

FY 2015 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

State of Minnesota

**Minnesota Department of Labor and Industry
Occupational Safety and Health Division**



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I. Executive Summary

A. State Plan Activities, Trends, and Progress

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the State Plans progress towards achieving performance goals established in their federal Fiscal Year (FY) 2015 Annual Performance Plan, to review the effectiveness of programmatic areas related to enforcement activities including a summary of an onsite evaluation, and to describe corrections made by the state in response to the FY 2014 FAME report findings and recommendations. This report fully assesses the current performance of Minnesota Department of Labor and Industry – Occupational Safety and Health Division (MNOSHA) 23(g) compliance program and compares the State Plan’s effectiveness to that of OSHA in the context of agreed upon monitoring measures.

A four person OSHA team was assembled to accomplish the evaluation onsite at MNOSHA in St. Paul, Minnesota, beginning on January 11, 2016. The OSHA team’s evaluation consisted of case file reviews and interviews of MNOSHA staff.

A detailed explanation of the findings and recommendations of the MNOSHA performance evaluation is found in Section III, Assessment of State Plan Performance. A summary of all the findings and recommendations noted, as the result of OSHA’s review, is found below and in Appendix A, New and Continued Findings and Recommendations.

The Minnesota Occupational Safety and Health Strategic Management Plan for FY 2014 to FY 2018 established three strategic goals: 1) Reduce occupational hazards through compliance inspections; 2) Promote a safety and health culture through compliance assistance, outreach, cooperative programs, and strong leadership; and 3) Strengthen and improve MNOSHA’s infrastructure. The FY 2015 Performance Plan provided the framework for accomplishing the goals of the MNOSHA Strategic Management Plan by establishing specific performance goals for FY 2015.

A thorough assessment of MNOSHA’s progress in achieving their annual performance goals has been conducted, and the results are found in Section IV, Assessment of State Plan Progress in Achieving Annual Performance Goals. Of particular note in the assessment are the following:

- Performance Goal 1.2, Reduction in State Fatality Rate: During FY 2015, MNOSHA experienced a 12% increase in worker fatality rate; from 0.661 fatalities per 100,000 workers to 0.741.
- Performance Goal 1.3.a, Total hazards identified / establishments visited: The FY 2015 target was a projected 1,800 inspections: 1,746 in the private sector and 54 in the public sector. During FY 2015, a total of 2,181 inspections were conducted; 21% above the goal. A total of 4,431 hazards were identified and cited.

- Performance Goal 1.4, Percent of inspections designated as programmed: The FY 2015 target was for 86% of all inspections to be conducted as programmed inspections. MNOSHA achieved 82%.
- Performance Goal 2.1.b, Increase Voluntary Protection Programs (MNSTAR): The FY 2015 target was to add one new participant and accomplish three re-certifications. Three sites were granted initial STAR certification and one achieved merit status. Seven sites achieved full re-certification as MNSTAR sites.
- Performance Goal 2.2, Total number of people participating in outreach / training: The FY 2015 target was to maintain the baseline five-year average for FY 2008 – 2012 of 4,063 participants in outreach training sessions. MNOSHA compliance exceeded the goal for FY 2015 by conducting 104 presentations to 4,312 participants; 6% above the baseline.

Quarterly monitoring team meetings were held during FY 2015, at which time the State Activity Mandated Measures (SAMM) report was reviewed and discussed with MNOSHA compliance staff. The FY 2015 SAMM is Appendix D of this report.

OSHA received and investigated two Complaints About State Program Administration (CASPA) during FY 2015. The first CASPA concerned a complaint inspection conducted two months after the alleged violations occurred. The second CASPA alleged a whistleblower complaint was closed before the complainant could be interviewed. After investigating the allegations, OSHA determined MNOSHA followed established policies and procedures with respect to the matters contained in the two complaints and those policies and procedures are at least as effective as OSHA's.

B. State Plan Introduction

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

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

MNOSHA's vision is to be a leader in occupational safety and health and to make Minnesota's workplaces the safest in the nation. MNOSHA is striving for the elimination of workplace injuries, illnesses, and deaths to ensure all of Minnesota's workers can return home safely. MNOSHA believes that to support this vision, the workplace must be characterized by a

genuinely shared commitment to workplace safety, by both employers and workers, with necessary training, resources, and support systems devoted to making this happen.

During FY 2015, there were no changes to the current administration. Commissioner Ken Peterson is the head of the DLI. Ms. Cindy Valentine is the Workplace Safety Manager reporting directly to the Commissioner. Mr. James Krueger is the Director of the OSH Compliance Division and Ms. Roslyn Robertson was the Director of the WSC Division within Minnesota DLI. The FY 2015 grant included funding totaling \$8,859,650 and full-time equivalent (FTE) staffing of 73.93 positions. The State Plan's required benchmarks are 31 safety investigators and 12 health investigators. MNOSHA allocated 32.98 safety and 15.98 health. At the beginning of FY 2015, there were 33 safety and 17 health investigators on staff. At the end of the fiscal year there were no vacancies.

C. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the comprehensive year, and as such, a review of the MNOSHA workplace safety and health program was conducted onsite from January 11, 2016 to January 15, 2016. One hundred (100) inspection cases (71 safety and 29 health, including seven fatality cases) were selected randomly for review. A total of 23 complaints were evaluated, including nonformal complaint files consisting of seven safety, one health, and one safety and health, and formal complaint inspection files consisting of six safety and eight health. An additional ten health inspection files were reviewed where 29 CFR 1910.95 was cited in order to evaluate MNOSHA's progress in addressing a previous finding. Discrimination cases 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. Nineteen (19) of the 36 cases were reviewed, including those with settled, settled other, dismissed, and withdrawn determinations. All cases occurred from October 1, 2014 through September 30, 2015.

In addition to reviewing the above cited case files, the audit team reviewed data gathered from MNOSHA inspections conducted from October 1, 2014 through September 30, 2015, including general statistical information, complaint processing, and inspection targeting. Minnesota data contained in the Integrated Management Information System (IMIS), OSHA's database system used by the state to administer its program and by the state and OSHA to monitor the program through FY 2015, was examined.

Throughout the entire process, MNOSHA was cooperative, shared information, and ensured staff was available to discuss cases, policies, and procedures. MNOSHA staff members were eager to work with the evaluation team.

D. Findings and Observations

The FY 2014 Follow-up FAME identified five findings and three observations that were continued from the FY 2013 Comprehensive FAME. Two of the findings and all three of the observations addressed concerns within health inspection case files. A review of FY 2015 case files verified completion of three of the five recommendations and two of the three observations.

The remaining two recommendations are being addressed. The one remaining observation has been converted to a new finding. A list of the observations is found in Appendix B, Observations Subject to New and Continued Monitoring. A list of the FY 2014 findings and recommendations and MNOSHA's progress in addressing the findings is found in Appendix C, Status of FY 2014 Findings and Recommendations.

A summary of the new findings and recommendations noted, as the result of OSHA's evaluation for FY 2015, is found below and in Appendix A, New and Continued Findings and Recommendations. Additionally, there are three new observations relating to discrimination case files.

1. Finding FY 2015-03 (FY 2014-OB-01): Potential opportunities have not been taken to perform worker exposure monitoring for the purpose of documenting worker exposure for the complete evaluation of a condition discovered during the inspection.

Recommendation FY 2015-03 (FY 2014-OB-01): Ensure exposure monitoring is conducted to evaluate and document worker exposure to health hazards.

2. Finding FY 2015-04: MNOSHA's settlement agreement for discrimination cases contains a confidentiality provision contrary to OSHA's Whistleblower Investigations Manual and MNOSHA Instruction ADM 3.7 *Data Practices and Release of Case File Information*.

Recommendation FY 2015-04: Ensure confidentiality provisions are not included in settlement agreements for discrimination cases.

II. Major New Issues

MNOSHA continues to have experienced staff but retirements and resignations left vacancies that could not be filled due to budget constraints. In FY 2014, the MNOSHA Compliance program reported 85.32 FTEs, and in FY 2015 this number fell to 73.93 FTEs, compared with 95.56 FTEs in 2008. Inspection numbers decreased from 2,556 in FY 2014 to just 2,181 in FY 2015; a 15% reduction.

III. Assessment of State Plan Performance

A. State Plan Administration

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

1. Training

MNOSHA developed and implemented its own training program outlined in ADM 5.1 *MNOSHA Investigator and Consultant Training Plan*. This training plan is comprehensive in nature, covering not only the information needed to conduct enforcement activities, but the routine administrative functions of the MNOSHA. The equivalent of OSHA's Initial Compliance and Legal Aspects courses are covered at the state level. This facilitates and reinforces MNOSHA's policies and procedures for conducting an inspection and developing a legally sufficient case for the state. MNOSHA also provides training to develop soft skills including conflict resolution, interviewing/investigation, organization, presentation, creating training techniques, and time management. The training instruction identifies the responsible party for conducting various aspects of the training and the time frame in which the training is completed. Some of the training is provided on line. In addition to MNOSHA's internal training program, investigators attend courses at the OSHA Training Institute (OTI) to obtain specific training based on discipline and need. A training and outreach director has managed the training program since January 2013.

2. Funding

The total state and federal funds allocated to the MNOSHA 23(g) program for FY 2014 were \$9,202,273, which was approximately 5.5% more than in FY 2013. MNOSHA overmatched the amended federal base award level of \$3,973,900 by \$1,248,211. MNOSHA applied for a one-time funding opportunity offered during the fiscal year and was approved in the amount of \$6,262 for training and winter jackets. MNOSHA did not de-obligate any funds during FY 2014.

The total state and federal funds allocated to the program for FY 2015 were \$8,859,650, which is approximately 3.8% less than in FY 2014. MNOSHA overmatched the amended federal base award level of \$3,991,800 by \$823,208. MNOSHA applied for a one-time funding opportunity offered during the fiscal year and was approved in the amount of \$52,842. The additional funds provided OTI training, standards books, and monitoring equipment. No funds were de-obligated during FY 2015.

3. Staffing

Management and administration of the OSH Compliance Division is the responsibility of the OSHA Management Team (OMT). The OMT is comprised of the compliance director, two area directors, and five supervisors. The total complement of the OSH Compliance Division was 85.32 FTE for FY 2014 and 73.93 FTE for FY 2015.

For FY 2015, the benchmark for safety was 31 positions, with 32.98 positions, or 106% filled. The benchmark for health was 12 positions, with 15.98 positions, or 133% filled.

		FY 11	FY 12	FY 13	FY 14	FY 15
Safety	Benchmark	31	31	31	31	31
	Positions Allocated	44	41	42	41.9	32.98
	Positions Filled	42	39	40	41.9	32.98
	Vacancies	2	2	2	0	0
	% of Benchmarks Filled	135%	126%	129%	135%	106%
Health	Benchmark	12	12	12	12	12
	Positions Allocated	18	18	16	17.9	15.98
	Positions Filled	16	18	15	17.9	15.98
	Vacancies	2	0	1	0	0
	% of Benchmarks Filled	133%	150%	125%	149%	133%

MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and e-mails. During FY 2015, these two positions responded to approximately 4,251 phone calls and 1,446 written requests for assistance, primarily e-mails. A majority of these inquiries were answered within one day. During FY 2015, 77% of phone calls were received from employers, workers, and consultants. Most information is provided to callers during the initial phone call, while others are directed to the MNOSHA or OSHA websites or another state agency for assistance. The information requested covers a wide variety of topics, which is why MNOSHA continues to use investigative staff to answer a majority of the calls.

4. Integrated Management Information System (IMIS)

Minnesota used Informix based software for enforcement information management and data processing, which is called MOOSE, for MNOSHA Operations System Exchange. It provides MNOSHA with real time information and data processing. Through FY 2015, data entered into MOOSE was transmitted into OSHA's IMIS database on a daily basis. Management reports, equivalent to those available from IMIS, are used by the MNOSHA management to track complaints, accidents, assignments, inspections, abatement, debt collection, and other issues of interest. At the start of FY 2016, MOOSE began interfacing with the OSHA Information System (OIS).

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

5. State Internal Evaluation Plan (SIEP)

MNOSHA established goal #3 in their FY 2014 to FY 2018 Five-Year Strategic Management Plan as their workplace plans to address the state's SIEP. Projected fiscal year plans are identified in the program's annual grant applications. Summaries of the program's achievements in relation to their plan are provided in the State OSHA Annual Report (SOAR).

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

1. Environmental Scanning
2. Organizational Analysis
3. Identify Target Areas
4. Current Workforce Analysis
5. Future Workplace Analysis
6. Gap Analysis and Strategy Development
7. Develop and Implement an Action Plan and Communication Strategy
8. Monitor Plan and Evaluate Results

MNOSHA's Compliance Directives Coordination Team (DCT) is charged with coordinating and managing the MNOSHA internal information system. The DCT consists of three management analysts and two OMT directors. This group monitors federal standard/policy activity and coordinates updates to all relevant MNOSHA standards, directives, and policies accordingly. MNOSHA adopts federal standards by reference and/or develops Minnesota specific standards when necessary to support MNOSHA program goals.

During FY 2015, 33 directives were revised and issued to staff which is three more than in FY 2014.

MNOSHA conducts internal reviews to ensure the MNOSHA program continues to follow the requirements of the OSHA program. Internal performance is a monthly agenda item at OMT meetings, whereby reports are generated to facilitate review of the internal program components. The program currently has three positions with responsibility for quality control and assurance of inspection case files.

B. Enforcement

During FY 2015, MNOSHA conducted 2,181 inspections; 1,605 safety and 576 health. Of those 1,778 were programmed, 341 were complaints and referrals, and 25 were follow-ups. The total number of inspections was a 15% decrease from FY 2014. (Source: Inspection report dated October 20, 2015)

1. Complaints

During FY 2015, MNOSHA received a total of 616 complaints, of which 270 (44%) were formal and 346 (56%) were nonformal. The average number of days to initiate a complaint inspection in FY 2015 was 3.1, well below the negotiated standard of nine days. The average number of days to initiate a complaint investigation was 1.49, below the negotiated standard of two days. OSHA randomly selected nine complaint investigations for review during this evaluation of the MNOSHA program.

MNOSHA has its own complaint process specified in its own administrative instruction, ADM 3.16 *Administrative Procedures for Handling Complaints and Information Requests*. It outlines the policies and procedures for processing formal and nonformal complaints. MNOSHA's complaint process for formal complaints is similar to the federal process. MNOSHA considers electronic complaints obtained through the federal complaint system as formal complaints if the individual indicates they are a current employee or employee representative and an electronic signature is provided. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items. In some instances, the complainant may elect to process the complaint nonformally to address the issue, such as in sanitation complaints or complaints with low severity.

Following complaint inspections, complainants are mailed a letter informing them of the inspection and indicating whether or not citations were issued. In the federal program, the letter addresses each complaint item with reference to the enclosed citation(s) or a sufficiently detailed explanation for why a citation was not issued. The difference in procedure was noted in the FY 2012 FAME as finding and recommendation 12-02. However, MNOSHA is prohibited under state statute to provide detailed information in the letter for open cases (Minnesota Statute § 13.39 subd. 2). MNOSHA is not able to share citations with the public until the citations are final orders. This is the result of a Supreme Court of Minnesota decision known as the Westrom decision. As a result of this court case, the Minnesota DLI is precluded from making public inspection results prior to citations becoming final orders. The statute and court decision prohibit the complainant from receiving a copy of the citations when issued. On December 12, 2013, MNOSHA modified their letter to the complainant to include OSHA's website where citation item information may be found. Complainants are also invited to contact the investigator with any questions they may have regarding the inspection.

MNOSHA's nonformal complaint processing does differ from the federal program. As with the federal program, with the occurrence of a serious injury, information obtained by telephone, email, or fax will normally be scheduled for inspection. MNOSHA developed a specific administrative instruction outlining the process for these serious injury events, ADM 3.18 *Serious Injury Inspection Procedures*.

Another difference between the federal program and MNOSHA's nonformal complaint process relates to the outcome of nonformal complaint investigations. Chapter 9 of *OSHA's Field Operations Manual (FOM)* contains the requirement to advise the complainant of the employer's response, as well as the complainant's right to dispute that response, and if the alleged hazard persists, of the right to request an inspection. MNOSHA does not send a letter to the complainant at the conclusion of the investigation to inform them of the outcome. This was noted in the FY 2012 FAME as finding and recommendation 12-01, and continued to be noted each year thereafter while MNOSHA and OSHA attempted to identify a resolution. On December 29, 2014, MNOSHA revised their ADM 3.16 to include information in the acknowledgement letter to the complainant regarding how a complainant may obtain a copy of the employer's response after the complaint is closed. The difference in MNOSHA's procedure remains open in this

report as finding and recommendation FY 2015-01.

Finding FY 2015-01 (FY 2014-01): MNOSHA does not send a letter to the complainant at the conclusion of the nonformal complaint investigation to inform them of the outcome.

Recommendation FY 2015-01 (FY 2014-01): Send a letter to the complainant at the conclusion of the investigation, including a copy of the employer's response, to inform them of the outcome and provide an opportunity to request the matter be reviewed.

2. Fatalities

A total of 20 fatalities were reported to MNOSHA in FY 2015, up from 17 the previous year. DLI's Injury Notification Template is provided to OSHA for information and tracking of all fatalities. Six of the seven fatality cases reviewed were responded to within one workday in accordance with MN Instruction ADM 3.19 *Fatality Investigation Procedures*. One case was delayed due to miscommunication between supervisors.

Fatality information is recorded in MNOSHA's information system, Minnesota OSHA Operations System Exchange (MOOSE). All fatalities are entered into the Fatality/Serious Injury Log. Each entry is reviewed by a supervisor who determines if the fatality falls within MNOSHA's jurisdiction. The supervisor can assign a fatality for inspection from the log, at which time an Accident/Event record is generated. Generally, non-jurisdiction fatalities are not inspected and an Accident/Event record is not generated. Fatality information is uploaded to OSHA's database system and tracked by the State Activity Mandated Measures (SAMM) Report. In two of the 20 cases, MNOSHA responded to a report of a serious injury and opened the inspection prior to the time of the resulting death. The algorithm contained in the SAMM does not recognize as timely inspections opened prior to the date of the fatality. Consequently, the SAMM report contained in Appendix D to this FAME report incorrectly reflects a timely response rate of 85%, as opposed to 95%.

During the 2000 session, the legislature amended the Minnesota Occupational Safety and Health Act by adding a new section (Minn. Stat. 182.6545) which requires MNOSHA to make reasonable efforts to locate a deceased employee's next of kin and to mail them copies of the following documents related to the investigation:

- Citations and notification of penalty
- Notices of hearings
- Complaints and answers
- Settlement agreements
- Orders and decisions
- Notice of appeals

Under the statute, the next of kin also has the right to request a consultation with DLI regarding citations and notifications of penalties issued as a result of the investigation of

the employee's death.

MNOSHA Instruction ADM 3.19 *Fatality Investigation Procedures* requires a condolence letter be sent to the next of kin. After issuance of the initial letter, MNOSHA generally does not attempt to communicate with the next of kin unless MNOSHA is contacted by them. Contact is kept at the supervisory/management level.

3. Targeting and Programmed Inspections

During FY 2015, MNOSHA conducted 2,181 inspections, with 82% opened as programmed inspections. MNOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. MNOSHA has a specific administrative instruction that outlines its policies for inspection targeting, ADM 2.1 *Scheduling Plan for Programmed Inspections*. Ninety-three percent (93%) of all programmed inspections were conducted in the emphasis industries.

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

MNOSHA participates in several National Emphasis Programs (NEPs), which include Amputations, Combustible Dust, Silica, Lead, PSM Ammonia and Ethanol, Isocyanates, and Trenching.

MNOSHA utilized data from Minnesota's Department of Employment and Economic Development and the Minnesota DLI's Workers' Compensation unit to develop a local planning guide. Employers with a high number of compensation claims, and SIC/NAICS codes identified in the state's Strategic Management Plan, receive priority for an inspection. Other Local Emphasis Programs (LEPs) include, but are not limited to, Window Washing, Foundries, Healthcare, Meat Packing, Serious Injury, Grain Facilities, Hexavalent Chromium, and Noise and Respiratory Hazards.

MNOSHA's procedures for scheduling construction inspections are also outlined in MNOSHA's ADM 2.1 *Scheduling Plan for Programmed Inspections*. The primary scheduling methods for construction inspections are a Dodge list of the major projects in the state and Activity Generated Inspections. Under the Activity Generated Inspections LEP, an inspection may be opened if the site has at least one of the following activities being conducted (safety or health): demolition and/or renovation work; visible airborne dust; lined dumpsters; use of torches for brazing, cutting, welding, soldering, or applying open flame heat; use of internal combustion engines inside a structure; any removal of exterior materials using "dry methods"; frequent use of saws, grinders, jackhammers, etc.; bridge work; structures greater than 30 feet high; buildings equal to or greater than two stories or 20 feet in height; buildings equal to or greater than 5,000 square feet; multiple equipment (at least one earth moving) operation - crushing hazard or struck-by hazard; or roofing work equal to or greater than 14 feet from the eave to a lower level or

a potential fall of 20 feet.

Of the 1,778 programmed inspections opened in FY 2015, 1,764 were coded as programmed planned, while 14 were coded as programmed related.

During the FY 2013 onsite review, 13 of the 40 programmed planned cases evaluated were coded as health. Three of those inspections were conducted under the Noise and Respiratory Hazards LEP. In two of the cases, monitoring was not conducted to determine the workers' exposure to noise. In all three of the cases, documentation contained in the file did not support that a comprehensive evaluation of the employer's hearing conservation program and/or noise reduction efforts had been conducted. This was noted as Finding 13-02. In response, MNOSHA discussed the evaluation and documentation of hearing conservation programs during inspections with the industrial hygiene staff. Subsequently, four quarterly audits of 100% of the related case files were conducted by an OMT director.

During the FY 2015 onsite review, 19 of the 79 programmed planned cases evaluated were coded as health. Two of the three (66%) Noise and Respiratory Hazards LEP case files reviewed did not appear to contain evidence of a comprehensive evaluation of noise hazards. Consequently, the finding remains open.

Finding FY 2015-02 (FY 2014-02): Noise and Respiratory Hazards LEP case files did not contain documentation showing that a comprehensive evaluation of the employer's hearing conservation program and/or noise reduction efforts had been conducted.

Recommendation FY 2015-02 (FY 2014-02): Ensure that MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry* is followed when evaluating the employer's hearing conservation program and/or noise reduction efforts and the file is documented accordingly.

4. Citations and Penalties

In MNOSHA's Field Compliance Manual (FCM), Chapters 5 and 6 contain the requirements and policies for citations and penalties. The citations and penalties proposed for issuance are reviewed at multiple levels in MNOSHA's management system prior to issuance.

During FY 2015, MNOSHA investigators conducted 2,181 inspections where 4,360 hazards were identified and cited. Seventy-one percent (71%) of the inspections resulted in violations and 66% of those violations were classified as serious. The average number of serious/willful/repeat violations per inspection decreased from 1.98 in FY 2014 to 1.94.

The average initial penalty per serious violation in the private sector during FY 2015 was \$1,006, an increase of 11% from FY 2014. MNOSHA retained 86.37% of those penalties.

MNOSHA's average current penalty per serious violation in the private sector (SAMM 8: 1-250+ workers) was \$826.58 in FY 2015. The Further Review Level (FRL) is -25% of the National Average (\$2,002.86), which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and State Plans are therefore required to adopt penalty policies and procedures that are "at least as effective as" (ALAE) those contained in the FOM, which was revised on October 1, 2015 to include changes to the penalty structure in Chapter 6 – Penalties and Debt Collection.

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase penalties according to the Consumer Price Index (CPI) each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting ALAE analysis of State Plan penalty structures, to include evaluation of average current penalty per serious violation data.

During the FY 2013 review, 15 of the 29 health cases reviewed contained industrial hygiene sampling. MNOSHA Instruction CPL 2-2.1A *Noise Measurements and Citations in General Industry* contains direction for the documentation of employee noise exposure in order to sustain violations of 29 CFR 1910.95 Occupational Noise Exposure. In three cases reviewed, the employer's history of sampling results or MNOSHA's dosimetry results of less than 66% dose were relied upon to cite the employer. Finding and recommendation 13-03 addressed this concern. In response, MNOSHA discussed the need to sample for noise during inspections with the industrial hygiene staff. Subsequently, four quarterly audits of 100% of the related case files were conducted by an OMT director. During OSHA's FY 2015 review, 11 case files containing violations of 29 CFR 1910.95 were reviewed and found to be acceptable. Consequently, the finding which had been continued as FY 2014-03 is considered completed.

Similarly, in six of the cases reviewed during the FY 2013 review, exposure monitoring for air contaminants was not conducted during the inspection in order to evaluate the workers' exposure, address complaint items, and/or support serious citations. Observations FY13-OB-1, FY13-OB-2, and FY13-OB-3 addressed the concerns respectively. All three observations were continued in the FY 2014 Follow-up FAME.

During the FY 2015 review, ten of 18 (56%) programmed comprehensive inspections appeared to miss reasonable opportunities to conduct exposure monitoring for serious health hazards including hexavalent chromium, noise, silica, carbon monoxide, wood dust, and spray finishing chemicals. Therefore, observation FY 2014-OB-01 has been converted to a new finding and recommendation, FY 2015-03.

In contrast, in all nine unprogrammed (complaint or referral) case files reviewed, exposure monitoring appeared appropriate for the purpose of evaluating the complaint

items and compliance with applicable MNOSHA health standards. Observation FY 2014-OB-02 is considered closed.

No instances of relying entirely on an employer's own monitoring data to support a violation were found in the reviewed case files. Observation FY 2014-OB-03 is also considered closed.

Finding FY 2015-03 (FY 2014-OB-01): Potential opportunities have not been taken to perform worker exposure monitoring for the purpose of documenting worker exposure for the complete evaluation of a condition discovered during the inspection.

Recommendation FY 2015-03 (FY 2014-OB-01): Ensure exposure monitoring is conducted to evaluate and document worker exposure to health hazards.

5. Abatement

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

At the time of the FY 2009 Baseline Special Evaluation of the MNOSHA program, the past due abatement was being aggressively addressed by MNOSHA. In October 2009, MNOSHA completed a reorganization of compliance and management personnel. At the end of December 2009, MNOSHA implemented a management system to control abatement past due issues. MNOSHA ADM 3.4 *Abatement Verification* was revised on August 20, 2010 to include definitions for Certification of Abatement and Documentation of Abatement, as well as guidance on when each type of abatement verification is required. Identical to OSHA, MNOSHA's abatement documentation standard (5210.0532 subp. 3) and ADM 3.4 require abatement documentation such as written, video graphic, or photographic evidence in certain circumstances. When abatement documentation is necessary, MNOSHA identifies this requirement in the citations. MNOSHA trained field staff on correct application of abatement documentation in September 2010.

MNOSHA's regulations and written procedures for Petitions for Modification of Abatement Dates (PMA) are equivalent to federal regulations and procedures. Only one case reviewed for FY 2015 contained a PMA.

MNOSHA's follow-up inspection policy is slightly different than OSHA's. In addition to follow-ups being scheduled for inspection as the result of an employer's failure to submit timely progress reports outlining abatement or when the investigator recommends a follow-up inspection, MNOSHA identifies specific citation outliers, which will prompt a follow-up inspection. In Minnesota, a follow-up inspection is scheduled when an inspection results in at least five citations that are serious, willful, or repeat and are not immediately abated with at least one citation rated in greater severity and probability.

In past years, the appropriate use of the abatement method "Corrected During Inspection"

(CDI) was not well documented in MNOSHA's policies and procedures and at times was used inappropriately. A violation can be considered corrected during the inspection when the investigator witnesses and observes the correction to the specific violation while onsite. Additionally, OSHA requires that the violation worksheet must contain information on how the violation was abated. This policy is outlined in the FOM and in the previous compliance directive, CPL 2-0.114 *Abatement Verification Regulation*, 29 CFR 1903.19 - *Enforcement Policies and Procedures*. In the 2011 files previously reviewed where serious hazards were identified and the abatement was classified as CDI, the files did not contain the specific information outlining the corrective action observed by the investigator. This item was included in previous FAME reports as finding and recommendation 10-06 and 11-01. MNOSHA ADM 3.4 *Abatement Verification* was revised on September 16, 2011, addressing this concern.

During OSHA's review for FY 2013, adequate evidence of abatement was not found in four of five case files which contained CDI violations. The violations were for serious hazards involving falls from roofs and scaffolds, and a trench. During the inspections, the workers stopped working and were therefore temporarily removed from the hazard. The investigator in each case noted the employer's intention to correct the violation(s) prior to resuming work. However, the investigator left the site without any true assurance that the hazards would be abated. In one case, the employer did not accept delivery of the resulting citation, could not be located by MNOSHA, and did not pay any of the penalties. On December 4, 2014, MNOSHA ADM 3.4 was updated to clarify that CDI can only be applied if elimination of the hazard is observed on site. During the FY 2015 review, all case files reviewed where CDI was applied contained documentation showing the investigator witnessed the elimination of the hazard prior to the employees resuming work. Finding and recommendation FY 2014-04 (13-04) is considered completed.

6. Worker and Union Involvement

Minnesota Statute 182.659 and Chapter 3 of the FCM contain requirements and policies for the investigator to involve employees and employee representatives during the course of the inspection. This includes the opening conference, walk around, and closing conference. Chapter 1 of the MOOSE Manual for Inspection Files contains instructions to indicate contact with the union representative(s) or explain their absence. In cases where citations are issued, the authorized employee representatives are also mailed a copy of the citation.

The requirement to provide employee representatives the opportunity to participate during the various stages of an inspection is stated in Section 8(e) of the OSH Act and Chapter 3 of OSHA's FOM. Chapter 5 of the FOM contains the minimum level of documentation required including identification of employee representatives and those who accompanied the CSHO on the inspection, a written narrative, and any other relevant comments/information. Additionally as an index of effectiveness, 29 CFR 1902.4(c)(2) requires OSHA to determine whether the State Plan provides an opportunity for employees and their representatives, before, during, and after inspections, to bring possible violations to the attention of the state agency. The method OSHA uses to make

this determination is established procedure and case file review. OSHA utilizes this same method internally. Therefore, it is important that the investigator document that the opportunity has been provided. One way this can be accomplished is to explain why an employee representative is not shown as having participated, such as when they have declined to participate.

Chapter 5 of the FOM also contains the requirements to mail a copy of the citation to the union and complete a diary sheet chronologically listing all actions taken. A copy of all written correspondence is to be placed in the file per OSHA's ADM 03-01-005 *OSHA Compliance Records*.

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

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

During FY 2013, MNOSHA's internal quality control group noted inconsistent documentation of union involvement during the inspection. MNOSHA Instruction ADM 3.9 *Case File Processing* was amended on May 7, 2013, to include mailing of citations to the unions, and the requirement was discussed with administrative support staff at that time. The need for documentation was discussed with all MNOSHA staff on October 23, 2013.

In eight of the 16 cases included in the FY 2013 onsite review where workers were represented by a union, a union representative was not involved during the inspection process and the case did not contain information indicating participation had been offered and declined. Additionally, mailing of the citation to the union was not documented in the files. In response, a MNOSHA management analyst conducted four quarterly audits including 10% of the related case files. Deficiencies were addressed with the staff members involved. During the FY 2015 review, case files were found to be adequately documented for union involvement. Finding and recommendation FY 2014-05 (13-05) is considered completed.

C. Review Procedures

1. Informal Conferences

MNOSHA's review procedures are organized slightly different than the OSHA program. Instead of conducting an informal conference before the expiration of the contest period, a citation must be contested before an informal conference is held. In accordance with MN Stat.182.661 and Minnesota Rules Chapter 5210, employers, employees, and authorized employee representatives have 20 calendar days from the date of receipt of citations within which to file a notice of contest regarding the citation, type of violation, penalty, and/or abatement date. The statute further requires that the notice be filed on a form provided by the Commissioner and that the contesting parties serve a copy of the notice on affected employees.

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

2. Formal Review of Citations

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

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

MNOSHA's management or principal investigator also discusses penalty reduction and reclassification reasoning with employers during settlement conferences, and documents the reasons for the changes in the memorandum. In the cases reviewed during the FY 2015 audit, a majority of the changes were penalty reductions for settlement purposes.

D. Standards and Federal Program Changes (FPCs) Adoption

1. Standards Adoption

During FY 2014, three applicable standards were required to be adopted by the State of Minnesota. During FY 2015, the adoption of one applicable standard was optional.

Additionally, during FY 2015, OSHA published the Final Rule for Confined Spaces in Construction. Minnesota is in the process of rulemaking to adopt the rule identically. MNOSHA consistently responds to requests for their intent and adoption of standards in a timely manner.

**Federally-Initiated Standards Log
Summary for MN Report**

Subject	Intent to Adopt	Adopt Identical	Date Promulgated	Effective Date
Cranes and Derricks in Construction: Underground Construction and Demolition	YES	YES	11/12/2013	11/12/2013
Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment	YES	YES	09/29/2014	09/29/2014
Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions	YES	NO	03/16/2015	10/01/2015
Cranes and Derricks in Construction: Operator Certification	YES	YES	03/16/2015	03/16/2015

The State of Minnesota continues to provide timely notification to OSHA regarding all State-Initiated Standard Changes. Minnesota proposed and adopted six standard changes during FY 2014 and FY 2015. Minnesota Rule changes addressed the following topics: employee and authorized employee representative contests, employer contests, filing documents by facsimile and electronically, carbon monoxide monitoring, indoor workroom ventilation and temperature, and the standard industrial classification list for AWAIR.

2. OSHA or State Plan-Initiated Changes

All Federal Program Change (FPC) responses were submitted timely, as well as plan change information and any state initiated changes. For those FPCs that the state did not adopt, the items were not adopted due to the state having a pre-existing directive that addressed these issues. To access these documents, please visit http://www.osha.gov/dcsp/osp/std_fpc.html. For specific information on the state’s policy as it relates to these items, please contact MNOSHA Compliance at 651-284-5050.

**Federal Program Change
Summary for MN Report**

Directive Number	Title	Adoption Required, Equivalency Required or Adoption Encouraged/Not Required	Intent to Adopt	Adopt Identical	State Adoption Date
CPL 03-02-003 2014 626	OSHA Strategic Partnership Program for Worker Safety and Health	Adoption Encouraged / Not Required	NO	N/A	N/A
CPL 02-14-01 2014 645	Site-Specific Targeting 2014 (SST-14)	Equivalency Required	NO	N/A	N/A
CPL 02-00-157 2014 646	Shipyards Employment "Tool Bag" Directive	Equivalency Required	YES	YES	06/02/2014
CPL 02-01-056 2014 684	Inspection Procedures for Accessing Communication Towers by Hoist	Equivalency Required	NO	N/A	N/A
TED 01-00-019 2014 704	Mandatory Training Program for OSHA Compliance Personnel	Equivalency Required	NO	N/A	N/A
CPL 02-00-158 2014 705	Inspection Procedures for the Respiratory Protection Standard	Equivalency Required	YES	NO	01/27/2015
CPL 02-01-057 2015 724	Compliance Directive for the Cranes and Derricks in Construction Standard	Equivalency Required	YES	YES	03/31/2015
CPL 03-00-018 2015 725	Revision – National Emphasis Program – Primary Metal Industries	Adoption Required	YES	NO	12/22/2014
CPL 02-03-005 2015 744	Whistleblower Investigations Manual	Equivalency Required	NO	N/A	N/A
CPL 02-02-078 2015 764	Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis	Equivalency Required	NO	N/A	N/A
CPL 02-02-079 2015 784	Inspection Procedures for the Hazard Communication Standard (HCS 2012)	Equivalency Required	NO	N/A	N/A
TED 04-01-002 2015 804	OSHA Alliance Program CSP 04-01-002	Adoption Encouraged / Not Required	NO	N/A	N/A
CPL 03-00-019 2015 824	National Emphasis Program on Amputations	Adoption Required	YES	NO	10/01/2015
TED 03-01-004 2015 825	Special Government Employee Program Policies and Procedures Manual for the Occupational Safety and Health Administration's Voluntary Protection Programs CSP 03-01-004	Intent Required	NO	N/A	N/A
CPL 02-03-006 2016 844	Alternative Dispute Resolution Process for Whistleblower Protection Program	Adoption Encouraged / Not Required	NO	N/A	N/A

E. Variances

There were no variance requests received or variances granted during FY 2014 and FY 2015.

A variance is an order issued by the Minnesota DLI to allow an employer to deviate from the requirements of a MNOSHA standard. Variances can be temporary or permanent. Variances are to be written to cover future activity by the employer and his or her employees. DLI can refuse to accept an application for a variance regarding a contested citation.

When variances are granted by OSHA covering several states, MNOSHA will honor a federal variance, provided the employer has not applied to DLI for a separate State variance, the federal application included Minnesota, the federal standard from which the variance was granted has been adopted by MNOSHA without change, and DLI receives no objections to the variance.

F. State and Local Government Worker Program

MNOSHA's public employee program operates identically as 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 2015, MNOSHA conducted 99 public sector inspections. This is approximately 4.5% of the total inspections conducted in Minnesota. During the FY 2015 review, six public sector case files were reviewed. There were no apparent differences between the state and local government and private sector case files.

G. Workplace Retaliation Program

Throughout FY 2014 and FY 2015, MNOSHA's Whistleblower Protection Program consisted of an OMT Director, one lead investigator, and two investigators. Procedurally, the MNOSHA Whistleblower Protection Program adheres to MNOSHA ADM 3.6 *Discrimination Complaint Handling Procedures*, which provides guidelines for the investigation and disposition of discrimination complaints filed with MNOSHA. MNOSHA revised the directive on May 17, 2012, in response to OSHA's revision of its *Whistleblower Investigations Manual (WIM)* CPL 02-03-003, effective September 20, 2011. MNOSHA further revised their directive on October 23, 2013, in response to OSHA's concern that certain policies and procedures were not as effective as OSHA's. Subsequent revisions occurred on April 29, 2014, September 10, 2014, and January 28, 2015 primarily to expedite the investigation process.

Accordingly, this review followed the guidelines, procedures, and instructions of OSHA's WIM, and 29 CFR 1977. MNOSHA's lead investigator was interviewed and MNOSHA management was consulted for information as necessary during the review.

During FY 2015, MNOSHA docketed 40 cases for investigation and closed a total of 36 cases; a reduction from FY 2014 when 48 cases were opened and 57 cases were closed.

Investigative File Review

The cases reviewed were selected from those with final determinations during the review period and the selections were based on type of determination and the investigator of record. Nineteen (19) of the 36 cases (53%) were reviewed, including those with settled, settled other, dismissed, and withdrawn determinations. During the review period, the program employed three full-time whistleblower investigators, with the lead investigator transitioning into a supervisory role.

Cases are assigned for investigation after responses are received from both the complainant and respondent. An assignment memorandum is not produced but the assignment is tracked in MOOSE. Investigators meet monthly with the OMT Director to discuss cases and ensure cases are completed in a timely manner.

A review of the Case Summary and Length of Investigation reports for the review period indicated that of the 36 cases completed, two (6%) were withdrawn, 27 (75%) were dismissed, five (14%) were merit, one (3%) was settled, and one (3%) was settled other. The percentage of cases completed timely was 67%.

During the FY 2015 review, in two of the 19 cases reviewed, the complainant's alleged protected activity involved safety or health enforcement activity. In both cases the investigator did not include in the file any information from the inspection file to support or negate the allegations. According to OSHA's WIM, an investigator should conduct pre-investigation research including obtaining: copies of complaints, copies of the results of recent enforcement actions taken against the employer, copies of relevant documents including inspector's notes, and information on any previous whistleblower complaints filed by the complainant or against the respondent.

While there are some procedural and administrative differences between MNOSHA and OSHA's discrimination programs, the determinations made by MNOSHA were consistent with the evidence and reasoning contained in each of the 19 case files reviewed.

Observation FY 2015-OB-01: Discrimination case files did not contain information from enforcement case files to support or negate allegations in the case.

Federal Monitoring Plan FY 2015-OB-01: OSHA will periodically check case files to ensure information from enforcement case files is included in worker retaliation case files.

Complaint Intake and Screening

MNOSHA follows ADM 3.6 for complaint intake and screening. All complaints are screened by the investigators and are tracked in MOOSE. During the review period, MNOSHA had 49 complaints coded as screened and closed. Their previous instruction stated that screened out complaints will only be confirmed by letter if the complainant does not understand why their complaint does not meet the criteria to docket the case. This was included in the FY 2011 FAME as finding and recommendation 11-02. In response, MNOSHA's revised policy is to offer to send the complainant a letter confirming that the case is inappropriate for investigation and to document the complainant's response to the offer. The revised policy remains contrary to OSHA's WIM, which requires that a letter to the complainant be generated for all screened and closed complaints. Of the 11 screened and closed cases reviewed for FY 2015, three (27%) were not sent closing letters and the file did not note that the complainant did not want to receive one.

Notes regarding the intake information and the reason the complaint is screened and closed are entered into MOOSE. The investigators now document whether or not the complainant was in agreement with the disposition of their complaint and whether a follow up letter is sent. On occasion, a complainant may disagree with the investigator's determination that the complaint is

inappropriate for investigation. In the past, the complainant was not able to appeal that determination. OSHA's long-standing policy has been to docket and dismiss those complaints so that the complainant has the right to appeal. The difference in procedure was noted in the FY 2011 FAME as finding and recommendation 11-03. MNOSHA's revision of their ADM 3.6 on May 17, 2012 incorporated this change.

Lastly, MNOSHA's instruction indicates that if a complainant does not wish to file at the time of initial contact with MNOSHA, they may leave their address to receive a letter confirming the 30-day filing time period.

Observation FY 2015-OB-02: MNOSHA did not send a closing letter to the complainant for administratively closed cases and, in the alternative, did not note that the complainant declined to receive a letter.

Federal Monitoring Plan FY-OB-02: Discrimination cases will be discussed and evaluated during quarterly monitoring meetings.

Case Activity Worksheet

The MNOSHA Whistleblower Program does not use Case Activity Worksheets generated by the Whistleblower WebIMIS system. The program determined that they do not need the information contained on the form. While the Case Activity Worksheet is not provided to the respondent, a detailed allegation is incorporated into the respondent's notification letter.

Complainant Statement and Witness Interviews

MNOSHA utilizes a Complainant's Statement form filled out by the investigator after the initial phone intake with the complainant. The Complainant's Statement form includes a narrative of the allegation and is sent with the complainant's acknowledgement letter. The complainant is asked to fill in any incomplete sections of the form, review the narrative of the allegation, provide any additional written documentation, and sign to verify it is accurate. Complainants' initial statements are not taken in person.

Prior to beginning interviews with witnesses, Minnesota Statute § 13.04, subd. 2 requires the individual be given certain information referred to as the "Tennessee Warning." Included is information on confidentiality of the witness's statement. MNOSHA's ADM 3.6 directs the investigator to read the warning to non-management witnesses. During the FY 2015 review, three (16%) of the 19 files reviewed, showed that the Tennessee Warning had been given to management witnesses.

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

Observation FY 2015-OB-03: The "Tennessee Warning" was provided to management witnesses whose interview statements are not considered confidential.

Federal Monitoring Plan FY 2015-OB-3: Discrimination cases will be discussed and evaluated during quarterly monitoring meetings.

Docketing and Respondent Notification

Once a complaint has been determined to be appropriate for investigation, the investigator will docket the complaint and send the docket and notification letter to the complainant. In addition to the Complainant's Statement form, the complainant's letter includes dual filing rights, and is sent via certified mail. After MNOSHA receives the completed Complainant's Statement form, a docket and notification letter is sent to the respondent. The respondent is given ten days to submit their response and supporting documentation.

Final Investigation Report

MNOSHA has declined to change the name of the report to Report of Investigation as OSHA has done in order to be consistent with other federal agencies. MNOSHA only prepares a Final Investigation Report (FIR) when the complaint resulted in a full field investigation. Complaints that are closed for lack of cooperation, settlement, or withdrawals are closed with a memorandum to the OMT Director. The FIR follows the criteria provided in OSHA's WIM. One area where MNOSHA differs is how case files are organized. While the FIR and memorandums outline the facts of the case, MNOSHA's files are not arranged in accordance with the WIM so that supporting exhibits are referenced and easily identified. Rather, contents of the files are scanned into MOOSE.

MNOSHA utilizes a written determination that adequately sets forth the determination and provides the respective party their right to review of the MNOSHA finding.

Settlements

Two cases were settled during the review period with one coded as "settled" and one coded as "settled other." Both of the files contained fully executed copies of the agreements as well as closing letters to the complainant and respondent.

In the one settled case reviewed, MNOSHA included a confidentiality provision in the settlement agreement. OSHA's WIM contains instruction that settlement agreements must not state or imply that OSHA or DOL is party to a confidentiality agreement. Settlement agreements are disclosed by OSHA to the public upon request in accordance with the Freedom of Information Act (FOIA), unless one of the FOIA exemptions applies. Similarly, MNOSHA Instruction ADM 3.7 *Data Practices and Release of Case File Information* states that settlement agreements must be released.

Finding FY 2015-04: MNOSHA's settlement agreement for discrimination cases contains a confidentiality provision contrary to OSHA's Whistleblower Investigations Manual and MNOSHA Instruction ADM 3.7 *Data Practices and Release of Case File Information*.

Recommendation FY 2015-04: Ensure confidentiality provisions are not included in settlement agreements for discrimination cases.

Timeliness

The Occupational Safety and Health Act of 1970 (OSH Act) requires the complainant be notified of the case determination within 90 days. Although 29 CFR 1977 indicates the timeframe is directory in nature and delays will occur, every effort will be made to meet the deadline.

MNOSHA hired a new investigator midway into FY 2012. Overall that year, 42% of the cases were completed timely, with an average completion time of 189 days. In FY 2013, the percentage of cases completed within 90 days was 37%, with an average completion time of 222 days. The rise in the average days to completion was explained by a reduction in back logged cases with 34 cases being closed out with a completion time range of 98 days to 733 days. The topic is discussed during quarterly monitoring meetings throughout the year. During FY 2013, the program diligently worked to clear up their backlog of cases, while simultaneously completing new cases. For the first year since FY 2010, more cases were closed than were opened.

As noted above, over the last two years MNOSHA has made several changes to their complaint intake and investigation procedures in an attempt to expedite investigations. In FY 2015, 67% of the discrimination cases were completed by MNOSHA within 90 days, which is a notable increase over FY 2014 when 47% of the cases were completed timely.

Whistleblower WebIMIS System Information

MNOSHA entries into the Whistleblower Application for docketed cases include party information and investigation information; and do not utilize case comment, additional tracking, and the date of adverse action. MNOSHA does not currently enter administratively closed complaints into the WebIMIS, which was noted as a finding in the FY 2012 FAME and revisited during the FY 2013 onsite review.

All information is retained in MOOSE and is available to OSHA upon request. This is supported by the data that was provided to OSHA for this audit. MNOSHA offered to enter administratively closed case information into WebIMIS, with OSHA's help, since MNOSHA would be entering the same data into both systems creating a duplication of work. As an alternative, MNOSHA and OSHA signed a memorandum of understanding affirming MNOSHA's agreement to provide OSHA data related to administratively closed cases entered into MOOSE, upon request.

Program Management

MNOSHA primarily relies on their MOOSE, not the Whistleblower Application, for tracking and management of worker retaliation activity. The MNOSHA management team reviews worker retaliation activity reports from MOOSE on a monthly basis and does not utilize the report capability of the Whistleblower Application. Effective procedures are also in place to

review appealed cases. Requests for review must be submitted in writing. When a complainant requests an appeal (review), the file and appeal are reviewed by the MNOSHA Director and discussed with the investigator(s). If there is a dispute or question regarding complaints that are screened and closed, the OMT Director is involved and additional investigation is conducted if necessary. All screened and referred complaints are tracked in MOOSE.

Resources

Investigators are provided with computers, digital recorders, and personal protective equipment. Based on the current new caseload, staffing of three investigators appears to be adequate. As previously noted, MNOSHA continues to focus on reducing the backlog, while completing new cases in a timely manner, in order to raise the percentage of cases completed within 90 days.

H. Complaint About State Program Administration (CASPA)

OSHA received and investigated two CASPAs during FY 2015. As requested, MNOSHA provided a written response to each of the allegations within 30 days. MNOSHA's responses included an explanation of the actions taken and/or the procedures in place with respect to each complaint item. Onsite reviews were conducted by OSHA during which time staff was interviewed and cases were reviewed. In both instances it was determined that MNOSHA followed the appropriate processes and procedures which are at least as effective as OSHA's.

I. Voluntary Compliance Program

Voluntary Protection Program (MNSTAR)

There were 11 Voluntary Protection Program (MNSTAR) site evaluations conducted in Minnesota in FY 2015. Three of the 11 received the designation of MNSTAR sites for the first time, and the remaining eight were recertification evaluations. MNOSHA Instruction ADM 3.28 *MNSTAR Voluntary Protection Program* outlines how the state administers the program. MNOSHA's instruction follows OSHA's CSP 03-01-003 *Voluntary Protection Programs (VPP): Policies and Procedures Manual*. Applicants must meet the criteria contained in the MNOSHA Voluntary Protection Program instruction. In addition to requiring the company's injury and illness rate be below the national average for the industry, MNSTAR applicants' rates must also be below the state averages for the industry.

Partnerships

MNOSHA Directive ADM 3.27 *MNOSHA Strategic Partnership Plan* is consistent with *OSHA Strategic Partnership Program for Worker Safety and Health* CSP 03-02-003 (11/06/2013). There were two active partnerships in place, and one new partnership was signed during FY 2014 and continued in FY 2015. The three partnerships were being administered appropriately by MNOSHA. MNOSHA's partnerships are an extended voluntary cooperative relationship between MNOSHA and groups of employers, employees, employee representatives, and interested stakeholders designed to encourage, assist, and recognize efforts to eliminate serious hazards and achieve a high degree of worker safety and health.

Alliances

MNOSHA is not required to have an Alliance program similar to the *OSHA Alliance Program* CSP 04-01-002. However, MNOSHA does have alliances with associations in place. MNOSHA and alliance participants work together to reach out to, educate, and lead Minnesota's employers and their employees in advancing workplace safety and health.

During FY 2014, one new alliance was established with a community college to provide hands-on training on MNOSHA standards and mandated programs, networking, and promotional opportunities, to establish a more comprehensive management system for the campus. The opportunity to extend the efforts to other affiliated campuses was pursued in FY 2015. Additionally, a new alliance was established in FY 2015 with the Minnesota Department of Health for the development of a training program on workplace violence prevention. A new alliance was also established with the Consulate of Mexico to support consular events through training and technical assistance.

J. State and Local Government Sector 23(g) On-Site Consultation Program

MNOSHA conducted 130 onsite consultation visits in state and local government during FY 2014, which exceeded the grant projection of 120 visits. A total of 69 (88%) of the 78 initial visits were coded as high hazard visits, as defined by MNOSHA's High Hazard Emphasis Program. As a result of the consultation visits, 296 hazards were identified and corrected. All but one of the hazards identified were verified and corrected in a timely manner; within 14 days after the latest correction due date. (Source: Mandated Activities Report for Consultation (MARC) dated October 27, 2014)

During FY 2015, MNOSHA conducted 92 public sector consultation visits, which is 77% of their grant projection of 120. A total of 67 (89%) of the 75 initial visits were coded as high hazard visits. During FY 2015, 578 hazards were identified and corrected. All of the hazards identified were verified and corrected in a timely manner. (Source: MARC dated October 21, 2015)

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

In the FY 2015 State OSHA Annual Report (SOAR), MNOSHA provided information that outlines their accomplishment of meeting their Five-Year Strategic Management Plan. The information has been reviewed and analyzed to assess their progress in meeting performance plan goals. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, all but two of the annual performance goals have been met or exceeded.

The following summarizes the activities and/or accomplishments for each of the FY 2015 performance goals.

Strategic Goal #1

Reduce occupational hazards through compliance inspections.

Performance Goal 1.1: Reduction in total recordable cases (TRC) rate from a five-year average of 3.9.

Results: This goal was met.

Discussion: The FY 2015 target was a reduction in the calendar year (CY) TRC rate from the previous five-year average for CY 2009 – 2013, which was 3.9 per 100 workers. The CY 2014 TRC rate achieved was 3.7, a 5.13% reduction. MNOSHA Compliance continues to review new information to redefine targeting to reduce injury and illness rates.

Performance Goal 1.2: Reduction in state fatality rate from a five-year average of 0.661.

Results: This goal was not met.

Discussion: The FY 2015 target was a reduction in the state's fatality rate from the previous five-year average for FY 2010 – 2014, which was 0.661 per 100,000 workers. The FY 2015 fatality rate achieved was 0.741, a 12% increase. There were 20 fatalities in FY 2015 compared to 17 fatalities in FY 2014. MNOSHA Compliance continues to address workplace fatalities in its outreach materials, and during outreach presentations and seminars.

Performance Goal 1.3.a: Identified hazards totaling 4,718 during 1,800 inspections.

Results: This goal was met.

Discussion: The FY 2014-2018 Strategic Management Plan does not provide targets for the number of inspections; rather they are projected in the Annual Performance Plan and may change from year to year. The FY 2015 Performance Plan projected 1,800 inspections: 1,746 in the private sector and 54 in the public sector. During FY 2015, a total of 2,181 inspections were conducted: 2,082 in the private sector and 99 in the public sector. Sixty-eight percent (68%) of the inspections conducted resulted in violations; 64% of the violations were cited serious. Although during FY 2015, 4,431 hazards were identified and cited, which is 6% fewer than the baseline five-year average for FY 2008 – 2012 of 4,718 hazards, the average hazards identified per inspection increased 1.1% above the baseline.

Performance Goal 1.3.b: Conduct 62% of programmed inspections in targeted emphasis industries.

Results: This goal was met.

Discussion: MNOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain emphasis industries. The FY 2015 goal was for 62% of programmed inspections to be conducted within the emphasis industries. MNOSHA conducted 93% of all programmed inspections within the emphasis industries. Nine inspections of temporary employers were conducted, of which one (11%) resulted in citations being issued to the employer.

Performance Goal 1.3.c: Ongoing support in the areas of ergonomics, workplace violence, and safe patient handling.

Results: This goal was met.

Discussion: The FY 2015 target was ongoing support of Minnesota Workplace Safety Consultation's ergonomics and safe patient handling efforts. MNOSHA conducted 35 programmed inspections in the meat processing and healthcare industries.

Performance Goal 1.4: 86% of inspections designated as programmed inspections.

Results: This goal was not met.

Discussion: The FY 2015 target was for 86% of all inspections to be conducted as programmed inspections. In FY 2015, 82% (1,801) of MNOSHA's 2,181 inspections were opened as programmed inspections.

Strategic Goal #2

Promote a safety and health culture through compliance assistance, outreach, cooperative programs, and strong leadership.

Performance Goal 2.1.a: Maintain three Partnerships.

Results: This goal was met.

Discussion: The FY 2015 target was to maintain three Partnerships. In FY 2015, MNOSHA maintained a Partnership with Minnesota Department of Transportation and two contractors relating to the construction of the St. Croix Bridge's superstructure. The agreement was designed to ensure safety and maintain an open line of communication. MNOSHA has also maintained Partnerships with the Associated Builders and Contractors (ABC) and the Associated General Contractors (AGC). Employers in the construction industry are placed in one of three participation levels depending on the extent of their safety and health program.

Performance Goal 2.1.b: Increase Voluntary Protection Programs (MNSTAR) participation through one new and three re-certified participants.

Results: This goal was met.

Discussion: The FY 2015 target was to add one new MNSTAR participant and accomplish three re-certifications. There are currently 41 employers in the MNSTAR program. Three sites were granted initial STAR certification and one achieved merit status during FY 2015. Seven sites achieved full re-certification as MNSTAR sites.

Performance Goal 2.1.c: Continue to identify compliance assistance opportunities.

Results: This goal was met.

Discussion: MNOSHA continues to strive to improve communication with immigrant and hard-to-reach employers and workers. MNOSHA employs one investigator who is fluent in both English and Spanish. MNOSHA's booth at a Mexican Latino Resource Fair attracted 150 people. Two presentations were given in Spanish: one to 22 new employers and two on roofing installation to 205 workers. In addition, MNOSHA provides written materials to immigrant and other hard-to-reach employers in coordination with DLI's community services representative. MNOSHA updated its webpage with information on Ebola including information in Spanish and Somali.

Performance Goal 2.2: Maintain the total number of people participating in outreach / training at a five-year average of 4,063.

Results: This goal was met.

Discussion: The FY 2015 target was to maintain the baseline five-year average for FY 2008 – 2012 of 4,063 participants in outreach training sessions. MNOSHA compliance exceeded the goal for FY 2015 by conducting 104 presentations to 4,312 participants, 6% above the baseline. Ninety-nine percent (99%) of the presentations were given in emphasis areas including construction, youth, immigrant employers and employees, emerging businesses, and other strategic plan emphases.

Performance Goal 2.3: Continue the current practice of participating in homeland security efforts at state and national levels.

Results: This goal was met.

Discussion: The FY 2015 target was to continue with the current practice. During FY 2015, a MNOSHA director attended three federal Homeland Security conference calls. MNOSHA continued to participate on the State Emergency Response Plan. The Minnesota Emergency Operations Plan was reviewed in January 2015 and no edits were made. MNOSHA management personnel attended three meetings of the Emergency Preparedness and Response Committee. One MNOSHA director participated in briefings with the State Emergency Operations Center twice daily for two months regarding a bird flu outbreak that impacted 108 farms in 23 counties. MNOSHA assisted the MN Department of Agriculture in the areas of air quality monitoring and heat stress.

One director completed two remaining seminars to obtain an Emergency Management Certification: G556, FEMA Local Damage Assessment, and EMC960, Emergency Management Role Orientation.

Three staff members completed FEMA courses including IS-00100, Introduction to Incident Command System; IS-00200, ICS for Single Resources and Initial Action Incident; IS-0029, Public Information Officer Awareness; IS-00247.a, Integrated Public Alert and Warning System; and IS-0073.a, NIMS Resource Management.

Performance Goal 2.4: Maintain performance in the areas of response time and service level to stakeholders.

Results: This goal was met.

Discussion: The FY 2015 target was to maintain the baseline as an on-going performance. MNOSHA has two safety and health professionals on duty to answer questions received primarily through phone calls and emails. During FY 2015, these two positions responded to 4,251 phone calls and 1,446 written requests for assistance. During FY 2015, 77% of phone calls were received from employers, workers, and consultants. The information requested covers a wide variety of topics, which is why MNOSHA continues to use investigative staff to answer a majority of the calls.

During FY 2015, MNOSHA received 616 workplace safety and health complaints of which 270, or 44%, resulted in an on-site inspection with an average response time of 3.1 days. The remaining complaints were handled through MNOSHA's phone/fax process (nonformal complaint).

MNOSHA provides a variety of safety and health information on its website including printable handouts and information about its audio visual library, which offers a selection of safety and health videos and DVDs available for a free two-week loan. The MNOSHA website also provides links to other websites where safety and health regulations can be accessed. In total, there were 77,992 hits to the MNOSHA web page.

Strategic Goal #3

Strengthen and improve MNOSHA's infrastructure.

Performance Goal 3.1: Review rules annually for effectiveness: ongoing evaluation, development of rules, standards, guidelines, and procedures.

Results: This goal was met.

Discussion: MNOSHA staff continually monitors OSHA standard and policy activities and coordinates updates accordingly. During FY 2015, two federal standards were adopted and one Minnesota rule was updated. Eleven existing directives were reviewed and updated according to schedule and 22 directives received unscheduled updates throughout the year. They included scheduling, noise, silica in construction, right-to-

know / globally harmonized system (GHS), complaint handling, discrimination, penalty collection, and safe patient handling.

Performance Goal 3.2: Draft updates to the workforce development and retention plan.

Results: This goal was met.

Discussion: The FY 2015 target was to draft updates to the existing workforce development and retention plan. Potential retirement of staff in leadership roles during the next few years has been identified as a concern. The training directive is being updated to include soft skills such as organization, interviewing, conflict resolution, and creative training. Specialized training has been created for specific industries to address foundries, grain handling, asbestos, combustible dust, HAZWOPER re-certification, health care, process safety management, traffic controls, and window washing. MNOSHA staff act as an expert in each area and gain experience in leadership and interaction with stakeholders. MNOSHA has been able to retain field staff that have significant safety and health consulting experience and one investigator who speaks fluent Spanish. MNOSHA's staff includes seven industrial hygienists with over 15 years of experience (three are CIHs) and 15 safety investigators with over ten years of experience. During FY 2015, MNOSHA trained its staff on Right-to-Know including GHS, excavations, fall protection stand down, recordkeeping, and data practices.

Performance Goal 3.3: Evaluate consistency and quality of inspection files and develop workflow analysis of the discrimination process to ensure the business needs of MNOSHA, the requirements of OSHA, and the services provided to stakeholders are met.

Results: This goal was met.

Discussion: The FY 2015 target was to evaluate consistency and quality of inspection files and to develop workflow analysis of the discrimination process. Throughout FY 2015, inspection case files were reviewed by senior safety and industrial hygiene investigators and by management analysts. Feedback was provided to supervisors and to all staff during a division-wide staff meeting.

During FY 2015, MNOSHA's discrimination unit made several changes to expedite the processing of cases. The senior investigator became the unit supervisor allowing more cases to be completed within 90 days. Respondents are not notified of the complaint until the complainant's cooperation in the intake process is obtained. Lastly, cases proposed for a merit determination are reviewed by MNOSHA's attorneys for legal sufficiency prior to the parties being notified.

V. Other Special Measures of Effectiveness and Areas of Note

None.

Appendix A – New and Continued Findings and Recommendations

FY 2015 Minnesota State Plan Comprehensive FAME Report

FY 2015-#	Finding	Recommendation	FY 2014-# or FY 2014-OB-#
FY 2015-01	MNOSHA does not send a letter to the complainant at the conclusion of the nonformal complaint investigation to inform them of the outcome.	Send a letter to the complainant at the conclusion of the investigation, including a copy of the employer's response, to inform them of the outcome and provide an opportunity to request the matter be reviewed.	FY 2014-01
FY 2015-02	Noise and Respiratory Hazards LEP case files did not contain documentation showing that a comprehensive evaluation of the employer's hearing conservation program and/or noise reduction efforts had been conducted. Two of the three (66%) Noise and Respiratory Hazards LEP case files reviewed did not appear to contain evidence of a comprehensive evaluation of noise hazards	Ensure that MNOSHA Instruction CPL 2-2.1A <i>Noise Measurements and Citations in General Industry</i> is followed when evaluating the employer's hearing conservation program and/or noise reduction efforts and the file is documented accordingly.	FY 2014-02
FY 2015-03	Potential opportunities have not been taken to perform worker exposure monitoring for the purpose of documenting worker exposure for the complete evaluation of a condition discovered during the inspection. Ten of 18 (56%) programmed comprehensive inspections appeared to miss reasonable opportunities to conduct exposure monitoring for serious health hazards	Ensure exposure monitoring is conducted to evaluate and document worker exposure to health hazards.	FY 2014-OB-01
FY 2015-04	MNOSHA's settlement agreement for discrimination cases contains a confidentiality provision contrary to OSHA's Whistleblower Investigations Manual and MNOSHA Instruction ADM 3.7 <i>Data Practices and Release of Case File Information</i> .	Ensure confidentiality provisions are not included in settlement agreements for discrimination cases.	

Appendix B – Observations Subject to New and Continued Monitoring

FY 2015 Minnesota State Plan Comprehensive FAME Report

Observation # FY 2015-OB-#	Observation# FY 2014-OB-# or FY 2014-#	Observation	Federal Monitoring Plan	Current Status
	FY 2014-OB-01	Potential opportunities have not been taken to perform worker exposure monitoring for the purpose of documenting worker exposure for the complete evaluation of a condition discovered during the inspection.		Converted to Finding
	FY 2014-OB-02	Exposure monitoring was not conducted when likely necessary to adequately address concerns brought forth through complaint items.		Closed
	FY 2014-OB-03	An employer’s own exposure monitoring data has been relied upon to support a violation.		Closed
FY 2015-OB-01		Discrimination case files did not contain information from enforcement case files to support or negate allegations in the case.	OSHA will periodically check case files to ensure information from enforcement case files is included in worker retaliation case files.	New
FY 2015-OB-02		MNOSHA did not send a closing letter to the complainant for administratively closed cases and, in the alternative, did not note that the complainant declined to receive a letter.	Discrimination cases will be discussed and evaluated during quarterly monitoring meetings.	New
FY 2015-OB-03		The “Tennessen Warning” was provided to management witnesses whose interview statements are not considered confidential.	Discrimination cases will be discussed and evaluated during quarterly monitoring meetings.	New

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 Minnesota State Plan Comprehensive FAME Report

FY 2014-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2014-01	MNOSHA does not send a letter to the complainant at the conclusion of the nonformal complaint investigation to inform them of the outcome.	Send a letter to the complainant at the conclusion of the investigation, including a copy of the employer's response, to inform them of the outcome and provide an opportunity to request the matter be reviewed.	<p>Minn. Rules 5210.0420, subp. 2, requires employers to post a copy of the letter from MNOSHA and the employer's response in the workplace for 15 days and to provide copies to the union representative.</p> <p>Employees have access to the MNOSHA letter and employer's response in the workplace. If the information is not posted or the items are not corrected MNOSHA would do an on-site enforcement inspection.</p> <p>Upon request, MNOSHA provides a copy of the letter in accordance with Minn. Stat. 13.02, subd 7, and MNOSHA Instruction ADM 3.7. Once proceedings are complete, the file is public.</p> <p>The initial letter to the complainant has been modified to inform the complainant of the procedure to request a copy of the employer's response.</p>	12/29/2014	Awaiting Verification 01/15/2016
FY 2014-02	Noise and Respiratory Hazards LEP case files did not contain documentation showing that a	Ensure that MNOSHA Instruction CPL 2-2.1A <i>Noise Measurements and Citations in General Industry</i> is followed when evaluating the employer's hearing conservation	<p>Discussion was held at the IH staff meeting, focusing on evaluation and documentation of respiratory protection and hearing conservation programs when doing RESPNOISE inspections.</p> <p>One hundred percent of RESPNOISE</p>	08/11/2015	Open 02/11/2016

	comprehensive evaluation of the employer's hearing conservation program and/or noise reduction efforts had been conducted.	program and/or noise reduction efforts and the file is documented accordingly.	LEP case files were audited by MNOSHA for four consecutive quarters, ending with FFY2015 quarter 3 data. <u>FFY2014 Qtr 4 results:</u> Six out of seven files reviewed were acceptable. <u>FFY2015 Qtr 1 results:</u> Nine out of ten files reviewed were acceptable. <u>FFY2015 Qtr 2 results:</u> Thirty out of thirty-two files reviewed were acceptable. <u>FFY2015 Qtr 3 results:</u> All twenty-nine files reviewed were acceptable.		
FY 2014-03	Documentation of noise exposures was not adequate to support a violation of 29 CFR 1910.95, as described in MNOSHA Instruction CPL 2-2.1A <i>Noise Measurements and Citations in General Industry</i> .	Ensure that MNOSHA Instruction CPL 2-2.1A <i>Noise Measurements and Citations in General Industry</i> is followed when determining and documenting noise exposures.	Discussion at IH staff meeting addressed the need to sample for noise, to identify a violation and support a citation, unless unable to do so and approved by the supervisor. One hundred percent of case files with citations for 29 CFR 1910.95 were audited by MNOSHA for four consecutive quarters, ending with FFY2015 quarter 3 data. <u>FFY2014 Qtr 4 results:</u> All three files reviewed were acceptable. <u>FFY2015 Qtr 1 results:</u> One file was reviewed and was acceptable. <u>FFY2015 Qtr 2 results:</u> All three files reviewed were acceptable. <u>FFY2015 Qtr 3 results:</u> All four files reviewed were acceptable.	08/11/2015	Completed 02/11/2016
FY 2014-04	Abatement was classified as "Corrected During Inspection" where the workers had	Ensure that "Corrected During Inspection" is being applied appropriately in that abatement of the hazard is achieved and documented during the	ADM 3.4, Abatement Verification, and the MOOSE manual have been updated to clarify CDI application through observed abatement and corresponding abatement documentation.	12/04/2014	Completed 01/15/2016

	stopped working during the inspection and the employer indicated the hazards would be corrected prior to resuming work.	inspection.			
FY 2014-05	Union participation was not documented in accordance with MNOSHA ADM 3.9 <i>Case File Processing</i> and Chapter 4 of the MOOSE manual to assure involvement in all necessary aspects of the inspection; i.e., opening conference, walkaround, closing conference, and mailing of the citation.	Ensure that MNOSHA ADM 3.9 <i>Case File Processing</i> and Chapter 4 of the MOOSE manual are followed by documenting union representative involvement for all necessary aspects of the inspection and citation issuance and/or the representative's declination to be involved.	<p>ADM 3.9, Case File Processing, was amended 5/7/2013 to include mailing of citations to unions, and the process was discussed with Administrative Support staff, both prior to the FFY2013 audit and again on March 20, 2014. Inconsistent documentation of union involvement during the inspections was noted by the MNOSHA quality control group, and the need for documentation was discussed with all MNOSHA staff on 10/23/2013; a checklist was also developed for staff.</p> <p>An email was sent to all staff on 3/27/2014 focusing their attention on documenting union participation during inspections. The case file review process will also ensure documentation is present in case files.</p> <p>To ensure that the two items are documented in case files, 10% of case files that had union representation were audited by MNOSHA for four consecutive quarters, ending with FFY2015 Quarter 3 data.</p>	08/11/2015	Completed 01/15/2016

			<p><u>FFY2014 Qtr 4 results:</u> All eleven files reviewed were documented regarding union participation. Documentation of mailing the citation was missing in three of the nine files.</p> <p><u>FFY2015 Qtr 1 results:</u> All eight files reviewed were acceptable for union participation. Three out of four files with citations had acceptable documentation of mailing the citation.</p> <p><u>FFY2015 Qtr 2 results:</u> All eight files reviewed were correctly documented for union participation. All six files with citations were documented appropriately.</p> <p><u>FFY2015 Qtr 3 results:</u> Nine out of eleven files reviewed correctly documented union participation. All nine files with citations were documented appropriately.</p>	
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Appendix D – FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 Minnesota State Plan Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. The SAMM Report, which is native to IMIS, a system that generates reports from the NCR, is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA’s ability to combine the data. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year’s report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA’s WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM.

All of Minnesota State Plan’s enforcement data was captured in NCR during FY 2015. The Minnesota State Plan opened 2,181 enforcement inspections, and they were all captured in NCR.

U.S. Department of Labor

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

State Plan: Minnesota - MNOSHA			FY 2015	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	3.05	9	State Plan data is pulled from NCR. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	3.05	N/A	State Plan data is pulled only from NCR. This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	1.49	2	State Plan data is pulled from NCR. Further review level is negotiated by OSHA and the State Plan.

2b	Average number of work days to initiate complaint investigations (federal formula)	1.49	N/A	State Plan data is pulled only from NCR. This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	State Plan data is pulled from NCR. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	1	0	State Plan data is pulled from NCR. Further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.94	+/-20% of SWRU: 1.92	State Plan data is pulled from NCR. Further review level is based on a one-year national rate, pulled only from OIS.
		Other: .91	+/-20% of Other: .87	
6	Percent of total inspections in state and local government workplaces	4.54%	+/-5% of 8.22%	State Plan data is pulled from the NCR. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 1,605	+/-5% of S: 1,445	State Plan data is pulled from the NCR. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 576	+/-5% of H: 355	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$826.58	+/-25% of \$2,002.86	State Plan data is pulled from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	\$604.66	+/-25% of \$1,402.49	State Plan data is pulled from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	\$699.33	+/-25% of \$2,263.31	State Plan data is pulled from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.

	c. Average current serious penalty in private sector (101-250 workers)	\$1,086.97	+/-25% of \$3,108.46	State Plan data is pulled from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,218.75	+/-25% of \$3,796.75	State Plan data is pulled from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
9	Percent in compliance	S: 25.53%	+/-20% of S: 28.47%	State Plan data is pulled from the NCR.
		H: 36.22%	+/-20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
10	Percent of work-related fatalities responded to in one workday	85%	100%	State Plan data is pulled from the NCR. Further review level is fixed for all State Plans. N/A - State Plan data was extracted from the NCR, which does not capture this measure. This measure is captured in OIS.
11	Average lapse time	S: 14.86	+/-20% of S: 42.78	State Plan data is pulled from the NCR.
		H: 18.59	+/-20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	86.37%	+/-15% of 67.96%	State Plan data is pulled from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	State Plan data is pulled from the NCR. Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	39%	100%	State Plan data is pulled from the WebIMIS. Further review level is fixed for all State Plans.

15	Percent of 11(c) complaints that are meritorious	12%	+/-20% of 24%	State Plan data is pulled from WebIMIS. Further review level is based on a three-year national average, pulled from WebIMIS.
16	Average number of calendar days to complete an 11(c) investigation	95	90	State Plan data is pulled from the WebIMIS. Further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.91%	+/- 25% of 1.35%	State Plan data is pulled from the NCR. Further review level is based on a one-year national rate, pulled only from OIS.