but the field notes did not provide details of these interviews. | NY PESH should train CSHOs on the importance requirement to of documenting employee interviews in field notes and ensure that supervisors check for documentation of employee interviews during the file review. | Special Study Finding #9 |
| FY 2023-17 | *Adoption of Federal Standards*  NY PESH has not adopted all overdue FPCs. | NYPESH should develop a strategy that ensures FPCs are adopted within the required timeframes. | FY 2022-08  FY 2021-08  FY 2020-05 |
| FY 2023-18 | *Responding to Worker Retaliation Cases Timely*  During the audit period of FY 2022 and FY 2023, NY PESH’s averaged days to screen a case was 55 days. There is a case currently pending intake from April of 2022 (669 days) and a total of four cases pending intake from FY 2022. OSHA has a goal of 10 days or less to screen a case.  For the 15 cases reviewed in the Intake/Screening Pending status, OSHA determined that 100% of the complaints  had excessive time in this status. This should be the shortest phase in the processing of complaints. A determination should be made quickly if a case can be administratively closed or needs to be docketed.  As of January 30, 2024, NY PESH had a total of 64 open complaints with 46 open docketed cases. On average, a case is 954 days old by the time it is closed.  The age of the docketed cases  is currently from 244 days to 2051 days, with an average day pending at 902 days and the average age to close a case is 959 days. | NY PESH needs to ensure that investigators screen the cases upon receipt, properly record the cases in OIS, and work with the counsel’s office to close cases timely. | FY 2022-09  FY 2021-09 |
| FY 2023-19 | *Case File Documentation in Whistleblower Files*  Case file documentation was missing in the case files reviewed as documented in the narrative of the FAME. | NY PESH needs to follow their FOM or adopt OSHA’s WIM as necessary. Standardization of  forms and the information contained in those forms would also help in ensuring consistent investigations and meeting critical  metrics. | New |
| FY 2023-20 | *Lack of Investigative Steps*  In 11 of 15 (73%) of case files in the Intake/Screening Pending phase lacked substantial investigative steps. They ranged  from never contacting the complainant, not sending docket letters, administrative closing letters, or following-up with  supervisors. | NY PESH needs to follow their FOM to process whistleblower complaints effectively. | New |
| FY 2023-21 | *Consultation Policies and Procedures Manual*  Specific elements must be implemented into NY PESH’s consultation manual of October 2021 to be at least as effective (ALAE) as OSHA’s federal CPPM. | NY PESH should implement these elements into its consultation manual to be ALAE as federal OSHA’s latest CPPM dated September 29, 2023. | FY 2022-10  FY 2021-OB-08  FY 2020-OB-04  FY 2019-OB-04 FY 2018-OB-07 |
| FY 2023-22 | *Confidentially between Enforcement and Consultation Activities*  The activities of enforcement and consultation are not conducted independently from each other. | PESH should develop a policy designed to ensure that confidentiality is maintained between consultation and enforcement activities. PESH should properly charge time to align with the correct category in the 23(g). | Special Study Finding #11 |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-08 | *Timely Response to Complaints Requiring Inspections*  SAMM #1a, average number of workdays to initiate complaint inspections (state formula) was reported at 22.7 days in FY 2023. The negotiated number of days to respond to complaints with an inspection is 10 days. | OSHA will monitor NY PESH during FY 2024 to identify possible causes of this disparity to ensure that complaint inspections are initiated within the negotiated review level. OSHA will gather information during quarterly meetings about the progress of the central intake unit in responding to complaints and streamlining the complaint intake process. | Continued |
| FY 2023-OB-02 | FY 2022-OB-02  FY 2021-OB-02 | *Timely Response to Complaints Requiring Investigations*  SAMM #2a, average number of workdays to initiate complaint investigations (state formula) was reported at 7.62 days in FY 2023. The negotiated number of days to respond to complaints with an investigation is one workday. | OSHA will monitor NY PESH during FY 2024 to identify possible causes of this disparity to ensure that complaint inspections are initiated within the negotiated review level. OSHA will gather information during quarterly meetings about the progress of the central intake unit in responding to complaints and streamlining the complaint intake process. | Continued |
| FY 2023-OB-03 |  | *Complainant Rights*  In three of 10 (30%) of the complaint files reviewed that the complaint was determined not to be valid, the correspondence to the complainant did not provide the complainant’s appeal rights. Additionally, the letter did not provide a copy of this appeals procedure. The information that must be included in the letter to the complainant when NY PESH decides to not act on a complaint is outlined in page 260 of the PESH FOM. | OSHA will monitor the progress that NY PESH is making to standardize the complaint processing procedures during quarterly meetings. | New |
| FY 2023-OB-04 |  | *Dismissing Complaints*  In two of 10 (20%) of the complaint files reviewed that dismissed the complaint, the complaint was incorrectly determined not to be valid, even though it was a signed complaint from an employee or union representative. | OSHA will monitor NY PESH’s progress to standardize the complaint processing procedures during quarterly meetings. OSHA will monitor NY PESH’s progress in updating its FOM. | New |
| FY 2023-OB-05 |  | *Case File Documentation*  NY PESH received notification of ten fatalities that were closed without an inspection being conducted. All 10 of the files reviewed lacked an autopsy report or other documented medical evidence such as a death certificate that confirmed that the death was medically related and not occupationally related. | OSHA will monitor NY PESH’s progress in developing written procedures on evaluating and documenting reports of fatalities that are not inspected. | New |
| FY 2023-OB-06 |  | *Mailing Violations to Unions*  Twenty-three of 35 (65%) of the closed files lacked an entry in the case contact sheet or other file notes that confirmed that the union received the citations. The case contact entries would state violations sent but did not specify to which individuals. | OSHA will monitor through discussions at quarterly meetings. | New |
| FY 2023-OB-07 |  | *Federal Whistleblower Manual* NY PESH is overdue in adopting an ALAE Whistleblower Manual. | OSHA will monitor the progress of revising the whistleblower chapter in the NY PESH FOM during quarterly meetings. | New |
| FY 2023-OB-08 | FY 2022-OB-07  FY 2021-OB-07 | *Consultation Case File Documentation*  Consultation documentation was lacking. | OSHA will monitor during quarterly meetings and by utilizing OIS reports. | Continued |
|  | FY 2022-OB-05  FY 2021-OB-05 | *Percent In-Compliance Health*  The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 44.42% which equals a range of 35.54% to 53.30%. NY PESH’s percent in-compliance for health inspections is 53.17% which is above the FRL. | OSHA will monitor quarterly utilizing the SAMM Report. | Closed |
|  | FY 2022-OB-09 | *Worker Involvement*  NY PESH’s percent of initial inspections with worker walkaround representation or worker interview is 96.55% for SAMM 13 which is below the FRL of 100%. | OSHA will monitor quarterly utilizing the SAMM Report. | Closed |
|  | FY 2022-OB-01  FY 2021-OB-01 | *Processing of UPAs*  In FY 2021, eight of the 20 UPAs (40%) reviewed had either incomplete or incorrect entries in OIS. Six UPAs were missing entries in the response section showing the date that the employer provided evidence of a satisfactory response to the complaint allegations. One complaint was marked invalid in OIS, but an investigation was conducted, and another was marked valid, and an investigation was not conducted. | During next year’s FAME, a limited scope review of selected case files will be reviewed to determine if this reflects the data trend. | Closed |
|  | Special Study Observation #1 | *Missing Field Notes*  Six of the 19 (32%) cases reviewed did not have field notes. | OSHA will evaluate field notes in its next comprehensive on-site FAME monitoring visit. | Closed |
|  | Special Study Observation #2 | *Complainant Identity*  In one of 19 (5%) of case files reviewed the identity of the complainant was disclosed to the employer representative. | OSHA will evaluate in its next comprehensive on-site FAME monitoring visit. | Closed |
|  | Special Study Observation #3 | *Letters Explaining NOVs Delayed Beyond 30 Working Days*  In one of 11 (10%) complaint inspection case files reviewed, PESH did not issue a letter explaining that the NOVs were delayed beyond 30-working days from the closing conference as required by the PESH FOM (p. 262). | OSHA will evaluate case files during the next comprehensive on-site FAME monitoring visit to determine if open cases without an NOV issued within 30 days of the closing conference date contain an explanation letter. | Closed |
|  | Special Study Observation #4 | *Notification Letter to Complainant of Delay of Inspection*  In two of 11 (20%) complaint files where an inspection was conducted but was delayed, the case file did not contain a notification letter to the complainant stating that the inspection would be delayed as required by the PESH FOM (p. 261). | OSHA will evaluate case files during the next comprehensive on-site FAME monitoring visit to determine if letters notifying the complainant of inspection delays are maintained in the case file. | Closed |
|  | Special Study Observation #5 | *Failure to Abate (FTA) Penalties Not Following FOM*  In all (100%) FTA cases, the penalty was not calculated accurately. | OSHA will evaluate penalty calculations during the next comprehensive on-site FAME monitoring visit. | Closed |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01 | *Safety Lapse Time*  In FY 2022, the average safety lapse time (SAMM #11a) for citations was calculated at 85.06 days which is above the FRL range of 43.66 days to 65.50 days for safety. | NY PESH needs to utilize the OIS report system and the SAMM Report to track lapse time and manage the program to minimize this metric. | Internal “weekly action reports”, open  inspection reports, and other OIS  data are distributed to supervisors  and management weekly.  Effective July 14, 2023, NY PESH has  implemented an all-staff directive on  case management which ensures  proper tracking and completion of  case work. Supervisors are directed  to review open cases with inspectors  weekly, ensuring timely progress,  and appropriate direction. Inspectors  are required to maintain a “case  management inventory” to inform  supervisors and managers of case  status. Focused case monitoring will  ensure timely completion of case  work, abatement tracking, timely  follow up, and case completion.  Supervisors are to discuss lapse time  and assist with prioritization at weekly  case management meetings with  Inspectors.  NY PESH continues to work on  streamlining the case review process  to improve lapse times.  A supervisor has been assigned as a  fatality investigation leader to  oversee all active fatality  investigations.  Staff training, conducted in May,  2023, covered the results of the FFY  2022 FAME as well as safety and health topics affecting enforcement  and consultation staff in both safety  and industrial hygiene disciplines.  Additional training has been  scheduled for October 2023. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-02 | *Health Lapse Time*  In FY 2022, the average health lapse time (SAMM #11b) for citations was calculated at 111.52 days which is above the FRL range of 52.88 days to 79.32 days for health. | NY PESH needs to utilize the OIS report system and the SAMM Report to track lapse time and manage the program to minimize this metric. | Internal “weekly action reports”, open  inspection reports, and other OIS  data are distributed to supervisors  and management weekly. Effective July 14, 2023, NY PESH has  implemented an all-staff directive on  case management which ensures  proper tracking and completion of  case work. Supervisors are directed  to review open cases with inspectors  weekly, ensuring timely progress,  and appropriate direction. Inspectors  are required to maintain a “case  management inventory” to inform  supervisors and managers of case  status. Focused case monitoring will  ensure timely completion of case  work, abatement tracking, timely  follow up, and case completion.  Supervisors are to discuss lapse time  and assist with prioritization at weekly  case management meetings with  inspectors.  NY PESH continues to work on  streamlining the case review process  to improve lapse times.  A supervisor has been assigned as a  fatality investigation leader to  oversee all active fatality  investigations.  Staff training, conducted in May,  2023, covered the results of the FFY  2022 FAME as well as safety and health topics affecting enforcement  and consultation staff in both safety  and industrial hygiene disciplines. Additional training has been  scheduled for October 2023. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-03 | *OIS Open*  *Inspection Report*  *and SIR*  The OIS Open  Inspection report run  on February 8,  2023, showed that  NY PESH had 57 files  that were opened  prior to FY 2023 with  uncorrected  hazards. There were  files with overdue  abatement from  2020, 2021 and  2022. SIR measure  3b noted 36 inspection files at  the end of the year  with abatement  overdue more than  60 calendar days. | NY PESH needs to  develop a written  procedure to address  how OIS reports will be used to ensure timely abatement of all hazards. | As noted in items 1 and 2 above,  NY PESH has implemented a staff  directive on case management.  Under this directive, supervisors hold  individual weekly meetings with  inspectors to review all open cases.  In preparation for these meetings, the  Supervisor generates and reviews  any applicable reports from OIS. The  supervisor reviews outliers in the  reports, and monitors progress on  any higher profile issues from  previous weeks. The inspectors are  required to maintain lists of their  active cases with up-to-date status  available to supervisors and  managers in shared OneDrive folders. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-04 | *Staffing*  NY PESH staffing level is allocated for 43 CSHOs, but currently there are only 30 onboard as of FY 2021. | NY PESH should fill current staffing vacancies with qualified staff, specifically in the NYC office. | At the time of this response, NY PESH has onboarded nine new inspection staff since September 2022. The Associate Administrative Analyst  position has been filled in NYC. One  upstate inspector and one NYC  Administrative Assistant position is to  be filled upon approval of the  selected candidates. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-05 | *Case File Documentation*  In six of 10 (60%) FY 2021 case files,  documentation was lacking for COVID-19 fatality inspections, and four of 10 (40%) were lacking evidence of interviews with non- managerial employees. | NY PESH should consider developing a quality control procedure to ensure that adequate documentation is obtained for fatality inspections. NY PESH needs to follow their FOM regarding required case file documentation. | NY PESH has assigned an enforcement supervisor to serve as a fatality investigation leader to oversee all active fatality investigations. This  role, coupled with the case  management process described  above, ensures quality control and  timely completion. Requirements of  quality case development and  documentation will be a topic at the October 23, 2023 full staff training. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-06 | *Responding to Fatalities*  In 10 of 12 (83%) of the COVID-19  fatality inspections in FY 2021, the inspection was not initiated within one working day of the report. | NY PESH should respond to worker fatalities within one workday which is the SAMM reference agreed upon measure and federal requirement. | Staff training, addressing data entry,  and additional oversight provided by  the fatality investigation leader  ensures timely responses to  occupationally related fatalities upon  reporting to NY PESH. A staff directive for fatality cases will be issued in summer 2023. The requirement of 1-day responses will be addressed. | September 30, 2023 | Completed |
| FY 2022-07 | *Next-of-Kin Letters In* 10 of 12 (83%) of the COVID-19  Fatality inspections in FY 2021, both the initial notification of inspection and results of the inspection next-of- kin letters were not sent to the families of the victims. The practice of sending next-of-kin letters ceased at the beginning of the COVID-19 pandemic for those fatalities related to COVID-19 only. | NY PESH needs to follow their FOM regarding issuing  letters to the families of victims. | NOK letter procedures have been  reviewed and reinforced during staff  training and periodic meetings.  Oversight provided by the fatality  investigation leader and case  tracking ensures timely and  appropriate responses.  NOK letters will be addressed in the  staff directive on fatality investigations that will be issued in  summer of 2023. A spreadsheet is  utilized for tracking each fatality  including NOK communications. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-08 | *Adoption of Federal Standards*  NY PESH has not adopted 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses. | NY PESH should adopt OSHA’s recordkeeping and reporting requirements in a substantially identical manner to include recent updates and revisions. | NYSDOL is in the process of  amending 12 NYCRR 801.39 and 12  NYCRR 801.41and strives to do so  by early 2024. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-09 | *Responding to Worker Retaliation Cases Timely*  At the conclusion of FY 2022, NY PESH had 48 pending whistleblower retaliation investigations with an average of 453 days pending. | NY PESH needs to work with their counsel’s office to close worker retaliation cases timely. | NY PESH continues to participate in  scheduled bi-weekly discrimination  meetings with DOL Counsel’s Office  with the focus on rendering decisions  on the oldest cases. NY PESH is also  implementing a case management  policy which requires weekly  meetings with investigators and  supervisors. The meetings will be  used to identify and communicate  issues that need attention and/or  development early in the case  process with the goal of timely, high quality determinations, settlements,  and/or restitution.  NY PESH, in utilizing available training resources, has nine staff registered for OTI course #1421 Whistleblower Investigation Fundamentals during August 2023. Since NY PESH staff have  collateral duties for performing safety  and health and discrimination  enforcement activities, the program is still seeking to have full-time  discrimination investigators. | Not Applicable | Open  (As of September 30, 2023) |
| FY 2022-10 | *Consultation Policies and Procedures Manual*  Specific elements must be implemented into NY PESH’s consultation manual of October 2021 to be at least as effective (ALAE) as OSHA’s federal CPPM. These elements include union/employee participation on all visits, posting and sharing the list of hazards onsite with both the employer and any union representatives, revising the deadline for submitting the report to the employer, and utilizing a tool/procedure that is equivalent to the Form 33. | NY PESH should implement these elements into its consultation manual to be ALAE as federal OSHA’s CPPM. | During the April 27, 2023 meeting  with the Region and National Office,  NY PESH agreed to set aside assertions that NY PESH was not required to follow  the CPPM due to language in 29  CFR 1908 and the State Plan  Policies and Procedures Manual  conditions, a commitment was made in the interest of resolving and meeting grant conditions a commitment was made  to implement the four main areas in  dispute to the greatest extent  possible, while still recognizing that  some differences may be necessary.  The CPPM will be updated to include:  1. Consultation visits will involve  employee participation.  2. A list of identified hazards and  recommended corrective  actions will be provided to the  employer for posting at the  workplace or otherwise  shared with employees or  their representatives.  3. The written report will be sent  to the employer within 20  working days of the  completion of the closing.  4. The Form 33 will be used for  comprehensive scope visits,  and as applicable based on  the scope of the employer’s  request. (SPPM). In the interest of resolving | Not Applicable | Open  (As of September 30, 2023) |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 22.7 | 10 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 19.48 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of workdays to initiate complaint investigations (state formula) | 7.62 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | 3.19 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | 100% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 4.68 | **+/-**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) | 1.14 | +/-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) | 555 (safety) | **+/-**5% of 700 | 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 665 to 735 for safety. |
| 7b | Planned v. actual inspections (health) | 314 | +/-5% of 450 | 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 427.50 to 472.50 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 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 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 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 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 Plan.  The further review level is based on a three-year national average. |
| 9a | Percent in-compliance (safety) | 22.79% | +/- 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) | 42.97% | +/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 | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 101.64 | +/-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) | 110.49 | +/-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% | N/A-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 | 99.54% | 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 (Pending) % | 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. |

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.

**\***Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2023.