

FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

State of Michigan

Michigan Occupational Safety and Health Administration



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Contents

I.	Executive Summary.....	3
II.	State Plan Background	3
A.	Background	3
B.	New Issues.....	4
III.	Assessment of State Plan Performance	4
A.	Data and Methodology	4
B.	Review of State Plan Performance.....	5
	1. Program Administration	5
	2. Enforcement	6
	3. Review Procedures	12
	4. Standards and Federal Program Changes (FPCs) Adoption	13
	5. Variances	16
	6. State and Local Government Worker Program	16
	7. Whistleblower Program.....	16
	8. Complaint About State Program Administration (CASPA).....	20
	9. Voluntary Compliance Program.....	20
	10. State and Local Government 23(g) On-Site Consultation Program.....	21

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2020 Findings and Recommendations.....	C-1
Appendix D – FY 2021 State Activity Mandated Measures (SAMM) Report.....	D-1

I. Executive Summary

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the State Plan's performance for Fiscal Year (FY) 2021, and its progress in resolving outstanding findings and/or observations from previous FAME reports. This report assesses the current performance of the Michigan Occupational Safety and Health Administration (MIOSHA) 23(g) compliance program in the context of agreed upon monitoring measures.

A detailed explanation of the findings and recommendations of the MIOSHA performance evaluation is found in Section III, Assessment of State Plan Progress and Performance. The FY 2020 Follow-up FAME identified one continued finding and two continued observations. In this report, all three have been either completed or closed. Two new findings and three new observations have been identified. A summary of the new findings is found in Appendix A, New and Continued Findings and Recommendations. A summary of all observations is found in Appendix B, Observations and Federal Monitoring Plans. Appendix C describes the status of previous findings with associated completed corrective actions.

The Michigan Occupational Safety and Health Strategic Management Plan for FY 2019 to FY 2023 established three strategic goals: 1) Help assure improved workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities; 2) Promote employer and worker awareness of, commitment to, and involvement with safety and health to effect positive change in the workplace culture; and 3) Strengthen public confidence through continued excellence in the development and delivery of MIOSHA's programs and services. The FY 2021 Performance Plan provided the framework for accomplishing the goals of the strategic plan by establishing specific performance goals for FY 2021. MIOSHA reduced their overall inspection projection from 4,383 to 4,108 inspections after completing 3,161 inspections during FY 2020 due to the SARS-CoV-2 (COVID-19) pandemic, which was anticipated to continue in FY 2021. During FY 2021, MIOSHA implemented state emphasis programs (SEP) to address COVID-19 in manufacturing and office settings.

In the FY 2021 State OSHA Annual Report (SOAR), MIOSHA provided information that outlines their accomplishments toward meeting their Five-Year Strategic Management Plan. The information has been reviewed and analyzed to assess their progress in meeting performance plan goals. MIOSHA is committed to achieving the goals as well as the state activity mandated measures (SAMM). Eight (8) of 12 annual performance goals have been met or exceeded. Goals not met during the year included reduction in total incident rates within specified industries, reduction in general industry fatality rate, increase in MIOSHA Training Institute participants, and response time to fatalities. Most notable was MIOSHA's progress in reducing their in-compliance rates to, in the case of safety inspections, below the further review level (FRL).

Quarterly monitoring meetings were held during FY 2021, at which time the State Activity Mandated Measures (SAMM) report and the State Indicators Report (SIR) were reviewed and discussed with MIOSHA management staff. The FY 2021 SAMM is Appendix D of this report.

II. State Plan Background

A. Background

The Michigan Department of Labor and Economic Opportunity (LEO), formed in June 2019, is

responsible for the state's regulatory services and programs that protect and promote the labor market, including the MIOSHA program. The program received initial approval on October 3, 1973 and certification on January 16, 1981. MIOSHA includes the General Industry Safety and Health Division (GISHD); Construction Safety and Health Division (CSHD); Appeals; Consultation, Education and Training (CET); and the Technical Services Division (TSD). Enforcement of safety and health rules, adoption of standards, consultation services and other related OSHA activities are conducted within these five divisions. MIOSHA's CET division administers the private sector on-site consultation program funded under a 21(d) grant.

The mission of MIOSHA is to help protect the safety and health of Michigan workers with the overall mission to reduce workplace fatalities, injuries and illnesses. This is done through a combination of compliance, education and training, and consultation activities supported by standards promulgation, data management, and administrative functions. MIOSHA has historically focused its efforts on the most hazardous industries and occupations.

Susan Corbin was appointed Acting Director of LEO in October 2020 and Director in August 2021. Barton Pickelman is MIOSHA's Director, and each of the five divisions has a division director. MIOSHA benchmarks include 56 safety and 45 health compliance officers. At the start of FY 2021, funding was allocated for 45 safety and 32 health full-time equivalents (FTE). MIOSHA's FY 2021 grant included funding totaling \$23,858,000, which includes a \$2,481,800 overmatch. There were no furloughs or hiring freezes during FY 2021.

B. New Issues

None.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A five-person team, which included a whistleblower supervisor, was assembled to conduct a virtual on-site case file review from January 10 – 14, 2022. The review was held remotely due to travel restrictions and social distancing requirements in place for the coronavirus pandemic. A total of 130 safety, health, and whistleblower protection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2020, through September 30, 2021). The selected population included:

- Twenty (20) fatality case files
- Thirty (30) non-fatality inspections by the Construction Division
- Thirty (30) non-fatality inspections by the General Industry Division
- Thirty (30) whistleblower case files
- Twenty (20) phone/fax complaint and referral 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 measure 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 2021 SAMM report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

a) Training

MIOSHA has implemented its own training program, as outlined in MIOSHA instructions TRG-05-1R3 and TRG-09-1R2. MIOSHA's General Industry Safety and Health Division (GISHD) and Construction Safety and Health Division's (CSHD) in-house training on occupational safety and health standards is coordinated with standard courses that are offered by the MIOSHA Training Institute (MTI). During FY 2020, MTI training was cancelled in response to the COVID-19 pandemic. In FY 2021, virtual and hybrid courses were offered and well received by participants.

Initial field training for technical staff is provided during the probationary period and is scheduled throughout the state to enhance understanding of hazards at a variety of worksites and industries. Safety Officers (SO) and Industrial Hygienists (IH) are required to attend and complete compliance training outlined in the instructions during his/her employment. The purpose of the training courses is to provide the SO/IH with technical knowledge, skills, and information pertaining to MIOSHA inspection requirements. MIOSHA's equivalent to the OSHA Training Institute's (OTI) course #1000, Initial Compliance, and MIOSHA's General Industry Standards (General Industry Safety and General Industry Health) courses are required to be completed within the first year of a SO/IH's career. The instructions' appendices list courses required to be taken by technical staff during their first year, during years one through three, through year five, during years six through eight, and in year nine and beyond. After the SO/IH has completed training on MIOSHA safety and health standards, the Investigative Interviewing Techniques and Inspection Techniques and Legal Aspects courses are required to be taken at the OTI.

New technical staff has greater training requirements than experienced MIOSHA technical employees and are permitted to attend one or more out-of-state technical courses per year for the first three years of their career as time and funding allows. Experienced MIOSHA employees will be permitted, upon approval, to attend one out-of-state technical course every three years.

Employees are trained on significant changes in agency or division policies and procedures that affect their job tasks. These trainings are on-going and conducted during staff meetings. Staff is

expected to stay current on changes by reading new and revised documents as they are published in the MIOSHA Messenger, a bi-weekly internal newsletter for staff. Supervisors are responsible for assessing individual training needs and discussing training needs as a part of the employee performance evaluation.

b) OSHA Information System

MIOSHA uses a combination of administrative and technical staff to enter information into OIS. When necessary, shared drives are used to transfer information between district offices and the main office. MIOSHA's GISHD uses an ACCESS database called the 'universal log' to summarize data for tracking specific information about cases and is used to locate files within the office. Support staff runs reports from this database and OIS at least weekly and the reports are provided to supervisors to track case file status, including 90-day dates, which is when citations must be issued. Various other target dates are also tracked on the reports, including abatement and post citation activity. Data is entered into OIS and the ACCESS database in a timely manner.

c) State Internal Evaluation Program Report

For FY 2021, MIOSHA evaluated their response to a CASPA received during FY 2020. The evaluation confirmed that supervisors review case files and management systems are in place to ensure inspection files are completed timely. As a result of the review, General Industry Safety & Health Division (GISHD) staff were retrained on sampling for air contaminants in February 2021. Additionally, staff was reminded to forward discrimination allegations to the Employee Discrimination Section manager upon receipt.

d) Staffing

MIOSHA's administration consists of five divisions, each of which is headed by a director. The divisions are General Industry Safety & Health (GISHD); Construction Safety & Health (CSHD); Technical Services (TSD); Consultation, Education & Training (CET); and Appeals. In addition to the directors, GISHD has 13 managers/supervisors; CSHD has seven managers/supervisors; and TSD has four managers/supervisor. MIOSHA was comprised of 146.74 FTE in FY 2020 and 159.11 FTE in FY 2021.

The benchmark for safety and health has been 56 and 45 positions, respectively. In FY 2021, 45 safety and 32 health compliance officer positions were allocated. However, Michigan does not have 18(e) final approval.

2. ENFORCEMENT

During FY 2021, MIOSHA conducted 3,357 inspections: 2,483 safety and 874 health. The total number of inspections increased 6% from 3,161 inspections in FY 2020; however, the number of safety inspections was 23% fewer than planned. In light of the continued COVID-19 pandemic during FY 2021, this metric does not yet rise to the level of an observation. An inspection summary report dated March 9, 2022, showed a total of 3,404 inspections. Of those, 1,989 were programmed, 982 were complaints and referrals, 177 were employer-reported referrals, and 26 were follow-ups. (Source: SAMM and SIR reports dated November 8, 2021, and Inspection Summary report dated March 9, 2022)

a) Complaints

During FY 2021, MIOSHA received 2,965 complaints, of which 820 (28%) were formal and 2,145 (72%) were nonformal. The average number of days to initiate a complaint inspection in FY 2021 was 8.69, below the negotiated standard of 10 days. The average number of days to initiate a complaint investigation was 8.65, slightly above the negotiated standard of eight days. OSHA randomly selected 20 nonformal complaint and referral investigations for review during this evaluation of the MIOSHA program.

MIOSHA's complaint process is defined in Chapter IV of the MIOSHA Field Operations Manual (FOM). Inspections will be conducted in response to complaints when specific criteria are met, including:

- The complaint is reduced to writing, signed by a current employee, employee representative, or former employee and the complainant states the reason for the inspection request. The complaint must also indicate there has been a violation of a safety or health standard or danger exists.
- The complaint alleges physical harm, such as disabling injuries or illnesses have occurred as a result of an alleged hazard, and there is reason to believe the hazard still exists.
- The complaint alleges an imminent danger situation.
- The complaint identifies an establishment or hazard covered by a local or special emphasis.
- The employer fails to provide an adequate response to a letter inspection, or the complainant provides evidence that the employer's response is false or does not adequately address the hazard(s).
- The establishment that is the subject of the complaint has a history of instance-by-instance, willful, or failure-to-abate citations.
- A whistleblower investigator requests that a complaint inspection be conducted.
- A companion complaint can be scheduled for inspection if it is a complaint that would normally be investigated by telephone/fax and an on-site inspection has already been scheduled or begun.
- When a complainant does not provide their name and address for a complaint on a construction site, the CSHD can schedule an on-site inspection due to rapidly changing conditions on the site.

MIOSHA refers to complaints addressed with the employer by letter and/or telephone as off-site inspections. These are complaints which do not meet the criteria for an on-site inspection. In the case of a *letter complaint inspection*, MIOSHA advises the employer of the alleged hazards by

telephone, fax, letter, and/or email. The employer is required to provide a written response and MIOSHA provides a copy of the response to the complainant upon request. In situations of an other-than-serious nature, when it is believed that the issue(s) can quickly be addressed by telephone, a *telephone complaint inspection* may be conducted. After contacting the employer, explaining the allegations, and providing abatement assistance as necessary, MIOSHA sends a letter to the employer and the complainant summarizing the findings if they are satisfied the conditions have been addressed.

b) Fatalities

A total of 67 fatalities were reported to MIOSHA in FY 2021, an increase from 59 in FY 2020. Two of the 67 (97%) fatalities were not responded to within one day. In one case, the notification was shared by email and not followed up on to ensure the information was received and the inspection was opened timely. Training was provided to all staff to ensure the one-day requirement is known and verbal communication is maintained until the inspection is opened. In the second case, the notification was received through a non-traditional route – not from the employer - and was not found until two weeks later. This metric does not yet rise to the level of an observation.

MIOSHA's Five-Year Strategic Management Plan for FYs 2019-2023 outlines a reduction of fatalities in both general industry and construction by 10% and 5% respectively over the five years. The targets each year are the number of fatalities that occurred in the prior calendar year and are compared to baselines. For example, the general industry baseline is the number of program-related fatalities during CY 2017. The construction baseline is the average fatality rate for calendar years 2013-2017.

Information about fatalities is recorded in OIS and in MIOSHA's fatality report. MIOSHA's FOM, Fatality Procedures Manual, and instruction MIOSHA-COM-06-1R4 Inclusion of Victim's Families in Fatality Investigations, detail fatality procedures, including initial notification and follow-up communication with next-of-kin.

MIOSHA's FOM and Fatality Procedures Manual contain procedures for conducting complete and thorough investigations. Investigations are to determine whether a violation of MIOSHA safety and health standards, regulations, or the general duty clause occurred. The safety or health compliance officer is to identify witnesses and conduct interviews as early as possible. The files are to be documented with the victim's personal data, incident data, equipment or processes involved, witness statements, safety and health program, analysis of multi-employer worksite, and requested records. Additionally, the investigation is recorded and tracked in OIS through the completion of various forms and modules. Forms completed in OIS and letters sent to the next-of-kin are to be included in the case file.

During FY 2019, 22 of the 37 (59%) fatality case files reviewed did not contain evidence and/or documentation consistent with MIOSHA's FOM, Fatality Procedures Manual, and/or instruction MIOSHA-COM-06-1R4 Inclusion of Victim's Families in Fatality Investigations, including: complete and accurate fatality/catastrophe report, investigation summary, violation worksheets, field narrative, diary sheet, letters to the next-of-kin, victim's personal data, photographs, measurements, police and medical examiner reports, witness statements, and/or multi-employer worksite description. MIOSHA showed progress in this area in the casefiles reviewed for FY 2021. Consequently, Observation FY 2020-OB-01 is closed.

For FY 2021, five of the fatality case files reviewed did not include a copy of the fatality report and/or investigation report. Two of 20 (10%) did not contain a copy of the fatality report. Four of 20 (20%) did not contain a copy of the investigation report. Additionally, an initial and/or results letter to the next-of-kin were not found in four of the 20 (20%) case files.

Observation FY 2021-OB-01: Five of the fatality case files reviewed for FY 2021 did not include a copy of the fatality report and/or the investigation report. Two of 20 (10%) did not contain a copy of the fatality report. Four of 20 (20%) did not contain a copy of the investigation report.

Federal Monitoring Plan FY 2021-OB-01: OSHA will discuss and evaluate MIOSHA's internal audits conducted in this area during quarterly monitoring meetings.

Observation FY 2021-OB-02: Four of 20 (20%) fatality casefiles reviewed for FY 2021 did not contain an initial and/or results letter to the next-of-kin.

Federal Monitoring Plan FY 2021-OB-02: OSHA will discuss and evaluate MIOSHA's internal audits conducted in this area during quarterly monitoring meetings.

c) Targeting and Programmed Inspections

During FY 2021, MIOSHA conducted 3,357 inspections, with approximately 58% opened as programmed inspections. MIOSHA's strategic management plan emphasizes a 10% reduction in injuries and illnesses (Total Recordable Cases, TRC) in eight industries selected as having rates above the state average. FY 2021 was the third year of the plan and MIOSHA met their goal of 2% reduction for five of the eight industries. MIOSHA determines whether to continue an emphasis after a 10% reduction is achieved. The following industries were included: wood product manufacturing, primary metal manufacturing, fabricated metal product manufacturing, machinery manufacturing, transportation equipment manufacturing, support activities for transportation, hospitals, and nursing and residential care facilities.

During FY 2021, MIOSHA implemented state emphasis programs (SEP) to address COVID-19 in manufacturing and office settings. MIOSHA typically participates in national emphasis programs (NEP).

Sites receiving priority for inspections in MIOSHA's GISHD are selected from directories (for example, Hoovers) of establishments in specific NAICS (North American Industry Classification System) codes targeted in the five-year strategic plan. Dodge lists of major projects provided by the University of Tennessee in the state are sorted and used for scheduling construction (CSHD) inspections. The targeting plan is designed to get staff on-site at randomly selected projects when they are between 30 and 60% complete, when the greatest number of employees is expected to be on the construction site. In addition, construction safety officers and industrial hygienists identify construction projects while traveling in their work areas. Field staff is also expected to stop and conduct inspections for potential imminent danger conditions viewed. This includes: employees working at heights with a high probability of falls resulting in death or serious injuries; employees working in trenches greater than five feet deep with no protective systems in place; employees working with cranes, boom trucks, aerial lift platforms in close proximity to overhead power lines; employees working on roadway projects where the lack of traffic control may be a hazard;

and employees working on projects where there is the potential for excessive exposure to lead, silica, noise, asbestos, hexavalent chromium, or isocyanate containing compounds.

d) Citations and Penalties

Chapter VI of MIOSHA's FOM contains the requirements and policies for citations and penalties. The citations and penalties are reviewed at multiple levels in MIOSHA's management system prior to issuance. MIOSHA citations are not to be issued more than 90 days after the completion of the physical inspection or investigation of the establishment.

Similar to OSHA's recommendation letter, MIOSHA utilizes a Notice of Potential Hazard (NOPH) form to provide information to the employer on how to correct an identified hazard, when a MIOSHA rule does exist that can be applied to the identified hazard, but employee exposure cannot be determined or is not sufficient to document a violation.

During FY 2020, the percentage of health (52.26%) in-compliance inspections was higher than the further review level (FRL) range of 29.72% to 44.58%.

In FY 2021, the FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 31.65%, which equals a range of 25.32% to 37.98%. MIOSHA State Plan's percent in-compliance for safety is 29.82%, which is within the acceptable range. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 40.64%, which equals a range of 32.51% to 48.77%. MIOSHA's percent in-compliance for health is 41.86%, which is also within the acceptable range. Consequently, Finding FY 2020-01 is completed.

MIOSHA's 3,357 inspections resulted in 6,626 hazards identified. Seventy percent (70%) of the inspections resulted in violations (serious, willful, repeat, or other-than-serious), with 49% of those violations classified as serious. The average number of serious/willful/repeat violations per inspection was 1.49. The FRL is +/-20% of the three-year national average of 1.78, which equals a range of 1.42 to 2.14. The average number of other-than-serious violations per inspection was 1.34. The FRL is +/-20% of the three-year national average of 0.91, which equals a range of 0.73 to 1.09. MIOSHA's average violations per inspection falls slightly outside of the expected range for other-than-serious violations. This metric does not yet rise to the level of an observation.

MIOSHA's FOM and instruction MIOSHA-COM-15-4R1 Employee Interviews in Safety and Health Investigations, contain procedures for the documentation of inspections. Information to be documented includes, but is not limited to: inspection report, narrative, interview statements, photographs, safety & health management system evaluation, records obtained during the inspection, diary sheet, chronology of actions taken, employee exposure, potential exposure, employer knowledge, measurements, control measures in place, and training.

During FY 2019, 26 of the 58 (49%) programmed, complaint, referral, and related inspection files reviewed did not contain evidence and/or documentation consistent with MIOSHA's FOM and instruction MIOSHA-COM-15-4R1 Employee Interviews in Safety and Health Investigations, including: complete and accurate diary sheet, chronology of actions taken, field narrative, violation worksheets, employee exposure, potential employee exposure, photographs, measurements, witness statements, and/or documentation of interviews. MIOSHA showed

progress in this area in the casefiles reviewed for FY 2021. Consequently, Observation FY 2020-OB-02 is closed.

The average current penalty per serious violation in the private sector during FY 2021 was \$1,217.24 (SAMM 8: 1-250+ workers). The FRL is -25% of the three-year national average (\$3,100.37), which equals \$2,325.28. In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually according to the Consumer Price Index (CPI). The Michigan State Plan has not yet completed the legislative changes to increase maximum penalties. This topic is addressed further under Standards and Federal Program Change (FPC) Adoption below.

e) Abatement

The compliance officer and their supervisor determine a reasonable abatement period using their best judgement. Abatement dates exceeding 30 days are not normally necessary. However, if an initial abatement date is granted in excess of 30 days, the reason is documented in the case file. MIOSHA instruction MIOSHA-COM-05-2R5 requires abatement documentation, for all serious, willful, repeat and failure-to-abate (FTA) notifications, that is adequate to assure the department that the citation has been abated. The MIOSHA FOM outlines examples of abatement documentation and includes: photographic or video evidence; evidence of purchase or repair of equipment; training records; and/or safety and health professionals' reports. Employers are not required to submit abatement for violations which were abated and observed by compliance officers during the on-site portion of the inspection. Managers and supervisors in the GISHD along with two or three safety officers use the universal log to track abatement. These safety officers come in to the Lansing office three days each week to review abatement for all safety case files. Several safety officers in the CSHD review abatement. Industrial hygienists in both GISHD and CSHD review and track hazard abatement.

An employer can petition the Board of Safety Compliance and Appeals for an extension of the abatement date (PMA) after a citation has become a final order. Late requests accompanied by a statement of exceptional circumstances are submitted to the Appeals Division for the Board's consideration. A PMA that is filed timely and meets all of the requirements will be granted by the issuing division on behalf of the Board.

If an employer does not respond to requests for abatement documentation and provide appropriate documentation within 30 days after the final request, a supervisor will generally assign a follow-up inspection. Follow-up inspections may be assigned for all fatalities, willful, and high gravity serious violations regardless of abatement received, unless the condition was abated during the on-site inspection. Follow-up inspections may also be conducted on a random basis or when deemed necessary. Follow-up inspections must be conducted by a safety officer or industrial hygienist within 30 days of assignment.

f) Worker and Union Involvement

Section 29(4) of the MIOSHA Act and Chapter V of the MIOSHA FOM require that an employee representative be given an opportunity to participate in the inspection. This includes the opening conference, walk around and closing conference.

SAMM 13, Percent of initial inspections with worker walk around representation or worker interview, was slightly less than the 100% FRL, at 99.67%. However, OSHA believes this is a matter of coding with respect to inspections opened on multi-employer worksites where an employer may not have employees at the site.

Instruction MIOSHA-COM-04-2R2 Appeal and Settlement Processes for MIOSHA Enforcement Divisions states that an employer may file a first appeal in writing, seeking modification or dismissal of a citation, proposed penalty, and/or an extension of time for abatement within 15 days of the receipt of a citation. An employee or employee representative may appeal in writing the reasonableness of the abatement date(s). Michigan Rule 408.21417(1) requires an employer post a copy of an appeal notice at the place where citations are posted and provide a copy of the notice to an authorized employee representative. The notice must inform the affected employees of their right to party status.

A second appeal is considered a formal appeal and must be delivered by the employer to the issuing division within 15 working days of the employer's receipt of the issuing division's decision in response to the first appeal. For employees or an employee representative that has elected party status, arrangements must be made to include them in pre-hearing discussions. When an employee representative has been identified during the inspection and has requested copies of the citation(s) or has elected party status at the second appeal level, contact with the employee representative is to be made to advise them of any settlement agreement in which there will be a significant modification to the citation(s) or abatement date(s). A significant modification to the citation includes vacating or dismissal; standard or rule change; or classification change.

3. REVIEW PROCEDURES

Section 41 of the MIOSHA Act and instruction MIOSHA-COM-04-2R2 describe the policies and procedures to be followed in the application of the appeals process. In addition to the appeal rights afforded by the MIOSHA Act, MIOSHA implemented a penalty reduction program (PRA), formally known as an informal settlement agreement, that can result in a 50% reduction if completed within 15 working days from the date the citations were received by the employer.

MIOSHA has two levels in the appeals process. Initially, an employer can request to have a citation modified, a citation or penalty dismissed, or an abatement date extended. The issuing division makes the decision. Thereafter, the employer can accept the decision and it will become a final order or the employer can file a second appeal. The second appeal is transmitted to the Board of Health and Safety Compliance and Appeals, and a prehearing conference is held in an attempt to settle the citations. If not settled, the case will be heard by an administrative law judge who issues a written decision.

In the case files reviewed during the FY 2021 file review, the majority of the changes were penalty reductions for settlement purposes. Approximately 61% of penalties were retained.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

a) Standards Adoption

During FY 2020 and FY 2021, five applicable standards were required to be adopted, including the annual adjustments to civil penalties, Beryllium, and COVID-19 Emergency Temporary Standard. Two final rules were not required to be adopted covering OSHA access to employee medical records and cranes and derricks in construction.

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 14, 2022, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osh-civil-penalties>; [87 FR 2328](#) (Jan. 14, 2022).

OSHA-approved State Plans must have penalty levels that are at least as effective as federal OSHA's per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017.

The MIOSHA 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 2022, without further delay. OSHA recognizes that the state has needed to implement legislative changes before this adoption can be completed. However, we are now five years past the initial adoption deadline. A letter to the MIOSHA 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 3, 2021.

The MIOSHA State Plan responded on September 29, 2021. This response included the following action plan: MIOSHA drafted proposed language to revise Section 35 of the Michigan Occupational Safety and Health Act, Act 154 of 1974 (as amended). The proposed bill language was provided to the LEO Legislative Affairs Office to initiate the process of finding a legislative sponsor. The Legislative Affairs Office and MIOSHA will work with the sponsor(s) and stakeholders to help ensure the bill is introduced, passed by the legislature, and signed by Michigan's Governor. Until at least as effective maximum and minimum penalty levels are adopted, the following finding will remain open.

Finding FY 2021-01: MIOSHA State Plan has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

Recommendation FY 2021-01: MIOSHA State Plan 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.

Table A
Status of FY 2020 and FY 2021 Federal Standards Adoption

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/5/2020	Yes	Yes	7/15/2020	Pending
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	9/14/2020	Yes	Yes	1/14/2021	3/24/2021
Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	10/28/2020	No	N/A	N/A	N/A
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	11/4/2020	Yes	Yes	2/27/2021	3/31/2021
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	11/4/2020	Yes	Yes	3/14/2021	9/9/2021
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/28/2021	Yes	Yes	7/14/2021	Pending
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	6/24/2021	Yes	Yes	7/21/2021	6/22/2021

MIOSHA continues to provide timely notification to OSHA regarding all state-initiated standard changes. MIOSHA proposed and adopted several new and amended state rules during FY 2021 in order to be as effective as the OSHA standards. Michigan Rule changes addressed the following topics: Standard Improvement Project IV, guarding of walking working areas, Beryllium, slings, plastic molding, firefighting, and respiratory protection.

b) Federal Program Change (FPC) Adoption

All but one FPC responses were submitted timely. MIOSHA did not adopt the National Emphasis Program for Coronavirus Disease 2019 (COVID-19) because substantially similar policies have been in place since June 2020.

Table B
Status of FY 2020 and FY 2021 Federal Program Change (FPC) Adoption

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/6/2020	Yes	Yes	6/10/2020	6/5/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	3/24/2020	Yes	No	8/4/2020	8/4/2020
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/14/2020	6/10/2020	Yes	No	10/14/2020	6/5/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	6/3/2021	Yes	No	n/a	11/1/2019
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	4/5/2021	Yes	No	9/19/2021	9/19/2021
Compliance Directive for the Excavation Standard, 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/25/2021	Yes	No	n/a adoption not required	12/1/2021
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/24/2020	Yes	No	n/a adoption not required	8/15/2020
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	4/19/2021	No	n/a	n/a adoption not required	n/a

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/25/2021	Yes	No	n/a adoption not required	10/29/2021

5. VARIANCES

There were no variance requests received or variances granted during FY 2020 and FY 2021.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

MIOSHA's state and local government worker program operates identically to the private sector program. As with the private sector, state and local government employers can be cited with monetary penalties. The penalty structure for both sectors is the same. In FY 2021, MIOSHA conducted 99 inspections of state and local government workplaces, 2.95% of the total number of inspections conducted in Michigan. This number was within the SAMM 6 FRL of +/- 5% of 2.99%, which equals 2.84% to 3.14%. During the FY 2021 review, there were no apparent differences between the state and local government and private sector case files.

7. WHISTLEBLOWER PROGRAM

MIOSHA's Whistleblower Protection Program consists of a manager and three investigators. Procedurally, the MIOSHA Whistleblower Program adheres to OSHA's Whistleblower Investigations Manual (WIM), CPL 02-03-007, which provides guidelines for the investigation and disposition of discrimination complaints.

During the period covered by this report, the program employed three full-time whistleblower investigators in addition to the manager. All intakes are reviewed by the manager in Detroit, who then assigns them to the investigators for screening. The investigators work from home offices and are expected to cover the entire state. The manager started in 1991 and the other investigators have been on board since 2004, 2012, and 2015. Each of the investigators has been through the Basic Whistleblower Investigation course at the OTI and at least one has taken the interviewing course.

MIOSHA follows investigation procedures that are similar to OSHA's but deviate in a couple of areas. For example, MIOSHA does not share the complainant's statement with the respondent, nor do they share the respondent's position with the complainant. This is to avoid having to put the documents through the Freedom of Information (FOIA) office prior to sharing, which would create delays in the investigation process. MIOSHA does provide the MIOSHA discrimination complaint form when notifying the respondent. Additionally, MIOSHA does not send the respondent notification at the same time the complainant's docketing letter is sent. The reason is to ensure the complainant is interested in moving forward by obtaining a signed complaint prior to notifying the respondent. The majority of complainant statements are performed in-person and witness interviews

are performed onsite. If the complainant is in a remote part of the state, travel costs may be prohibitive unless it is certain the case will move forward.

MIOSHA has implemented changes to expedite complaints and investigations. The response time for respondents to submit position statements is 14 days. Additionally, MIOSHA is using the early administrative closure letter in cases when a complaint is not prima facie or does not fall within MIOSHA jurisdiction.

MIOSHA's appeal review system provides complainants with an effective process for review of their cases. Unlike OSHA's committee review, MIOSHA offers complainants the opportunity for a hearing before an administrative law judge.

REVIEW PROCESS

MIOSHA utilizes the policies and procedures contained in the OSHA Whistleblower Investigations Manual (WIM). Accordingly, this review followed the guidelines, procedures, and instructions of OSHA's WIM, CPL 02-03-007, effective January 28, 2016.

This review was for the period October 1, 2020, through September 30, 2021. Reports utilized from the OSHA Information Technology Support System (OITSS), Whistleblower Application include the Whistleblower Case Listing, Length of Investigation, Activity Measures, and Investigation Data Report for the same period.

During FY 2021, MIOSHA completed 162 cases and ended the year with 22 cases pending. During the same time period, 149 new complaints were docketed, and 247 complaints were administratively closed.

The case files reviewed were selected from those with final determinations during the review period and the selections were based on type of determination and the investigator of record. Thirty of the 162 (19%) completed case files were reviewed, including four settled with MIOSHA involvement, one settled between the parties without MIOSHA involvement, 12 non-merit/dismissals, and 13 withdrawal determinations.

OITSS REPORTS

A review of the Whistleblower State Plan Investigation Data report for the review period indicated that of the 149 completed cases, 73 (45%) were withdrawn, 65 (40%) were dismissed, and 24 (15%) were found to have merit, with 22 of the 24 (92%) merit cases resulting in settlement. The percentage of cases completed timely was 70%, with an average completion time of 87 calendar days.

MIOSHA had 8 appeals resulting in a 7% appeal rate. MIOSHA's appeal process allows complainants to go through the Michigan Administrative Hearing System providing for a hearing before an administrative law judge.

While there are some procedural and administrative differences between MIOSHA and OSHA's Whistleblower Protection Programs, the merit / non-merit determinations made by MIOSHA were generally consistent with the evidence and reasoning contained in all case files reviewed.

COMPLAINT INTAKE AND SCREENING

Intakes and complaints are distributed by the manager. Complaints are screened by the investigators. All complaints that were docketed were timely filed, within the state's jurisdiction, and properly screened. During FY 2021, MIOSHA administratively closed 247 complaints.

COMPLAINANT STATEMENT AND INTERVIEWS

MIOSHA investigators complete a complainant statement for each complaint assigned to them. All case files contained complainant interview statements. Complainant statements may be taken over the phone, especially for complainants located a long distance from the investigator; however, MIOSHA prefers to handle all interviews in person when possible. Complainant interview statements are not redacted and shared with the respondent. MIOSHA utilizes the MIOSHA discrimination complaint form, like an OSHA-87, and shares that when notifying the respondent due to the time delay it would cause by having to send all statements through the FOIA office. (Note: this is the same for the respondent position statements. Each investigator completes a summary of the position statement, which is shared with complainants).

Investigators also complete a Complainant Interview Checklist which puts a complainant on notice that they have been made aware of certain things regarding the investigative process and the do's and don'ts. Use of the form prevents complainants from claiming later that they were not told or didn't know their responsibilities during the investigation and is a best practice.

DOCKETING AND RESPONDENT NOTIFICATION

Once a complaint has been determined to be appropriate for investigation, the investigator will docket the complaint and the docketing letter is sent to the complainant. The docketing date in OITSS is the date of the letter to the complainant. The notification letter to the respondent is sent after the investigator has conducted a complete interview and the complainant has signed the complaint. This has resulted in some withdrawals after docketing, but before notification to the respondent, when the complainant did not return the signed statement within a specified time period. According to the WIM, these cases should be administratively closed which affords the complainant an opportunity to appeal, whereas a withdrawal does not. For this reason, withdrawals must be requested by the complainant. During FY 2021, MIOSHA closed 73 cases as withdrawn.

Finding FY 2021-02: When a whistleblower complainant does not return a signed statement within a specified time, MIOSHA closes the complaint as withdrawn contrary to the OSHA Whistleblower Investigations Manual (WIM).

Recommendation FY 2021-02: Follow the WIM for the appropriate type of determination when the complainant fails or chooses not to return a signed statement.

REPORT OF INVESTIGATION

MIOSHA prepares a Report of Investigation (ROI) when the complaint resulted in a full field investigation. The manager reviews all investigation files and signs and dates the ROIs and closing letters. Complaints that are closed for lack of cooperation, settlement, or withdrawals are closed in accordance with the streamlined procedures, allowing a Case Summary to be used in lieu of the ROI. The ROI used by MIOSHA follows the criteria provided in the WIM. All dismissal determinations

were supported by evidence in the files. When a full field investigation was conducted, each of the elements in the ROI contained a proper analysis and exhibits were consistently referenced.

SECRETARY'S FINDINGS

MIOSHA does not utilize a Secretary's Findings similar to that contained in OSHA's WIM. MIOSHA alternatively utilizes a letter that adequately sets forth the determination and provides the respective party their right to appeal the MIOSHA determination.

SETTLEMENTS

Twenty-two (22) cases were settled during the review period. Five of the cases were reviewed and four were coded settled and one was coded settled other. All but one file contained fully executed copies of the agreements as well as closing letters to the complainant and the respondent. All files contained information regarding how the remedy was determined and agreed to.

CASE FILE MANAGEMENT

Each of the investigation files reviewed was organized in accordance with the WIM. While all files contained a Table of Contents and exhibits were separated by divider pages, tabs were not used.

TIMELINESS

During the review period, MIOSHA completed cases on average in 87 days. For the same time period, the average for all State Plans was 325 days.

PROGRAM MANAGEMENT

Dates and information in the case files reviewed were also compared to the entries made into the OITSS, Whistleblower Application. MIOSHA entries into OITSS include investigation information, party information, determination date, and the adverse action date under additional information. In the case of complaints referred from OSHA, MIOSHA maintains a practice of entering MIOSHA's receipt date as the filing date rather than the date the complaint was filed with OSHA. This practice is contrary to the WIM which indicates the date of postmark, facsimile transmittal, e-mail communication, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in person filing at a Department of Labor office will be considered the date of filing. No instances were found during the FY 2021 review of determinations of untimeliness due to the practice.

The manager uses OITSS reports weekly to stay abreast of investigations and ensure their timely completion.

Observation FY 2021-OB-03: In the case of whistleblower complaints referred from OSHA, MIOSHA maintains a practice of entering MIOSHA's receipt date as the filing date rather than the date the complaint was filed with OSHA.

Federal Monitoring Plan FY 2021-OB-03: OSHA will discuss and evaluate MIOSHA's internal audits conducted in this area during quarterly monitoring meetings.

RESOURCES

Based on file reviews, the training provided and available to investigators appears to be adequate. MIOSHA investigators attend courses through the OTI when possible and when the courses are available. Once advanced courses are offered, MIOSHA intends to take advantage of those as well. The manager meets with staff each month to have case discussions and provide any necessary updates regarding policies and procedures.

Staffing appears to be adequate. The case load per investigator ranged between 55 and 58 closed cases in FY 2021. The pending case load as of March 10, 2022, was 34, with each investigator having between ten and 13 open investigations. (Source: Length of Investigation report dated December 28, 2021, and Pending Cases report dated March 10, 2022)

While there are slight differences procedurally from those of OSHA, it was concluded after review of the investigation files that the determination reached in each case was supported by the evidence and documentation contained in the files. Procedures are in place which provide for effective and timely investigations, subsequent review, and an effective appeals system.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

No CASPAs were received regarding MIOSHA during FY 2021.

9. VOLUNTARY COMPLIANCE PROGRAM

Cooperative Programs (MVPP)

MIOSHA's Voluntary Protection Program (MVPP) assists employers and employees by providing a mechanism and a set of criteria designed to evaluate and recognize outstanding safety and health management systems. The Rising Star program provides a "stepping stone" for those establishments that have the desire and potential to achieve Star status within one to three years. Rising Star participants have a good safety and health management system and have incidence rates at or below the industry average for two out of the last three years. MIOSHA follows their Voluntary Protection Program (MVPP) Policies and Procedures Manual which follows OSHA's CSP 03-01-005 Voluntary Protection Programs (VPP): Policies and Procedures Manual (January 30, 2020).

In FY 2021, there were two new Star VPP sites and 16 participants were reevaluated and renewed.

Partnerships

MIOSHA had seven active Partnerships including two that were signed during FY 2021. MIOSHA instruction ADM-04-1R4, Partnerships for Worker Safety and Health, is consistent with OSHA's Strategic Partnership Program for Worker Safety and Health, CSP 03-02-003 (November 6, 2013). MIOSHA enters into cooperative relationships with an individual employer, employees, and/or their representatives. Partnerships may be developed with a group of employers, employees and/or their representatives in order to encourage, assist, and recognize their voluntary efforts to focus on and eliminate serious hazards and achieve a high level of safety and health.

Alliances

In FY 2021, there were 17 MIOSHA Alliances. One new Alliance was formed in FY 2021 with the Masonry Institute of Michigan. In addition, two Alliances were renewed in FY 2021. Instruction MIOSHA-ADM-03-3R4, Alliance Policies and Procedures, is consistent with OSHA's Alliance Program, CSP 04-01-002, (July 29, 2015).

10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

MIOSHA has declined to enter consultation information for state and local government (SLG) entities into OIS as the activities are completed by 100% state funded consultants. Rather, MIOSHA provides updates on the number of activities during quarterly monitoring meetings. During FY 2021, MIOSHA's activities with SLG entities included: 32 training sessions, 333 consultations, four hazard surveys, 28 promotions, and four safety and health evaluations.

Appendix A – New and Continued Findings and Recommendations

FY 2021 MIOSHA Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	MIOSHA State Plan has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.	MIOSHA State Plan 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.	
FY 2021-02	When a whistleblower complainant does not return a signed statement within a specified time, MIOSHA closes the complaint as withdrawn contrary to the OSHA Whistleblower Investigations Manual (WIM).	Follow the WIM for the appropriate type of determination when the complainant fails or chooses not to return a signed statement.	

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 MIOSHA Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
	FY 2020-OB-01	During FY 2019, 22 of the 37 (59%) fatality case files reviewed did not contain evidence and/or documentation consistent with MIOSHA's FOM, Fatality Procedures Manual, and/or instruction MIOSHA-COM-06-1R4 Inclusion of Victim's Families in Fatality Investigations, including: complete and accurate fatality/catastrophe report, investigation summary, violation worksheets, field narrative, diary sheet, letters to the next-of-kin, victim's personal data, photographs, measurements, police and medical examiner reports, witness statements, and/or multi-employer worksite description.		Closed
	FY 2020-OB-02	During FY 2019, 26 of the 58 (49%) programmed, complaint, referral, and related inspection files reviewed did not contain evidence and/or documentation consistent with MIOSHA's FOM and instruction MIOSHA-COM-15-4R1 Employee Interviews in Safety and Health Investigations, including: complete and accurate diary sheet, chronology of actions taken, field narrative, violation worksheets, employee exposure, potential employee exposure, photographs, measurements, witness statements, and/or documentation of interviews.		Closed
FY 2021-OB-01		Five of the fatality case files reviewed for FY 2021 did not include a copy of the fatality report and/or the investigation report. Two of 20 (10%) did not contain a copy of the fatality report. Four of 20 (20%) did not contain a copy of the investigation report.	OSHA will discuss and evaluate MIOSHA's internal audits conducted in this area during quarterly monitoring meetings.	New
FY 2021-OB-02		Four of 20 (20%) fatality casefiles reviewed for FY 2021 did not contain an initial and/or results letter to the next-of-kin.	OSHA will discuss and evaluate MIOSHA's internal audits conducted in this area during quarterly monitoring meetings.	New
FY 2021-OB-03		In the case of whistleblower complaints referred from OSHA, MIOSHA maintains a practice of entering MIOSHA's receipt date as the filing date rather than the date the complaint was filed with OSHA.	OSHA will discuss and evaluate MIOSHA's internal audits conducted in this area during quarterly monitoring meetings.	New

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 MIOSHA Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	During FY 2020, the percentage of health (52.26%) in-compliance inspections was higher than the further review level (FRL) range of 29.72% to 44.58%.	Ensure inspection resources are spent in workplaces that are exposing workers to hazards.	The General Industry Safety and Health Division and the Construction Safety and Health Division have reviewed inspection files to determine how to better select inspections that will improve in-compliance rates. Both divisions have had discussions with supervisors and field staff regarding the in-compliance rate and have rolled out changes to improve them. The in-compliance rate for MIOSHA for FY 2021 is within the further review level (FRL). The enforcement division's management will continue to monitor the in-compliance rate. The General Industry Safety and Health Division (GISHD) will continue implementing their six action steps and the Construction Safety and Health Division (CSHD) will implement the same six action steps detailed in MIOSHA's formal response letter to the FY 2020 Follow-up FAME.	8/31/2021	Completed

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MIOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	8.69	10	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	6.06	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)	8.65	8	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	7.51	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 2021. 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)	1.49	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	1.34	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government	2.95%	+/- 5% of 2.99%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MIOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

	workplaces			range of acceptable data not requiring further review is from 2.84% to 3.14%.
7a	Planned v. actual inspections (safety)	2,483	+/- 5% of 3,240	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 3,078 to 3,402 for safety.
7b	Planned v. actual inspections (health)	874	+/- 5% of 868	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 824.60 to 911.40 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,217.24	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector (1-25 workers)	\$573.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,561.74	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,196.20	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,292.85	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in compliance (safety)	29.82%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in compliance (health)	41.86%	+/- 20% of	The further review level is based on a three-year national

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MIOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

			40.64%	average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	97.01%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	37.21	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	72.15	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	61.31%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk-around representation or worker interview	99.67%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	70%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	15%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	87	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.87%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MIOSHA Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

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 OITSS report run on November 8, 2021, as part of OSHA's official end-of-year data run.