**FY 2023 Comprehensive**

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

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION, OFFICE OF OCCUPATIONAL SAFETY AND HEALTH**

South Carolina dept of labor logo

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

**Initial Approval Date: November 30, 1972**

**Program Certification Date: August 3, 1976**

**Final Approval Date: December 15, 1987**

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**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region IV**

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1. **Executive Summary**

The fiscal year (FY) 2023 South Carolina Federal Annual Monitoring Evaluation (FAME) resulted in a comprehensive FAME report that assesses the South Carolina Department of Labor, Licensing, and Regulations (SCDLLR) – Occupational Safety and Health Administration (SC OSHA) program’s progress toward achieving its performance goals established in the FY 2023 Strategic Management Plan. This report assesses the State Plan’s progress in resolving outstanding findings from its previous FAME report. This report also reviews the effectiveness of programmatic areas related to enforcement activities, including a summary of an onsite evaluation.

A seven-person OSHA team was assembled to conduct the onsite evaluation in Columbia, South Carolina, during the time frame of January 22, 2024, through January 26, 2024. The OSHA monitoring teams’ evaluation involved case file reviews, assessment of SC OSHA’s performance statistics, training documentation, policies, and procedures, and staff interviews. Care was taken to ensure this evaluation was based upon SC OSHA’s Field Operation Manual (FOM), compliance with established policies and directives, and electronic and hard copies of case file documentation.

Upon completion of the onsite evaluation, a comparison of the FY 2022 FAME findings was performed. Assessment of SC OSHA’s program and performance indicates the State Plan continues to provide the basic services required for the protection of South Carolina’s workers.

SC OSHA continues to experience difficulties in staff recruitment and retention, which has impacted the State Plan's ability to meet its enforcement presence. As a result, SC has experienced a decrease in the number of inspections conducted. As of May 2023, there were 5 Safety positions vacant and 1 Health position vacant. SC OSHA closed FY 2023 with 23 Compliance Safety and Health Officers, or approximately 85% staffed, and expects to be staffed at 100% by the end of the 2nd quarter in FY 2024. In FY 2023, the SC Legislature and the Governor provided a $2,500 increase in pay, if employees made less than $50,000, or a 5% raise, if they made more than $50,000, which was effective July 1, 2023.

A detailed explanation of the findings and recommendations of SC OSHA’s performance evaluation is found in Section III, Assessment of State Plan Progress and Performance. The FY 2022 Follow-up FAME identified two continued findings and three continued observations. In this report, one observation from FY 2022 has been closed. Three new findings and eight new observations have been identified in FY 2023. Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of all FY 2022 recommendations in detail.

South Carolina’s injury and illness rates for Calendar Year (CY) 2022 have stayed at low levels. The private sector Total Recordable Case (TRC) rate was 2.3 and the Days Away, Restricted, or Transferred (DART) rate was 1.4. These rates are 15% lower and 18% lower, respectively, then the national average. When the public sector numbers are included, the overall TRC rate was 2.4 and the DART rate was 1.5. These rates are 20% lower and 17% lower, respectively, than the national rates.

**II. State Plan Background**

1. **Background**

The SC OSHA State Plan was one of the first programs approved by the U.S. Department of Labor, per the guidelines of the Occupational Safety and Health Act of 1970. This was accomplished on November 30, 1972, and final approval was granted in 1987. In 1994, the South Carolina Department of Labor was eliminated, as part of the reorganization of the state government, and the South Carolina Department of Labor, Licensing and Regulation (SCDLLR) was created. During this review period, Emily H. Farr was the Director of SCDLLR, and Kristina Baker was the Deputy Director. SCDLLR is divided into the following three divisions: Labor; Fire and Life Safety; and Professional and Occupational Licensing. The SC OSHA program, within the Division of Labor, is responsible for the management and operation of the State Plan.

It is important to note that SC OSHA is organized into four main areas: Administration, Compliance, Legal and Outreach and Education. The Deputy Director Kristina Baker oversees the program and has four area leads that manage the day-to-day running of the program.

During the review period, Gwen Thomas was the State Plan Manager for the SC OSHA Program and responsible for the area of Administration. This includes leading the following departments: training; technical support and standards; the Web Integrated Management Information System; and the South Carolina Bureau of Labor Statistics. The Office of Technical Support and Standards (OTSS) provides information to assist the public in complying with standards. The office also supports the enforcement program with compliance guidance by providing guidance for internal and external use. In addition, OTSS reviews new OSHA standards and directives to determine, whether SC OSHA should adopt them.

The Compliance Manager, Charles Price, manages the Compliance area, including leading the safety and health compliance teams consisting of supervisors, compliance safety and health officers (CSHOs), and administrative staff. Former Compliance Manager Anthony Wilks, retired on September 15, 2023, just 15 days shy of the end of this audited fiscal year. As such, he was the compliance manager for most of this audited fiscal year.

The Chief OSHA Counsel, Deidre Laws, manages the Legal area, which includes Whistleblower 11 (c), informal conferences, contested cases and FOIAs.

The SC OSHA Consultation Manager, Kenyarda Edwards oversees the Office of Outreach and Education (O&E), which includes the safety and health training, compliance assistance, the South Carolina Palmetto Star Program, and On-site Consultative Services. The Palmetto Star Program is the equivalent to the OSHA Voluntary Protection program. The On-site Consultative Services are provided free of charge to private sector employers, through OSHA’s 23(d) grant program.

In South Carolina, state and local government agencies and workers are afforded the same rights, responsibilities, and coverage as those in the private sector.

**The table below shows SC OSHA’s funding levels from FY 2019 through FY 2023**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2019 - FY 2023 Funding History** | | | | | |
| **Fiscal Year** | **Federal Award ($)** | **State Plan Match ($)** | **100% State Funds ($)** | **Total Funding ($)** | **% of State Plan Contribution** |
| **2023** | $2,416,300 | $2,416,300 | - | $4,832,600 | 50% |
| **2022** | $2,349,000 | $2,349,000 | - | $4,698,000 | 50% |
| **2021** | $2,349,000 | $2,349,000 | - | $4,698,000 | 50% |
| **2020** | $2,299,700 | $2,299,700 | - | $4,599,400 | 50% |
| **2019** | $2,095,200 | $2,095,200 | - | $4,190,400 | 50% |

1. **New Issues**

South Carolina has filed two lawsuits in the U.S. District Court for the District of South Carolina, concerning the State Plan’s obligations to have maximum and minimum penalties that are at least as high as OSHA’s. Only one of these lawsuits is pending.

In a letter dated December 7, 2023, the Union of Southern Service Workers (USSW), Service Employees International Union, submitted a petition with Assistant Secretary Doug Parker, pursuant to 29 C.F.R. § 1955.5, requesting that the Occupational Safety & Health Administration withdraw its approval of the South Carolina State Plan, alleging the Plan has failed to maintain an effective enforcement program. On December 19, 2023, OSHA shared the petition with the leadership of SCDLLR, and requested a response within 60 days. SCDLLR provided a response on February 16, 2024. Currently, OSHA is reviewing the petition and the State Plan’s response.

Prior to the filing of this petition, SC OSHA was engaging with the USSW. Since then, compliance and legal personnel have worked cooperatively to continue to bridge the gap of understanding and shared information. South Carolina OSHA leadership has held multiple meetings with USSW staff and membership, which included listening sessions, as well as discussions about providing general safety training to its stewards and membership on workplace safety and health.

**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 seven-person OSHA team, which included whistleblower investigators, was assembled to conduct a full on-site case file review. The case file review was conducted at the South Carolina State Plan office, during the timeframe of January 22-26, 2024. A total of 161 safety, health, and whistleblower case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted, during the evaluation period (Oct 1, 2022, through September 30, 2023). The selected population included:

* Fifteen (15) fatality case files
* Twenty-five (25) complaint and referral investigation files
* Seventy-Six (76) Construction/General Industry safety and health case files
* Forty (40) closed whistleblower case files
* Four (4) Public Sector Consultation files

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

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

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

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

SCDLLR continues to operate a training program that is very similar to the OSHA Training Directive (TED 01-00-019). The State Plan’s training directive is designated TD- 003-019, and it ensures that compliance officers progress through an established training path. A Training and Development Director, who monitors the progression and development of the trainees in conjunction with the employee’s supervisor, administers SC OSHA’s training program. Each trainee is also assigned a mentor (senior compliance officer), who primarily supports the on-the-job training (OJT) aspect of the trainee’s development. The employee and the Training and Development Director used the SCOSH Training Guide for CSHOs form, and the Compliance Safety and Health Officer Core Training form, respectively, to track formal training. The latter form reflects the various career paths for occupational safety and health professionals, as they are presented in the OSHA Training Directive. The Training and Development Director also maintains an Excel spreadsheet, which tracks the employee’s participation in webinar and career development courses, as well as formal training courses. Their supervisor and mentor, using these tools assess the career progression and development of each employee.

During FY 2023, SC DLLR provided outreach safety and health training to 5,514 employers and employees. Some of the groups South Carolina OSHA O&E collaborated with include:

Town of Fort Mill, South Carolina Manufacturers Alliance, City of Rock Hill, South Carolina Law Enforcement Division, CMS Roofing, Midlands Technical College, MB Kahn Construction, Horry County Public Works, City of Columbia Parks and Recreation, and St Luke’s Free Clinic.

**Statistical Training Information FY 2023**

|  |  |
| --- | --- |
|  | **FY 2023** |
| Private sector employers trained | 861 |
| Private sector employees trained | 2,447 |
| State and local government employees trained | 1,724 |
| State and local government employers trained | 482 |
| Total number of employers and workers that received training | 5,514 |

1. OSHA Information System

The South Carolina OSHA Information System, also known as “The South Carolina OSHA Redesign and Enhancement” (SCORE) is into its thirteenth year of operation, and continues to provide a significant cost avoidance through the reduction of paper files. During FY 2023, SCORE obviated the need to keep and maintain paper inspection reports for 252 inspections and 631 consultation visits. Those inspections and consultation visits generated 883 inspection and consultation reports, citations, etc. SC OSHA’s OIS, not only provides an efficient means of data entry and secure storage, but it also allows SC OSHA to retrieve and analyze that data instantaneously. The development of a system-to-system interface between SC OSHA’s OIS and OSHA’s OIS system allows SC OSHA to conduct its own data management, while providing the required data to OSHA on a daily basis.

1. State Internal Evaluation Program Report

As a result of changes in SC OSHA management, several internal processes and procedures that relate to inspections, documentation, and report writing have been reviewed to ensure all procedures and workflows are more streamlined and uniformed, throughout the entire process. Additional processes regarding training, hiring, and onboarding were also evaluated and revised to facilitate increased effectiveness and uniformity. Process changes have been documented and communicated to all staff members during monthly meetings.

1. Staffing

During this period, SC OSHA’s staffing levels were below the established benchmarks for the program. The State Plan remains committed to staffing its program at the appropriate level, within the current budgetary constraints.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | | **FY 2018** | **FY2019** | **FY2020** | **FY2022** | **FY 2023** |
| **Safety** | Benchmark | 17 | 17 | 17 | 17 | 17 |
| Positions Allocated | 17 | 17 | 17 | 17 | 17 |
| Positions Filled | 15 | 15 | 15 | 15 | 15 |
| Vacancies | 2 | 2 | 2 | 2 | 2 |
| Percent of Benchmarks Filled | 88% | 88% | 88% | 88% | 88% |
| **Health** | Benchmark | 12\* | 12\* | 12\* | 12\* | 12\* |
| Positions Allocated | 12\* | 12\* | 12\* | 12\* | 12\* |
| Positions Filled | 5 | 5 | 5 | 5 | 7 |
| Vacancies | 5 | 5 | 5 | 5 | 3 |
| Percent of Benchmarks Filled | 50% | 50% | 50% | 50% | 70% |

\* The benchmarks and positions allocated for health have been agreed upon and recognized by OSHA to be 10, since FY 07.  This information has not yet been published in the federal register.

**2. ENFORCEMENT**

a) Complaints

During FY 2023, SC OSHA received a total of 445 valid complaints, of which 101 were formal and 344 were non-formal. SC OSHA was outside the state initiation time FRL for inspections (7 days) and (phone/fax) investigations (5 days), the negotiated federal formula for inspections, and at the negotiated level for investigations. SAMM 1A and 2A calculate the number of days between complaint receipt date and the first action. Under this formula, longer response times may be caused by incomplete complaints. SAMM 1B is for informational purposes only, and it is not a mandated measure, but it calculates the number of days between the date the office deems the complaint to be valid and the first action date. Under SAMM 1A, SC OSHA had an average response time of 29.58 days for complaint inspections, and SAMM 2A was 42.60 days for complaint investigations.

OSHA determined that many complainants were contacted weeks after sufficient information was available to process the complaint. For complaints that are processed by the informal complaint process (phone/fax), it is important that they are promptly addressed. There were three out of 17 complaints reviewed, where there was sufficient information to send an informal letter to the employer; however, no letter was sent. Examples of hazards include lack of infection control procedures, material handling/stacking of materials, exits, exposed wires, and hazardous chemicals causing chemical burns.

Additionally, the case file review found that three of 17 employers’ informal complaint responses did not adequately address complaint items, prior to closing the case files. The hazards identified related to welding fume, chemical exposure due to a broken pipe, and employees exposed to contaminants while powder coating. Case files reviewed showed that the results of the investigation or inspection were sent to the complainant; however, it was noted in several files that there was a delay in sending the results. Supervisors should ensure that the results of the complaint are sent timelier to the complainant.

According to the FY 2023 [SIR Measure 9] there were 57 valid unprogrammed complaints handled as inspections, which had been open more than 60 days, and 544 valid complaints handled as an informal (phone/fax), which had been open more than 30 days. SC OSHA should ensure that the number of complaints open remains low, so that hazards are quickly eliminated.

Referrals and employer-reported referrals are notices of alleged hazards or violations of the OSH Act, which are typically received from other federal, state, or local agencies, the media, as well as CSHO referrals. Referrals are handled like complaints. SC OSHA follows the same procedures as OSHA for employer-reported referrals. In FY 2023, 391 employer-reported referrals were received and 327 were processed by letters mailed to employers.

**Finding FY 2023-01**: The SAMM data (SAMM 1a) shows the average number of working days to initiate formal complaint inspections was 29.58 days, which was outside the FRL of seven (7) days.

**Recommendation:** SC OSHA should develop a management plan to ensure complaint inspections are initiated timely to meet the negotiated goal.

**Finding FY 2023-02**: The SAMM data (SAMM 2a) shows the average number of working days to initiate formal complaint inspections was 42.60 days, which was outside the FRL of five (5) days.

**Recommendation:** SC OSHA should develop a management plan to ensure complaint investigations are initiated timely to meet the negotiated goal.

**Observation FY 2023-OB-0****1**: SC OSHA did not validate and process at least three (3) of 17 complaints from former employees and other complainants alleging serious hazards. SC OSHA should adhere to the informal complaint processing procedures and requirements and develop a strategy to ensure that all complaints alleging serious hazards are addressed.

**Federal Monitoring Plan:**During next year’s FAME, a limited scope review will determine if this reflects the data trend.

**Observation FY 2023-OB-02**:In three of 17 informal (phone/fax) complaints reviewed, complaint items were not adequately addressed prior to closing the case files. The complaint allegations not addressed were in relation to potential health hazards.

**Federal Monitoring Plan:** During next year’s FAME, a limited scope review will determine if this reflects the data trend.

1. Fatalities

During FY 2023, SC OSHA conducted twenty-eight (28) fatality investigations, which was a 20% decrease in fatality investigations from FY 2022. South Carolina OSHA continued to follow National Emphasis Programs to focus resources on the most hazardous risks and industries. SAMM 10 reported that 96.30% of fatality investigations were responded to within one day, which included one outlier that was responded to following a State holiday. There were 12 construction fatalities, i.e., five more than the same period last year. Over the last year, SC OSHA has continued to identify and reduce the number or worker injuries, illnesses, and fatalities in construction by focusing attention and resources on the most prevalent types of workplace injuries and illnesses (e. g., falls, electrocutions, struck-by equipment, and crushed by/caught-in-between equipment hazards) through construction focused inspections.

The table below detail the industries, where fatalities occurred in FY 2022 and FY 2023.

|  |  |  |
| --- | --- | --- |
| **Fatalities By Industry** | **FY 2022** | **FY 2023** |
| Construction | 7 | 12 |
| Manufacturing | 9 | 7 |
| Transportation & Public Utilities | 4 | 1 |
| Wholesale Trade | 5 | 0 |
| Retail Trade | 6 | 0 |
| Services | 4 | 1 |
| Agriculture, Forestry, Fishing | 3 | 0 |
| Government | 3 | 2 |
| Finance: Insurance & Real Est. | 0 | 0 |
| Other  \*Landscaping, Warehousing,  Rental, Repair and Maintenance | 0 | 5\* |
| **Total Fatalities** | **41** | **28** |

The initial letter to Next-of-Kin (NOK) was sent on all investigations.  The initial letter states that the NOK may request the results of the inspection, including copies of the citations, the result of an informal conference, notice of employer protests, and any other actions taken toward the resolution of the matter.  In addition, the Deputy Director maintains continued correspondence, during the investigation.  Fatality information is recorded in SC OSHA’s information system.  The State Plan does not send a final next-of-kin (NOK) letter to the family to inform them of the inspection results, which is in accordance with the State Plan’s policy. All fatalities are also entered into the Fatality Tracker for review.  A supervisor, who determines if the fatality falls within SC OSHA’s jurisdiction, reviews each entry.

The fatality and severe injury investigation interviews that were conducted were very detailed and contained good information; however, during the review, it was identified that there were four investigations, where there was a delay in conducting interviews. CSHOs should be instructed to conduct interviews, as soon as possible after opening an inspection, especially for fatality cases.

In three of 15 fatality investigations reviewed, the case files contained evidence of hazardous conditions that may have violated SC OSHA standards and could have resulted in a citation.  The three instances included training on powered industrial truck use, no training in first aid, and spotter visibility issues related to a driving incident.

**Observation FY 2023-OB-03** **(previous FY 2022-OB-01, FY 2021-OB-01)**: Three of 15 fatality investigations reviewed lacked documentation to ascertain why an SC OSHA standard was not cited.

**Federal Monitoring Plan:** During next year’s FAME, a limited scope review will determine, if this reflects the data trend.

**Observation FY 2023-OB-04**: Four out of 21 fatality and severe injury investigations reviewed identified a delay in conducting interviews.

**Federal Monitoring Plan:** During next year’s FAME, a limited scope review will determine if this reflects the data trend.

c) Targeting and Programmed Inspections

SC OSHA reviews the annual high hazard planning guide for targeting hazards in specific industries. As a result of this practice, the State Plan has seen a reduction in the number of injuries and illnesses in these high hazard industries. SC OSHA participated in several National Emphasis Programs (NEPs), such as Amputations, Silica, Lead in General Industry and Construction, Process Safety Management, and Heat. In FY 2023, four inspections were conducted for the presence of Crystalline Silica, two for Lead, two for Heat related illnesses, two for Combustible Dust, one for Hex Chrome, and two for Primary Metals.

SC OSHA also conducted four (4) trenching inspections, 15 residential construction inspections, and eight (8) Workplace Violence inspections. SC OSHA participated in the following OSHA outreach and education initiatives in 2023: Fall Stand Down, Heat Campaign, National Safety Month, and Safe and Sound Week. Many South Carolina employers and employees participated in these awareness campaigns at various events throughout the State and sent in documentation to that effect.

According to inspection statistics reviewed, SC OSHA conducted 252 inspections in FY 2023, of which 56 were programmed inspections (54 Safety and 2 Health) for private industries. According to SC OSHA’s SIR data, 72.73% of private sector programmed safety inspections and 66.67% of private sector programmed health inspections had violations issued [SIR Measure 2b]. SC OSHA schedules programmed inspections by using lists created by OSHA’s Office of Statistical Analysis. The supervisor cycles through the lists, so that the next assigned for inspection is the one where the most time has elapsed since the last time it received a programmed inspection. However, in FY 2023, SC OSHA did not make full use of the lists available through the inspection targeting program. Furthermore, in FY 2023, there was only one programmed inspection for SC OSHA’s state and local government employee program.

Percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted, as compared to the number of employer establishments in the State. The State Plan had a percent enforcement presence of 0.26%, which was lower than the FRL range of 0.70% to 1.17%. The lower enforcement presence indicates that the State Plan is not reaching as many employers with enforcement activity than the national average.

**Observation FY 2023-OB-05**: In FY 2023, SC OSHA did not effectively assign targeting inspections in FY 2023. For example, SC OSHA conducted only two programmed health inspections in private industry, and one programmed inspection in the public sector.

**Federal Monitoring Plan:** During next year’s FAME, a limited scope review will determine if this reflects the data trend.

d) Citations and Penalties

In FY 2023, the 252 inspections conducted in SC resulted in an average of 2.02 serious, willful, repeat (SWR) violations per inspection, and 0.36 other-than-serious violations per inspection.  SC OSHA was within the range of the FRL for SWR, which was 1.40 to 2.10 (SAMM 5a), and was under the FRL for other-than-serious (OTS) violations, which was 0.71 to 2.10.  Serious violations are categorized as high, medium, or low severity serious, for penalty calculation purposes.  In FY 2023, SC OSHA issued 309 violations.  SC OSHA conducted 176 safety and 76 health inspections, which was within the FRL for safety inspections, 166.25 to 183.75, but below goal for health inspections, 80.75 to 89.25.

Several case files reviewed had a notation indicating that some violations had been found, that were not cited. This practice may be a contributing factor to the low number of OTS per inspection, as well as the elevated in-compliance percent. SC OSHA’s policy for Immediate Abatement Penalty Reduction (IAPR) (OP-002-13) allows for a reduction with abatement action taken, prior to the compliance officer leaving the job site. However, the policy does not define, whether or not a violation should be cited. There were six inspections reviewed, where the CSHO identified OTS violations that were corrected on site, with no corresponding citation issued. Clearly supportable OTS violations or possible serious violations that were not cited, included the following: pre-use inspections for powered industrial trucks, rebar caps, electrical cords, temporary lighting bulb cover, guardrails on a forklift basket, bridge crane labels and recordkeeping issues.

SC OSHA was outside the FRL average lapse time from opening conference to citation issuance date (SAMM 11) as referenced below:

|  |  |  |
| --- | --- | --- |
| **Average Lapse Time** | **SC OSHA** | **FRL** |
| Safety | 91.18 days | 44.18 to 66.28 |
| Health | 95.11 days | 55.78 to 83.66 |

The in-compliance rate was 35.16% for safety inspections, which was within the FRL range of 25.38% to 38.08% (SAMM 9). The in-compliance rate for health inspections was 59.57%, which was above the FRL of 35.06% to 52.58%.

SC OSHA’s average current penalty per serious violation in the private sector (SAMM 8: 1 -250+ workers) was $1,885.16 in FY 2023.  The further review level (FRL) is ±25% of the three-year national average $3,625.21).  The FRL ranges from $2,718.91 to 4,531.51.  Therefore, SC OSHA’s current penalty per serious violation in the private sector (1-250+ workers) was below the lowest acceptable FRL.

SC OSHA’s average current penalty for serious violations in the private sector (SAMM 8: greater than 250 workers) was $3,231.04 in FY 2023.  The further review level (FRL) is ±25% of the three-year national average ($7,331.41).  The FRL ranges from $5,498.56 to $9,164.26.  SC OSHA’s current penalty per serious violation in the private sector (greater than 250+ workers) was lower than the lowest acceptable FRL.

Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies, and procedures that are “at least as effective” (ALAE), as those contained in OSHA’s Field Operations Manual (FOM).  OSHA will continue to explore ALAE analysis of State Plan penalty structures to include evaluation of average current penalty per serious violation data.

According to the SC Field Operations Manual (SC FOM), for Serious violations, Gravity Based Penalty (GBP) shall be assigned, based on the following scale:

|  |  |  |
| --- | --- | --- |
| Severity | Probability | Gravity Based Penalty |
| High | Greater | $5,000 |
| Medium | Greater | $3,500 |
| Low | Greater | $2,500 |
| High | Lesser | $2,500 |
| Medium | Lesser | $2,000 |
| Low | Lesser | $1,500 |

The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury. If the administrator determines that it is appropriate to achieve the necessary deterrent effect, a GBP of $7,000 may be proposed. Consideration should have been given to increase the fatality related penalties to $7,000 for deterrent effect, and per the SC Special Emphasis Program on High Potential Hazards (HPH).

There were at least five cases reviewed that should have considered a proposed GBP of $7,000.  For example, an accident-related high gravity, greater probability, fall hazard was proposed with a GBP of $5,000 with an adjusted penalty of $3,500 and a forklift accident was proposed with a GBP of $5,000 with an adjusted penalty of $3,500.  A penalty near $7,000 was warranted for the recommended citations, based on HPH Policy and application of partial size reduction, per the SC FOM.

**Finding FY 2023-03 (previous Findings FY 2022-02, FY 2021-02 FY 2020-02, FY 2019-02):** The percentage of health (59.57%) inspections that were in-compliance was higher than the FRL of 32.06% to 52.58% (SAMM 9b).

**Recommendation:** Ensure inspection resources are spent in workplaces that are exposing workers to hazards by implementing corrective actions in the most hazardous worksites. Efforts should be focused on creating targeting lists and gaining entry to sites with the most hazards to best protect employees. Training should continue to address hazard recognition skills with health compliance staff.

**Finding FY 2023-04:** Six case files had OTS violations that were not cited.

**Recommendation:** Ensure that hazards identified during inspections that have sufficient prima facie evidence are addressed through a citation.

**Observation FY 2023-OB-06 (previous FY 2022-OB-01, FY 2021-OB-01)**: In at least five (5) inspections, it was identified that using the Gravity Based Penalty (GBP) of $7,000 was appropriate to achieve the necessary deterrent effect.

**Federal Monitoring Plan:** During next year’s FAME, a limited scope review will determine if this reflects the data trend.

**Observation FY 2023-OB-07**: In FY 2023, the average safety lapse time (SAMM 11a) for citations was calculated at 91.18 days, which is above the FRL range of 44.18 to 66.28 days.

**Federal Monitoring Plan:**  During next year’s FAME, a limited scope review will determine if this reflects the data trend.

**Observation FY 2023-OB-08**: In FY 2023, the average health lapse time (SAMM 11b) for citations was calculated at 95.11 days which is above the FRL range of 55.78 to 83.66 days.

**Federal Monitoring Plan:**  During next year’s FAME, a limited scope review will determine if this reflects the data trend.

**Observation FY 2023-OB-09**: SC OSHA conducted 76 health inspections, which was 10.6% below their goal of 85. The range of acceptable data not requiring further review is from 80.75 to 89.25 for health (SAMM 7b).

**Federal Monitoring Plan:**  During next year’s FAME, a limited scope review will determine if this reflects the data trend.

1. Abatement

SC OSHA has regulations that address requirements for abatement verification. During case file reviews, abatement information sent in by the employer was found to be consistent, which also included obtaining the employer’s certification. Supervisors assigned follow-up inspections to CSHOs, based on the criteria listed in the FOM. According to the SIR for FY 2023, the number of private sector inspections that had unabated violations more than 60 calendar days past the issuance date for safety was 46, and 90 calendar days past the issuance date for health was 7.

Most case files reviewed contained written documentation, photos, work orders, or employer’s certification of abatement. Petitions for Modification of Abatement (PMAs) were appropriately provided, when the employer requested an extension for their corrective action timeframe, and interim protection information was provided in the case file.

1. Worker and Union Involvement

The State Plan’s procedures for employee and union involvement are identical to OSHA’s. Case file review disclosed that employees were included during 100% of fatality investigations and other inspections. This determination was supported by SAMM 13.

**3. REVIEW PROCEDURES**

1. Informal Conferences

SC OSHA’s administrator or their designated representative may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notification of “failure to correct violation” or missed abatement date. Many of these issues can be resolved at the informal conference level, thereby expediting abatement, and avoiding unnecessary litigation. The Informal Conference Office provides an avenue for employers to settle cases and reach a better understanding of the citations received, after an inspection.  This office also maintains inspection files and handles Freedom of Information Act (FOIA) requests for SC OSHA records.  In the past year, 66 informal conferences were held, with 15, approximately 22%, moving forward to formal contest.

According to SC OSHA’s informal conference policy, detailed documentation will be entered into the database system, and all information provided by the employer to justify actions taken will be maintained in the case file. During the case file review, case files provided documentation of the rationale to support or explain the reason changes were made to the violations and penalties during informal conferences.

The FRL for percent penalty retained is +/- 15% of a three-year national average of 71.84%, which equals a range of 61.06% to 82.62% (SAMM 12). SC OSHA’s percent for penalty retained is 72.61%, which exceeded the FRL range.

1. Formal Review of Citations

In South Carolina, contested cases are handled by the South Carolina Administrative Law Court. SC OSHA has regulations for ensuring that employers have the right to contest citations and penalties. South Carolina continues to maintain a very low contest rate. During FY 2023, SC OSHA vacated 8 out of 15 violations of private sector violations, after a contest had been filed. SC OSHA also reclassified 1 out of 7 violations, after a contest had been filed. Regarding penalties, SC OSHA retained 100.74%, while OSHA retained 67.06%, after a contest had been filed. This data was obtained from the SIR for FY 2023.

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

In accordance with 29 CFR 1902, State Plans are required to adopt standards and federal program changes, within a 6-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines, which are at least as effective (ALAE) as the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, with a few exceptions, SC OSHA adopted all the federal directives and OSHA-initiated standards, which required action in a timely manner. The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn and does not impact standards not adopted timely. The adoption of SC OSHA’s Maximum Penalty Increase is still pending, due to the State’s Legislature. The tables below provide a complete list of the federal directives and standards, which required action during this period:

**Table A**

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

(May include any delinquent standards from earlier fiscal years)

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | N/A | No | No | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | N/A | No | No | 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 | 3/14/2022 | No | No | 7/14/2022 | -- |
| 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 | 4/12/2022 | Yes | Yes | 8/14/2022 | 5/27/2022 |
| 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 | 3/15/2023 | -- | -- | 7/15/2023 | -- |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 9/21/2023 | Yes | Yes | 1/21/2024 | 5/24/2024\* |

\*General Assembly review, adoption, and publication.

**Table B**

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

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 2/24/2023 | Yes | Yes | 7/30/2023 | 2/24/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 8/9/2023 | Yes | Yes | 1/13/2024 | 8/1/2023 |

**Table C**

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

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 7/5/2022 | Yes | Yes | 7/5/2022 | 7/5/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/11/2022 | Yes | No | 2/11/2023 | 2/11/2023 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/2/2022 | Yes | Yes | 3/15/2023 | 3/15/2023 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 2/24/2023 | No  (State’s  HHPG) | No  (State’s equivalent  HHPG) | NA | NA |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 8/9/2023 | Yes | Yes | 10/28/2023 | 7/5/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 11/28/2023 | Yes | Yes | 11/28/2023 | 11/28/2023 |

**Table D**

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

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 2/22/2022 | Yes | Yes | 3/14/2022 |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 6/8/2022 | Yes | Yes | 6/08/2023 |

**Table E**

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

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| NA |  |  |

**\*Adoption of Maximum and Minimum Penalty Increases**

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See 81 FR 43429. As required by law, OSHA then increased penalties annually, most recently on January 16, 2024, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2024-01-08/2024-annual-adjustments-osha-civil-penalties> ; 87 FR 2328 (Jan. 8, 2024).

OSHA-approved State Plans must have penalty levels that are at least as effective as OSHA’s, per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017. The SC State Plan is required to adopt maximum and minimum penalty increases that are at least as effective as the Agency’s most recent increase issued in January 2024, without further delay.

OSHA recognizes that the State has needed to implement legislative changes before this adoption can be completed. A letter to the SC State Plan informing that failure to adopt these increases would very likely result in a FAME finding, and requesting that the State Plan respond with an action plan for completing the necessary legislative changes, was sent on September 2, 2021. The SC State Plan responded on September 30, 2021.

This response included the following action plan: South Carolina OSHA will continue to evaluate the State Plan's effectiveness and have conversations with members of the General Assembly, in consideration of introduction and passage of a bill that would match OSHA’s penalty levels.

**Finding- FY-2023-05 (Previous Finding- FY-2022-02, Finding- FY-2021-02):** SC OSHA has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Recommendation:** SC OSHA should work with their State authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as OSHA’s penalty levels.

**5. Variances**

South Carolina has 73 permanent variances, none of which are multi-state variances approved by OSHA, and there are no temporary variances. The last variance (Just Aircraft, LLC) was adopted in 2019.

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

In FY 2023, SC OSHA’s state and local government employee program operated similarly to the private sector. As with the private sector, state and local government employers may be cited with monetary penalties. However, the penalty structure for state and local government agencies is different from the private sector. SC OSHA conducted 11 state and local government agency inspections in FY 2023, which accounted for over 3.97% of all inspections, which was within the FRL of 3.65% to 4.04% (SAMM 6).

**7. WHISTLEBLOWER Program**

The South Carolina Occupational Safety and Health Act, Section 41-15-210 et. Seq., Code of Laws of South Carolina, 1976, is the State statute of general application designed to regulate employment conditions relating to occupational safety and health. It aims to achieve safer and healthier workplaces throughout the State. A complaint filed under this statute is commonly referred to as an 11(c) complaint, which is a reference to Section 11(c) of the OSH Act. Enforcement of this statute in South Carolina falls under SCDLLR. Investigations were performed by investigators and currently reviewed by Labor Legal (e.g., SCOSH attorney), who oversees the program.

The SC OSHA Whistleblower Investigations Program has a dedicated Chief Counsel, who receives complaints and conducts intake and initial screening. If an investigation is warranted, the case is then assigned for investigation. Once the investigation is complete, the investigator makes a recommendation for disposition to the Chief Counsel.

SC OSHA’s Whistleblower Investigations Manual (WIM) codifies the policies and procedures of the SC OSHA 11(c) Whistleblower Investigations Program, and closely reflects the guidance provided by OSHA’s WIM, which was updated on April 29, 2022. Accordingly, SC OSHA implemented parallel updates in its WIM in FY 2023. SC OSHA policies and procedures regarding whistleblower investigations were found to be ALAE as those of OSHA. SC OSHA’s WIM, however, is an internal document and is neither statutory, nor considered as regulatory.

A review of 40 case files established that the paper case files are complete, meticulously organized, and compliant with the applicable policies. SC OSHA investigators have a thorough knowledge of the investigative process and the pertinent evidentiary burdens that are applicable to a retaliation allegation. Investigative findings are well-reasoned, supported by the weight of the evidence, and accurately documented in the case files. All complaints appeared to have been investigated, at least as thoroughly as OSHA would have investigated. SC OSHA maintains investigative data in the OSHA Information System (OIS).

During FY 2023, SC OSHA received 220 complaints, a 66% increase in intake over FY 2021. Of the complaints received, 135 were docketed and 82 were administratively closed. SC OSHA completed 226 investigations, nine (4%) of which resulted in positive outcomes for complainants, nine (4%) of which were withdrawn, 170 (75%) of which were administratively closed, and 39 (17%) of which were dismissed. It is important to note that while the rate of positive outcomes for complainants has decreased from 6% since FY 2021, the lower proportion is due to the significant increase in volume of complaints overall, most of which are administratively closed for lack of jurisdiction.

SC OSHA must update its WIM to include the requirement that Complainants, who contact SC OSHA directly, rather than by referral from OSHA, be notified of their right to dual-file with OSHA within the 30-day filing deadline under Section 11(c) of the Occupational Safety and Health Act of 1970. Both OSHA and SC OSHA will discuss appropriate efficient procedures for providing such notice to avoid duplicate filings and/or referrals. It is also recommended that SC OSHA update its WIM to reflect that complainants are afforded an opportunity to rebut a respondent’s position statement within a certain period of time, for example, 10 calendar days. While all case files demonstrated SC OSHA’s consistent practice of providing an opportunity for rebuttal, no time frame for response was established.

SC OSHA’s whistleblower program produces high quality investigations, as a result of efforts to introduce consistency and standardize best practices.

**Observation FY 2023-OB-10:** There was no evidence in the retaliation case files reviewed that SC OSHA was advising complainants of their right to dually file with OSHA.

**Federal Monitoring Plan:** During next year’s FAME, a limited scope review will determine if this reflects the data trend.

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

During this evaluation period, the Region received one CASPA, regarding SC OSHA’s enforcement division. The CASPA was handled in a timely manner, concluded in FY 2023, and did not result in recommendations to the State Plan.

**9. Voluntary Compliance Program**

The South Carolina Department of Labor, Licensing and Regulations (SCDLLR) administers the SC OSHA compliance program. The Office of Voluntary Programs (OVP) includes the Voluntary Protection Programs (VPP) called Palmetto Star, as well as Consultation, Alliances and Partnerships. During this period, SCDLLR also participated in the following OSHA outreach campaigns and initiatives: National Safety Stand Down to Prevent Falls in Construction; Heat Illness Prevention Campaign; and Safe + Sound. Numerous employees and employers in South Carolina supported each of these activities.

**Alliances**

SCDLLR continues to maintain its Alliance Program; SCDLLR had one active Alliance in 2023 with the Carolina Association of General Contractors (CAGC).

**Partnerships**

The State Plan’s Partnership Program is very similar to the OSHA Strategic Partnership Program (OSPP), including the guidance document and the annual evaluation report. However, due to the State Plan’s limited resources, only a small number of employers are permitted to participate in the program at a given time. At the time of the FAME onsite visit, two employers were active participants in the State Plan’s Partnership Program. The State Plan’s Partnership is very similar to the OSHA Strategic Partnership Program (OSPP), with a few exceptions. SCDLLR conducts quarterly visits to its Partnership sites, and the sites are evaluated through non-enforcement verification visits.

**Voluntary Protection Programs (VPP)**

SCDLLR continues to operate the South Carolina Palmetto Star Program. Overall eligibility requirements for the Palmetto Star are more stringent than the requirements of OSHA’s VPP. The Palmetto Star program is only open to employers in the North American Industrial Classification System (NAICS) codes 31-33, and employers are required to maintain injury and illness rates at least 50% below the rate for that industry in South Carolina. Participants are evaluated every three years, and the State Plan’s report is documented on a form, which is identical to the VPP report used by OSHA. There are currently 33 active Palmetto Star sites. A review of selected files revealed that evaluations are conducted, in accordance with the South Carolina Palmetto Star VPP’s policies and procedures. All required documentation was identified in the VPP files.

The State Plan is also continuing the Special Star Team Member (SPSTM) policy, which is like OSHA’s Special Government Employee (SGE) program. Participants in this program must undergo specialized testing and training. Participants in the program serve a three-year appointment term, and they must undergo a one-day re-certification training session to renew their participation.

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

In FY 2023, the consultation program projected two state and local government on-site consultation visits, three safety and two health. The State Plan exceeded the projected goal.  Twenty 20 state and local government visits were conducted, including 10 health visits and 10 safety visits. One health visit was a follow-up for air quality and lead exposure in the firearm trailers used by local law enforcement. The follow-up was deemed in compliance; however, the full-service visit documented several hazards that were abated in a timely manner. There were a total of 136 safety and health hazards identified: One hundred seventeen (117) were serious and nineteen were non-serious hazards all confirmed abated.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| --- | --- | --- | --- |
| Finding FY 2023-01 | The SAMM data (SAMM 1a) shows the average number of working days to initiate formal complaint inspections was 29.58 days, which was outside the FRL of seven (7) days. | SC OSHA should develop a management plan to ensure complaint inspections are initiated timely to meet the negotiated goal. |  |
| Finding FY 2023-02 | The SAMM data (SAMM 2a) shows the average number of working days to initiate formal complaint inspections was 42.60 days, which was outside the FRL of five (5) days. | SC OSHA should develop a management plan to ensure complaint investigations are initiated timely to meet the negotiated goal. |  |
| Finding FY 2023-03 | The percentage of health (59.57%) inspections that were in-compliance was higher than the FRL range of 32.06% to 52.58% (SAMM 9b). | Ensure inspection resources are spent in workplaces that are exposing workers to hazards by implementing corrective actions in the most hazardous worksites. Efforts should be focused on creating targeting lists and gaining entry to sites with the most hazards to best protect employees. Training should continue to address hazard recognition skills with health compliance staff. | Finding FY 2019-02  FY 2020-02  Finding FY 2021-01  Finding FY 2022-01 |
| Finding FY 2023-04 | Six (6) case files had OTS violations that were not cited. | Ensure that hazards identified during inspections that have sufficient prima facie evidence are addressed through a citation. |  |
| Finding FY 2023-05 | SC State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | SC OSHA should work with their State authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as federal OSHA penalty levels. | Finding FY 2021-02  Finding FY 2022-02 |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 20XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 |  | SC OSHA did not validate and process at least three (3) of 17 complaints from former employees and other complainants alleging serious hazards. SC OSHA should adhere to the informal complaint processing procedures and requirements and develop a strategy to ensure that all complaints alleging serious hazards are addressed. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
| FY 2023-OB-02 |  | In three (3) of 17 informal (phone/fax) complaints reviewed complaint items were not adequately addressed, prior to closing the case files. The complaint allegations not addressed were in relation to potential health hazards. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
| FY 2023-OB-03 | FY 2022-OB-01  FY 2021-OB-01 | Three (3) of 15 fatality investigations reviewed lacked documentation to determine the reason(s) an OSHA standard was not cited. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | Continued |
| FY 2023-OB-04 |  | Four (4) out of 21 fatality and severe injury investigations reviewed identified a delay in conducting interviews. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
| FY 2023-OB-05 |  | In FY 2023, SC OSHA did not effectively assign targeting inspections in FY 2023. For example, SC OSHA conducted only two programmed health inspections in private industry and one programmed inspection in the public sector. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
| FY 2023-OB-06 | FY 2021-OB-03  FY 2022-OB-03 | In at least five (5) inspections, it was identified that using the Gravity Based Penalty (GBP) of $7,000 was appropriate to achieve the necessary deterrent effect. | During next year’s FAME, a limited scope review will be conducted to determine if this observation is reflected in the data trend. | Continued |
| FY 2023-OB-07 |  | In FY 2023, the average safety lapse time (SAMM 11) for citations was calculated at 91.18 days which is above the FRL range of 44.18 to 66.28 days. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
| FY 2023-OB-08 |  | In FY 2023, the average health lapse time (SAMM 11) for citations was calculated at 95.11 days which is above the FRL range of 55.78 to 83.66 days. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
| FY 2023-OB-09 |  | SC OSHA conducted 76 health inspections, which was 10.6% below their goal of 85. The range of acceptable data not requiring further review is from 80.75 to 89.25 for health (SAMM 7b). | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
| FY 2023-OB-10 |  | There was no evidence in the retaliation case files reviewed that SC OSHA was advising complainants of their right to dually file with OSHA. | During next year’s FAME, a limited scope review will be conducted to determine if observation is reflected in the data trend. | New |
|  | FY 2022-OB-02  FY 2021-OB-02  FY 2020-OB-01  FY 2019-OB-01 | In FY 2023, missed violations or lack of a recommendation letter was noted in six out of 50 (12%) case files reviewed.  Several examples include, personal protective equipment, hazard communication, OSHA 300 logs and face masks during the COVID pandemic. | During next year’s FAME, a limited scope review will be conducted to determine if this observation is reflected in the data trend. | Closed |

| **2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| Finding FY 2022-01,  FY 2021-01 | The percentage of health inspections (62.71%) that were in-compliance was higher than the FRL of 32.51% to 48.77% for health. | Ensure inspection resources are spent in workplaces that are exposing workers to hazards by implementing corrective action in the most hazardous worksites. | The safety-in-compliance rate for FY 2020 was 28.29%. This is a significant improvement over the last several years and is well within the FRL. However, the health in-compliance rate was out of range. Inspections are conducted according to SC OSHA’s high hazard planning guide and the number of programmed inspections received. SC OSHA will continue to review the NAICS that are assigned and determine which industries warrant enforcement based on industry incidence rates. SC OSHA will also continue to provide additional training to CSHOs to ensure that all potential violations are addressed. In-compliance health inspections will be a focus during the FY 2023 comprehensive FAME. |  | Continued for Health Inspections |
| Finding FY 2022-02  And FY 2021-02 | SC State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | SC OSHA should work with their state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels | As to the specific finding regarding failure to adopt the increase in penalties, SC OSHA is working with their state authorities. |  | Open |

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

FY 2023 SC OSHA Comprehensive FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 29.58 | 7 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 11.08 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 42.60 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 15.27 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | N/A | 100% | N/A – The State Plan did not receive any imminent danger complaints or referrals in FY 2023.  The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 2.02 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.36 | +/- 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 | 3.97% | +/- 5% of  3.85% | 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 3.65% to 4.04%. |
| 7a | Planned v. actual inspections (safety) | 176 | +/- 5% of  175 | 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 166.25 to 183.75 for safety. |
| 7b | Planned v. actual inspections (health) | 76 | +/- 5% of  85 | 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 80.75 to 89.25 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,885.16 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $1,112.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $2,166.55 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $2,451.25 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $3,231.04 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 35.16% | +/- 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) | 59.57% | +/- 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 | 96.30% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 91.18 | +/- 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) | 95.11 | +/- 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 | 72.61% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 100% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 0.26% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

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