

FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

Maryland Occupational Safety and Health (MOSH)



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I. Executive Summary

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to evaluate the Maryland Occupational Safety and Health (MOSH) program's performance during Fiscal Year (FY) 2021, and its progress in resolving findings identified during previous FAMEs. This FAME included an on-site comprehensive review of safety and health inspection files randomly selected and obtained from the OSHA Information System (OIS), as well as randomly selected OIS complaint files and electronic complaints submitted through the OSHA website. OSHA also reviewed whistleblower case files obtained from the Web Integrated Management Information System (WebIMIS).

During FY 2021, MOSH continued to navigate through the previous year's COVID-19 pandemic-related challenges. MOSH covers 2.5 million workers in nearly 175,000 establishments in the state of Maryland. Although Maryland businesses had reopened by FY 2021, individual counties were given the authority to enforce the governor's various executive orders in response to local concerns.

MOSH completed corrective actions on two previous FAME findings – one related to not adequately addressing whistleblower complaints, and the other related to reviewing e-complaints. MOSH made significant strides to develop and implement new complaint processing procedures to ensure that every complaint received is reviewed and evaluated. MOSH has still not yet adopted the maximum penalty increase adopted by OSHA six years ago in 2016; and the decreasing number of SLG inspections being conducted over the past three years was converted from an observation. OSHA identified two new findings and continued one finding during this year's FAME.

MOSH increased the number of informal conferences within 15 working days and reduced the working day count between receipt of citation and the informal conference overall; therefore, this observation was closed. However, OSHA identified the following five new observations:

- MOSH not initiating enforcement action by way of inspection, investigation, or inquiry on 46 e-complaint alleging serious and/or hazardous workplace conditions;
- MOSH not accurately reflecting a complaint response time in SAMMs #1 and #2;
- MOSH not providing Next-of-Kin (NOK) with inspection results;
- MOSH not documenting and adequately performing inspections on two traffic-related fatalities – one of which also involved injury to one or more workers of the same employer – to ensure that commonly employed traffic safeguards were in place where work was being conducted on or near roadways;
- MOSH's increase in open non-contested cases with overdue abatement.

This report contains a total of three findings and five observations. Appendix A presents the new and continued findings from this year's evaluation. Appendix B presents the observations and federal monitoring plans. Appendix C displays the status of the previous findings with the associated corrective actions.

II. State Plan Background

A. Background

The Maryland Department of Labor (MDOL), Division of Labor and Industry (DLI), is the state agency designated by the governor to administer the MOSH program. The Maryland State Plan was initially approved on July 5, 1973, pursuant to Section 18 of the Occupational Safety and Health (OSH) Act. The State Plan was certified on February 15, 1980 and granted State Plan final approval on July 18, 1985.

MOSH operates under the authority of the MOSH Act, Labor and Employment Article, Section 5-101 through 5-901. MOSH operated under the guidance of Tiffany P. Robinson who was appointed secretary of the MDOL in July 2019. Matthew Helminiak served as Commissioner of DLI. Michael Stracka departed MOSH in July 2021, leaving the assistant commissioner position currently vacant. Michael Penn, Chief of Compliance, has been delegated the authority to act as Assistant Commissioner until the position is filled. MDOL is headquartered in Baltimore. The DLI is located in Hunt Valley and consists of MOSH representatives stationed in different regional and field offices located in Hunt Valley, Easton, Hagerstown, and Upper Marlboro.

MOSH is the agency responsible for ensuring that employers provide Maryland workers with workplaces free from recognized safety and health hazards. MOSH covers over 2.5 million workers and more than 175,000 employers in the state of Maryland. MOSH's Compliance Services Unit conducts occupational safety and health inspections for all state and local government workplaces, and private sector places of employment in the state of Maryland. However, MOSH does not inspect places of employment which fall under OSHA's jurisdiction. OSHA's jurisdiction includes federal workers, the United States Postal Service, private sector maritime activities (shipyard employment, marine terminals, and longshoring), and U.S. military bases. Additionally, MOSH's Outreach Unit provides free training and education; and manages its cooperative programs. MOSH also provides free consultation services through its consultation program.

MOSH operates a private sector on-site consultation project under Section 21(d) and an SLG consultation project under Section 23(g) of the OSH Act of 1970. MOSH's Discrimination Unit investigates whistleblower complaints made by workers who feel that they have been retaliated against by their employer for making a safety and health complaint or exercising other protected activity. The Research and Statistic Unit provides MOSH with statistical data on occupational fatal and nonfatal workplace injuries and illnesses. Industries covered by MOSH include a combination of agricultural, manufacturing, construction, transportation, and trade and service industries. Similar to OSHA, MOSH has selected certain high hazard industries on which to

focus its safety and health activities through the implementation of emphasis programs.

As a State Plan, MOSH has the authority to promulgate standards and regulations which maybe more stringent than OSHA's standards. MOSH has multiple standards and regulations which differ from the federal program including, but not limited to: High Voltage Lines (Title 6), Fall Protection in Steel Erection (Code of MD Regulations (COMAR) 09.12.25), and Tree Care and Removal (COMAR 09.12.28). MOSH also made amendments to OSHA standards that are more stringent than OSHA's such as: Occupational Exposure to Formaldehyde (29 CFR 1910.1048), Lead in Construction Work (29 CFR 1926.62), Excavations (Requirements for Protective Systems (29 CFR 1926.652), and Steel Erection (29 CFR 1926, Subpart R).

B. New Issues

Maximum Penalty Increase

In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually according to the Consumer Price Index (CPI). Over the past six years, MOSH has still not completed the legislative changes to increase maximum penalties – resulting in a new finding.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A seven-person OSHA team, including a whistleblower supervisor and investigator, was assembled to conduct the comprehensive on-site review. The case file review was conducted at the MOSH Hunt Valley Office from November 15, 2021 to November 19, 2021. OSHA returned on February 4, 2021 and subsequently on February 15, 2021 to complete the case file review. A total of 247 safety, health, and whistleblower inspection and complaint files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted and complaints received during the evaluation period (October 1, 2020 through September 30, 2021). The selected population included:

- Fourteen (14) fatality case files
- Fourteen (14) incident case files
- Forty-nine (49) programmed inspection case files
- Twenty-eight (28) complaint files
- Eighty (80) not valid complaint files
- Thirty (30) investigated complaint files
- Thirty-two (32) closed whistleblower case files

In addition, OSHA conducted a review of all 605 OSHA e-complaints forwarded to MOSH.

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

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report (SIR)
- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan (APP)
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Comprehensive on-site case file review

Each SAMM report has an agreed-upon Further Review Level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents MOSH's FY 2021 SAMM report and includes the FRL for each measure. Throughout the evaluation process MOSH was cooperative, shared information, and ensured staff was available to discuss cases, policies and procedures, and answer questions.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

a) Training

In 2021, MOSH hired four new safety and one new health compliance officer. Newly hired compliance staff attended virtual OSHA Training Institute (OTI) training as well as on-the-job training (OJT) with senior compliance staff. It is anticipated that MOSH staff will be able to attend more in-person training courses in FY 2022 and FY 2023. MOSH staff has also been provided with the opportunity to attend safety conferences for professional development.

The Hunt Valley office location maintains a safety lab for hands on training as well as modern classrooms for internal and OTI road courses. MOSH developed and implemented an Instruction (15-11) competency-based training program for MOSH compliance personnel. The training program outlines a two-phase approach to completing the mandatory training requirements: Phase 1 includes initial courses and Phase 2 includes technical courses. The instruction specifies that OJT is also a necessary component of compliance officer development.

b) OSHA Information System (OIS)

MOSH uses OIS as its primary means of inspection and unprogrammed activity (UPA)

entry. MOSH uses the reports available in OIS to internally evaluate its program by identifying deficiencies and areas of excellence. The reports are also used to analyze trends so that it can make adjustments to meet its established goals or develop new enforcement and outreach priorities.

MOSH retains the authority to address certain complaints through its referral process. As a result of the complaint review, OSHA noted that SAMM #1A may not capture all inspected complaints due to the internal referral procedure that MOSH utilizes. In order to be captured by the SAMM algorithm, the UPA must be coded as complaint. Regardless, SAMM #1 was not significantly impacted by the complaint inspection through referral process because most of the 70 referrals MOSH received in FY 2021 were not associated with complaints. All whistleblower investigation data is captured in WebIMIS. Similar to OIS, MOSH utilizes all report capabilities to assess the effectiveness of its program.

c) State Internal Evaluation Program Report (SIEP)

MOSH does not develop an annual formal written SIEP report for the comprehensive evaluation of its internal operations. However, prior to issuance, MOSH reviews case files at the regional level and in its central office. An extensive review with central office staff is conducted prior to issuance of any citations associated with fatality or significant case. Mandated measures are reviewed quarterly and MOSH's self-evaluation is reported to OSHA in the State OSHA Annual Report (SOAR).

d) Staffing

In FY 2021, MOSH hired an Outreach, Cooperative Compliance Program (CCP) and Voluntary Protection Programs (VPP) manager, as well as a program manager for Operations and Bureau of Labor Statistics (BLS) reporting in addition to four safety and one health compliance officers.

As of July 1, 2021, MOSH was staffed with 70.15 full-time employees (FTEs). MOSH allocated 43.20 safety compliance officer positions and reported that it was staffed with 34 safety compliance officers. The MOSH safety compliance officer benchmark is set at 38. In FY 2021, MOSH hired four safety compliance officers.

As of July 21, 2021, MOSH allocated 11.45 health compliance officer positions and reported that it was staffed with 10.45 health compliance officers. The MOSH health compliance officer benchmark is set at 18. MOSH has experienced considerable turnover in health compliance staff over the past few years. The program consistently and actively seeks to employ new staff. MOSH hired one new health compliance officer in FY 2021.

2. ENFORCEMENT

a) Complaints

In response to Finding FY 2020-02 which indicated that MOSH did not validate and process at least 43% of OSHA e-complaints from former employees and other complainants alleging serious hazards, MOSH reorganized its complaint processing procedures and addressed more complaints by inspection. Like previous FAMES, OSHA conducted an evaluation of the OSHA e-complaints forwarded to MOSH in FY 2021. The evaluation determined that MOSH staff evaluated each complaint it received. Finding FY 2020-02 was completed.

Serious Hazard Complaint Validation and Processing Procedures

Finding FY 2020-02 (Completed)

MOSH did not validate and process at least 72 of 169 (43%) electronic complaints from former employees and others alleging serious hazards.

The FY 2021 EOY SAMMs #1A and #2A indicated that MOSH inspected 151 and investigated 58 of the 707 complaints it received in FY 2021. During the review, it was determined that complaints were also inspected by utilizing the referral process as described in the OIS section above to achieve the desired enforcement action. In FY 2021, approximately 230 of the OSHA e-complaints received by MOSH specifically alleged COVID-19-related hazards. Overall, OSHA noted an improvement in MOSH's OSHA e-complaint validation and processing procedures.

However, the OSHA e-complaint review determined that MOSH did not exercise its enforcement authority to address hazards identified on e-complaints after validation and processing of 46 OSHA e-complaints determined to allege serious hazards. These complaints with alleged hazards were neither inspected nor investigated by MOSH. MOSH provided an explanation for not addressing each complaint. Some reasons include former employees selecting *do not reveal my name* on the complaint form with no response from the complainant after MOSH attempted to contact them to explain the MOSH ACT 5-209 and the OSH ACT 8(f)(1); the complainant withdrawing after they were informed their identities could not be protected in the event the employer inquired; no response from non-employee complainants after three attempts to follow-up; and not meeting MOSH formality requirements.

To address one of the issues, in FY 2021, MOSH revised its online complaint form to not allow a non-employee complainant to request their name to be withheld as an option. MOSH explained that enforcement action could now be taken on non-employee complaints without having to advise complainants their name could not be withheld.

Appendix A of the MOSH ACT describes the program's process to address complaints received from non-employees. The MOSH FOM states on Page IX-2 *Written and oral complaints filed by nonemployees as well as oral complaints filed by employees and unsigned written complaints filed by employees are considered non-formal complaints.* Page IX-5 then states that all nonformal complaints shall receive a response. *Upon receipt and evaluation of a nonformal complaint, the Compliance Manager, as soon as possible, shall prepare a letter to the employer advising of the complaint, informing of the*

standards allegedly violated, when necessary, and outlining the corrective action required. This letter shall be sent by certified mail with return receipt requested.

MOSH believes, based on the MOSH Act, that it cannot protect the identity of non-employee complainants, and uses that as a rationale to dismiss those complaints – even those alleging serious hazards. If MOSH is unable to contact the complainant to inform them their identity cannot be protected, the complaint is dismissed which prevents potential serious workplace hazards from being inspected or investigated. This could put workers' safety and health in jeopardy. When MOSH informs the complainants that their identity will not remain confidential, the result typically is that the complainant withdraws their complaint. Federal OSHA protects the identity of all complainants to the fullest extent of the law, as described in Chapter 9 of the FOM: *Complainant Protection. Identity of the Complainant. Upon request of the complainant, his or her identity will be withheld from the employer in accordance with Section 8(f)(1) of the Act. No information will be given to the employer that would allow the employer to identify the complainant.*

Complaint Enforcement

Observation FY 2021-OB-01

MOSH did not initiate enforcement action on 46 of OSHA e-complaints alleging hazardous workplace conditions.

Federal Monitoring Plan FY 2021-OB-01

OSHA will conduct a review of OSHA e-complaints in FY 2022 to determine if MOSH initiated enforcement action in response to hazardous workplace allegations.

The End-of-Year (EOY) SAMM report (Appendix D) indicated that MOSH averaged 3.07 workdays to initiate complaint inspections (SAMM #1A), falling within the five working day FRL. MOSH averaged 3.29 workdays to initiate complaint investigations (SAMM #2A), falling just outside of the three working day FRL.

A review of complaints revealed that the receipt date MOSH entered into OIS does not consistently coincide with the date the complaint was received. Of the 89 OSHA e-complaints that OSHA deemed serious and that MOSH inspected or investigated, MOSH entered the receipt date after the actual receipt date in 50 (56%) of the complaints. The receipt date was entered into OIS an average of 4 days after the actual receipt date in 44 of 70 (63%) OSHA e-complaints OSHA deemed serious that were inspected. The receipt date was entered into OIS an average of 1 day after the actual receipt date in 6 of 19 (32%) OSHA e-complaints OSHA deemed serious that were investigated. Therefore, SAMMs #1A and #2A may not accurately reflect the actual number of workdays to initiate complaint inspections and investigations, respectively. Similarly, MOSH did not consistently document the receipt date for those complaints it did not validate. However, non-valid complaints do not impact SAMMs #1A or #2A.

Complaint Response Time

Observation FY 2021-OB-02

MOSH did not accurately reflect the receipt dates for 50 of 89 (56%) OSHA e-complaints that OSHA deemed serious and that MOSH inspected or investigated.

Federal Monitoring Plan Observation FY 2021-OB-02

OSHA will evaluate complaint receipt dates in FY 2022 to determine if receipt dates are accurately identified in OIS and impact SAMMs #1A and #2A.

MOSH responded to all complaints coded as imminent danger within one day meeting the SAMM #3 FRL which is fixed at 100%.

b) Fatalities

SAMM #10 indicates that MOSH investigated 18 work-related fatalities in FY 2021. MOSH inspected 15 of the 18 (83%) within one workday. The FRL is fixed at 100%. The three outlier fatality investigations were COVID-related and were not opened until MOSH could determine they may be work-related; subsequently they were opened within one day once it was determined that the fatalities may have been work-related.

An FY 2021 review of fatalities indicated that victims' family member or NOK were not sent correspondence addressing the final outcome of the inspection in six of 14 (29%) of the reviewed fatality cases. In two of the cases, the NOK received a copy of the case file by request through the Maryland Public Information Act (MPIA). Discussions with MOSH officials revealed that phone conversations with the NOK, for each fatality case, occurred frequently throughout the inspection.

NOK Notification Documentation

Observation FY 2021-OB-03

In six of 14 (43%) fatality case files, there was no documentation showing that the final NOK letter with the inspection results were sent to the family members.

Federal Monitoring Plan FY 2021-OB-03

In FY 2022, OSHA will evaluate fatality case files to determine if NOK letters with inspection results are sent to the family members at the conclusion of fatality investigations.

Employers are required to report all fatalities to MOSH within eight hours. In some cases, MOSH may not have jurisdiction due to deaths from natural causes. If an inspection is initiated, but is later determined not to be work-related, MOSH may document its onsite inspection activity as a no inspection due to no jurisdiction.

A review of the FY 2021 electronic complaints revealed that FY 2020 on-site activity related to a worker fatality involving a temporary traffic control zone was not documented in OIS with an inspection file. Similarly, MOSH also did not document on-site activity of

a case resulting in a fatality and injuries while workers were repaving a parking lot when they were struck by an errant vehicle involved in a motor vehicle accident in FY 2020. MOSH clarified that a compliance officer evaluated each site and determined the fatalities not to be work-related but did not document the activity as no inspection due to no jurisdiction. OSHA determined that inspection files should be developed for these work-related fatalities.

Documentation

Observation FY 2021-OB-04

MOSH did not document and adequately perform inspections for two traffic-related fatality inspections ensuring that commonly employed traffic safeguards were in place where work was being conducted on or near roadways.

Federal Monitoring Plan FY 2021-OB-04

In FY 2023, during the next comprehensive FAME, OSHA will review OIS reports, UPA files, and inspections files for MOSH's roadway and work zone incidents.

c) Targeting and Programmed Inspection

Based on SAMM #7, MOSH conducted 1,236 total inspections during FY 2021 – accomplishing 56% of its goal. In particular, MOSH conducted 1,117 safety inspections and 119 health inspections. Safety and health inspections both fell below the FRL. MOSH planned for 1,968 safety inspections and 222 health inspections in FY 2021. The FY 2021 FRL for safety is +/- 5% of the goal established in the FY 2021 grant application (1,968 inspections) or 1,869.6 to 2,066.4 inspections. The FRL for health is +/- 5% of the goal established in the FY 2019 grant application (222 inspections) or 210.9 to 233.1 inspections.

Although MOSH fell short of meeting its goal, it conducted 194 more inspections than in FY 2020. Due to the continuing impact of COVID in FY 2021, the MOSH program adjusted its goals to best serve the working population during FY 2021. MOSH also utilizes a number of targeting programs to identify and schedule programmed inspections. These include the use of OSHA's National Emphasis Programs (NEPs) and Maryland-specific Local Emphasis Programs (LEPs) which address special emphasis hazards and industries in Maryland. MOSH has adopted LEPs for:

- Maryland High Hazard Industries
- Tree Care and Removal
- Health Hazards in Construction
- Fall Hazards in Construction
- Electrical Hazards in Construction

MOSH participates in the OSHA exempted SIC/NAICS industry list as provided in the current Appropriations Act. The Federal Appropriations Act contains limits for OSHA

activities where 23(g) grant funds are used on a year- by-year basis. Since these 23(g) grant funds are passed through OSHA to the State Plan, MOSH is held to the same restrictions and limits imposed on OSHA for the use of federal funds. The Appropriations Act limitations do not apply to 100% State Plan funds. MOSH Instruction, 14-9, describes the limitations or prohibitions of the use of federal funds for certain MOSH activities.

In FY 2021, 69.74% of all safety inspections and 5.8% of all health inspections were programmed. MOSH's in-compliance rate identified in SAMM #9 for health cases was 28.57% and 15.35% for safety cases in FY 2021. The health in-compliance rate was below the FRL (+/- 20% of the three-year national average of 40.64% or 32.51% to 48.77%). The safety in-compliance rate was also below the FRL (+/-20% of the three-year national average of 31.65% or 25.32% to 37.98%), indicating that MOSH sufficiently targets inspections and that compliance staff is well-trained in hazard recognition. Most case files that were identified as being in-compliance were found to be documented properly with no issues identified. However, OSHA identified two fatality case files that were lacking documentation of industry safeguard assessments. See Observation FY 2021-04.

Case files with citations issued included proper hazard identification and documentation with the correct standard for each violation noted. The on-site review did not reveal any other concerns with hazard identification. In FY 2021, MOSH issued violations in 924 safety cases and 74 health cases. MOSH issued repeat violations in 21.24% of not-in-compliance cases.

d) Citations and Penalties

During the on-site review, OSHA observed that MOSH's case files were well-organized and well-documented. Each file contained an extensive hazard description and well-developed employer knowledge gleaned from worker and management interviews. Most case files included numerous well-labeled photos. Based on the information and documentation contained in the reviewed case files, it appeared that citations were issued for apparent violations when appropriate. OSHA noted a slight difference in residential construction fall protection citation issuance policy but it was determined that the same hazards were identified and the appropriate abatement was obtained. Therefore, this did not rise to the level of a finding.

In FY 2021, MOSH issued 4,603 violations – 46.4% were serious and 18.5% were repeat. SAMM #5 clarifies that MOSH averaged 2.98 serious, willful, or repeat (SWR) violations per inspection, and 1.52 other-than-serious (OTS) violations per inspection surpassing the FRL of +/- 20% of the three-year national average of 1.78 or 1.42 to 2.14 for SWR violations and +/- 20% of the three-year national average of 0.91 or 0.73 to 1.09 for OTS violations. Before issuing a citation, MOSH considers the gravity of the violation. To determine this, MOSH considers the severity of the injury or illness that could result from the alleged violation, and the probability that an injury or illness could occur as a result of the alleged violation. The case file review revealed that citation classification

(severity/probability) was found to be in accordance with the MOSH FOM.

MOSH grouped citations where appropriate. The case file review did not note any major deviations from MOSH or OSHA policy. The MOSH FOM provides general and standard specific guidance for grouping violations.

MOSH issued 10 willful and 831 repeat violations in FY 2021. The review indicated that MOSH cited repeat violations where it was appropriate. An extensive review with central office staff is conducted prior to issuance of any citations associated with fatality or significant cases. MOSH consults with the Office of the Attorney General when any questions or concerns arise prior to issuance of citations. According to OSHA's definition, MOSH did not issue any significant cases in FY 2021.

In FY 2021, SAMM #11 provides that MOSH average safety lapse time was within the FRL (+/-20% of the three-year national average of 52.42 days or 41.94 to 62.90 days) at 46.79 days. MOSH average health lapse time fell just outside of the FRL (+/-20% of the three-year national average of 66.10 days or 52.88 to 79.32 days) at 83.01 days.

SAMM #8 indicates that MOSH's average current penalty in the private sector was \$871.24, falling outside of the FRL (+/- 25% of the three-year national average of \$3,100.37 or \$2,325.28 to \$3,875.46). Although MOSH's penalties are significantly lower than the national average, SAMM #12 clarifies that it maintained 89.66% of its penalties, significantly more than the FLR (+/-15% of the three-year national average of 69.08% or 58.72% to 79.44%).

e) Abatement

The FY 2021 EOY State Information Report (SIR) identified 121 non-contested cases that were awaiting abatement verification for more than 60 days. This represents a significant increase from the FY 2019 and FY 2020 SIRs which respectively identify seven and 57 open non-contested cases with open abatement.

Abatement Verification and Documentation

Observation FY 2021-OB-05

MOSH has not verified and documented abatement for 121 non-contested inspection cases that have been open for more than 60 days.

Federal Monitoring Plan FY 2021-OB-05

OSHA will continue to monitor the status of open abatement for non-contested inspection cases in FY 2022.

OIS reports show that MOSH conducted 6 follow-up inspections and issued 4 failure-to-abate violations in FY 2021. MOSH policies and procedures outline when follow-up inspections are necessary.

f) Worker and Union Involvement

SAMM #13 indicated that in 99.92% of inspections (FRL 100%), MOSH included worker representation. The EOY SAMM report indicated that MOSH included worker representation on all but one inspection. It was determined that the singular outlier was due to an OIS data entry error. During the on-site review, OSHA found that MOSH conducts interviews with workers on a consistent basis, and unions are provided the opportunity to participate in opening and closing conferences, as well as during the walkaround portion of inspections. SAMM #4 provides that MOSH was able to obtain entry at all sites.

Worker interviews are conducted to develop hazard descriptions and develop employer knowledge. Interview statements are documented in case files associated with incidents and fatalities. MOSH's policies resemble OSHA's policies. Under COMAR 09.12.20.F, if the employer contests, workers have the right to elect "party status" before the hearing examiner.

3. REVIEW PROCEDURES

a) Informal Conferences

MOSH follows the FOM guidance when determining penalty reductions during the informal conference. The MOSH conferee negotiates the amount of penalty reduction depending on the circumstances of the case, the financial condition of the employer, and what improvements in worker safety and health can be obtained in return. Penalty reductions are not offered for those items which lack proper documentation of abatement.

During FY 2021, MOSH provided effective consideration to the gravity of violations, the size of the business being inspected, good faith of the employer, and the employer's previous inspection history. In addition, MOSH considered the type, gravity, and severity of the violation when initially assessing penalty adjustment factors.

MOSH provided justification for vacating and/or reclassifying violations and only on rare occasions vacated or reclassified violations. During the FY 2021 on-site review, there were no concerns with the changes made to citations during the informal conference. All changes noted were appropriate to the case.

SAMM #12 indicated that MOSH maintained 89.66% of its penalties – exceeding the FRL. Any modifications made to violations did not indicate any systemic problems within the MOSH program. The on-site review did not reveal any settlement pattern concerns.

The FY 2021 EOY SIR indicated that MOSH vacated only 1.04% of violations pre-contest. Similarly, MOSH only reclassified violations in 0.88% of cases pre-contest. Likewise, the case file review did not reveal any issues with citation modification. The FY 2021 case file review revealed that MOSH continued to hold informal conferences beyond the 15-working day period in 21 of 42 (50%) of cases where an

informal conference was held. Informal conferences were held an average of 18 working days after the citations were received. The longest gap between receipt of citation and informal conference was 61 working days. MOSH policies do not require MOSH to hold informal conferences within the 15-working day contest period. In FY 2021 MOSH reduced the average number of working days in which an informal conference is held and held the majority of reviewed case file informal conferences – 38 of 42 (90%) - within 30 working days. OSHA closed the associated observation as MOSH significantly decreased the number of workdays between citation and issuance the informal conference. OSHA did not detect an impact on effectiveness of the program due to the delay of the informal conference.

Informal Conferences

Observation FY 2020-OB-02 (Closed)

In 70% of the case files reviewed, MOSH held informal conferences beyond the 15-working day contest period, and has not developed or implemented a policy ensuring that employers abate serious hazards when informal conferences were scheduled and held beyond the 15- working contest period.

b) Formal Review of Citations

The employer may preserve the ability to litigate a case when it properly files a Notice of Contest with the commissioner or authorized representative within 15 working days of receipt of the citation. MOSH continues to attempt to settle cases informally after it receives a Notice of Contest. When a case cannot be settled informally and the employer has submitted a Notice of Contest, the commissioner or authorized representative notifies the Office of Administrative Hearing. The commissioner or authorized representative also informs the employer of the time, place, and nature of the hearing as appropriate.

The FY 2021 EOY SIR indicates that 18.25% (46 of 252) of violations in contested cases settled through the Office of the Attorney General are vacated while the national average is recorded at 14.48%. Similarly, the SIR shows that 17.48% (36 of 206) of violations in contested cases settled through the Office of the Attorney General are reclassified. The national average is recorded at 12.17%. MOSH settled all of reviewed cases informally.

The FY 2021 EOY SIR indicates that 63.19% of penalties are retained after a contest has been filed, which was on par with the national average reported at 63.30%. The review did not reveal concerns with the originally issued citations. In general, MOSH may amend or administratively vacate a citation when the citation was issued with an administrative or technical error, when previously unknown additional facts are presented, or when additional facts establishing that no employees were exposed to the hazard are identified. The FOM also defines the circumstances when citation amendment or administrative vacating is not justified. The case file review did not reveal any adverse decisions.

MOSH policy regarding the disclosure of documents is governed by the Maryland Public Information Act (MPIA) and the regulations adopted by DLLR (COMAR 09.01.04).

MOSH policy is to disclose all documents to which the public is entitled under the MPIO and the regulations. All decisions were made available to the public and were consistent with federal procedures. OSHA is not aware of any inconsistency with federal precedence nor any poor quality decisions. The on-site review did not reveal any discrepancies with the procedures outlined in the FOM.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

a) Standards Adoption

State Plans are required to respond within 60 days of initial notification to declare whether they intend to adopt an OSHA change. According to 29 CFR 1953, when a federal change is identified as having the potential to impact the effectiveness of the State Plan, State Plans are required to either adopt the change identically or submit an alternative approach with a State Plan supplement that is at least as effective as the federal change.

Over the past six years, MOSH has still not adopted the maximum penalty increase. MOSH has an equivalent regulation for the Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work and does not intend to adopt OSHA's regulation at this time. Similarly, MOSH has its own regulation for the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records. The regulation is pending OSHA review.

State Plans are required to respond within 60 days of initial notification to declare whether they intend to adopt an OSHA change. According to 29 CFR 1953, when a federal change is identified as having the potential to impact the effectiveness of the State Plan, State Plans are required to either adopt the change identically or submit an alternative approach with a State Plan supplement that is at least as effective as the federal change.

Current legislation prevents MOSH from adopting FPCs within six months of OSHA promulgation when there is a delay in OSHA enforcement. In 2019, MOSH attempted to pass new legislation to address this but it was not passed. Regardless, MOSH has adopted all current FPC regulations except for the maximum penalty increase. OSHA will continue to monitor MOSH's legislative action to address FPC adoption when there is a delay in OSHA enforcement.

Adoption of Maximum and Minimum Penalty Increases

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See [81 FR 43429](#). As required by law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osha-civil-penalties>; [87 FR 2328](#) (Jan. 14, 2022).

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

MOSH is required to adopt maximum and minimum penalty increases that are at least as effective as the agency's most recent increase issued in January 2022, without further delay. OSHA recognizes that the state needs to implement legislative changes before this adoption can be completed. However, it is now five years past the initial adoption deadline. A letter to MOSH informing that failure to adopt these increases would very likely result in FAME finding and requesting that MOSH respond with an action plan for completing the necessary legislative changes was sent on September 3, 2021. MOSH responded on October 1, 2021.

Upon review, OSHA was concerned that the response did not sufficiently outline an action plan for adoption, and a second letter to MOSH was sent on November 22, 2021. MOSH responded on December 1, 2021 and confirmed that increasing penalty amounts will require legislative changes to Labor and Employment Article, 5-810, Annotated Code of Maryland. DLI plans to submit a legislative package to the governor's office in 2022 in accordance with the schedule set for the 2023 legislative session.

Until an at least as effective maximum and minimum penalty levels are adopted, the following finding will remain open.

Federal Program Change - Maximum Penalty Increase

Finding FY 2021-03

MOSH has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

Recommendation FY 2021-03

MOSH should work with its state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as OSHA's maximum and minimum penalty levels.

The current status of FY 2020 and 2021 federal standards adoption are listed in Table A below. Standards that were not yet adopted but that were required to be adopted before FY 2021 are also included.

b) Federal Program Change (FPC) Adoption

MOSH continues to be delinquent in its adoption of multiple FPC directives. FY 2021 FPC directives and directives from previous FYs that have not yet been adopted are listed in the table B below:

Finding FY 2021-01 (FY 2020-01) Federal Program Changes (FPCs)

MOSH did not take action on FPCs within the required timeframes.

Recommendation FY 2021-01

MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes.

The status of FY 2020 and 2021 federal directive adoptions is presented in Table B below:

Table A
Status of FY 2021 Federal Standards Adoption
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	4/10/2017	Yes	Yes	1/14/2021	4/23/2021
Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	8/25/2021	No	N/A	1/26/2021	N/A
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	8/25/2021	No	N/A	3/14/2021	N/A
Final Rule on the Beryllium Standard for Construction and Shipyards (8/31/2020)	10/30/2020	4/10/2017	Yes	Yes	2/27/2021	5/3/2021
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/6/2021	Yes	Yes	7/21/2021	8/27/2021
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR, Part 1903 (1/15/2021)	3/16/2021	12/1/2021	Yes		7/14/2021	
Interim Final Rule on Maximum Penalty Increases 29 CFR, Parts 1902, 1903 (7/1/2016)	9/1/2016	12/1/2021	Yes		1/1/2017	

Table B
Status of FY 2021 Federal Program Change (FPC) Adoption
(May include any delinquent FPCs from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Adoption Required						
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	6/29/2020	Yes	No	8/4/2020	Not Yet Adopted
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	8/14/2020	Yes	Yes	6/10/2020	8/30/2021
Equivalency Required						
Revised National Emphasis Program – Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (7/7/2021)	7/22/2021	6/22/2021	Yes	Yes	8/22/2021	8/27/2021
Compliance Directive for the Excavation Standard CPL 02-00-165 (7/1/2021)	9/30/2021				1/30/22	
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (6/28/2021)	7/13/2021	7/13/2021	Yes	No	8/13/2021	8/27/2021
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021				6/12/2021	
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	3/14/2022	Yes	Yes	9/19/2021	3/14/2022
Inspection Procedures for Respirable Crystalline Silica Standards CPL 02- 02-080) (06/25/2020)	8/24/2020	2/17/2021	Yes	No	12/24/2020	Not Yet Adopted
Field Operations Manual (FOM) CPL 02-00-164 (4/14/2020)	6/14/2020				10/14/2020	

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Whistleblower Investigations Manual CPL 02-03-007 (1/28/2016)	4/27/2016	4/10/2017	Yes	Yes	7/28/2016	Not Yet Adopted
Mandatory Training Program for OSHA Whistleblower Investigators TED 01-00-020 (October 8, 2015)	12/8/2015				4/8/2016	
OSHA Strategic Partnership for Worker Safety and Health CPL 03-02-003 (11/6/2013)	1/14/2014				5/6/2015	
<i>Adoption Encouraged</i>						
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021				N/A	
Electronic Case File System Procedures for the Whistleblower Protection Program (6/18/2020)	8/18/2020	2/17/2021	No	N/A	N/A	N/A
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/30/2020	2/17/2021	Yes	N/A	

c) State Plan Initiated Change (SIC) Adoption

MOSH adopted Instruction 21-1, COVID-19 Pandemic Field Enforcement Guidelines on August 27, 2021. The Instruction establishes procedures for MOSH compliance and consultation staff while conducting field inspections and investigations during the COVID-19 pandemic.

5. VARIANCES

MOSH variance provisions are described in Sections 5-318 through 5-327 of the MOSH Act and COMAR 09.12.20.17. There were no variances requested during the FY 2021 evaluation period.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

SAMM #6 indicates that MOSH conducted 59 safety and health inspection in SLG workplaces. MOSH conducted 4.77% of its total inspection activity in SLG for FY 2021, falling below the FRL (+/-5% of the 8.40% negotiated in the FY 2021 grant application or 7.98% to 8.82%). MOSH SLG inspections have been decreasing since FY 2019. SLG inspections may have been impacted as MOSH reassessed its inspection priorities due to the COVID-19 pandemic. Observation FY 2020-OB-01 was converted to finding as it has been reported as an observation in the FAME for more than three years.

State and Local Government (SLG) Inspection Goals

Finding FY 2021-03 (Observation FY 2020-OB-01)

MOSH conducted 59 of 1,236 (4.77%) inspections in SLG workplaces – 125 fewer inspections than its anticipated goal of 8.4% of inspections.

Recommendation FY 2021-03

MOSH should develop a strategy to conduct more inspections in SLG as agreed upon in its grant application.

Although no penalties are assessed against SLG employers, MOSH has worked with these agencies to bring them into compliance with current safety and health standards. Abatement information is required from SLG entities and is reviewed and evaluated in the same manner as private sector abatement documentation.

7. WHISTLEBLOWER PROGRAM

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by MOSH. COMAR 09.12.20.05 provides for employee whistleblower protection under §5-604 of the Maryland Occupational Safety and Health Act. Although SAMMs #14, #15, and #16 fall outside of the FRL, they often fall below the FRL due to procedural matters or internal decisions. The FRL is fixed for SAMM #14 and #16 for all states. The FRL for SAMM #15 is based on a three-year national average. The whistleblower-related SAMMs are presented in Appendix D. MOSH's major procedures were deemed to be at least as effective.

Of the 32 files reviewed, 17 were administratively closed, 13 were dismissed, and two were settled. All dispositions were appropriate and timely. The FY 2021 on-site review did not reveal any cases where a serious safety and health complaint associated with a whistleblower complaint was not addressed by MOSH. Finding FY 2020-03 was completed.

Finding FY 2020-03 (Completed)

MOSH did not generate an associated UPA or inspection for whistleblower complaints in six of 14 (43%) whistleblower complaints alleging serious safety and health concerns.

The comprehensive on-site review revealed that MOSH erroneously administratively closed,

instead of dismissing a docketed case that had been withdrawn. It was also noted that in at least one case, the case file did not indicate that the complainant was provided with appeal rights. OSHA determined that these were isolated incidents and did not rise to the level of a finding.

The on-site review also determined that the Final Investigative Report (FIR) – known by OSHA as the Report of Investigation (ROI) – does not include citations to specific exhibits in the case file. However, the review did not indicate any issues with MOSH review procedures and the investigator was available to answer any questions the assistant commissioner had during the review process. As such, this matter did not rise to the level of a finding.

It was also noted that MOSH does not maintain the postmarked envelope or other information identifying the date the complaint was received in the case file. However, OSHA did not notice any discrepancies concerning the receipt date in the case file.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

OSHA received one CASPA in FY 2021. The CASPA was related to MOSH's handling of COVID-19 complaints. OSHA began its investigation in November 2020. OSHA's investigation did not result in any findings or recommendations and the CASPA was closed.

9. VOLUNTARY COMPLIANCE PROGRAM

MOSH promotes and recognizes exceptional safety and health efforts through its voluntary programs. MOSH's VPP recognizes mid-to-large size employers for developing a comprehensive safety and health management system that protects workers from harm. These VPP workplaces are recognized for their efforts in achieving an exceptional, progressive program that has management commitment and worker involvement, employs routine hazard identification, hazard control and safety, and health training.

MOSH's VPP mirrors OSHA's VPP with the exception that it only accepts employers who meet the STAR status – the federal program also allows for the MERIT designation to employers who are close but have not yet met the full criteria of the program. MOSH's VPP also does not extend the program to mobile worksites. MOSH currently recognizes 20 VPP sites. Due to the COVID-19 MOSH did not add any new sites to the VPP in 2021. The VPP unit awarded one site reapproval and received one new application in FY 2021. Inspection deferrals are approved under VPP, which mirrors the federal policy. Worksites are removed from programmed inspection lists during participation in MOSH's VPP.

MOSH has also operates a Cooperative Compliance Partnership (CCP) for employers in Maryland that predates VPP in Construction. MOSH's CCP seeks to establish a cooperative relationship with private sector companies who are committed to reducing injuries and illnesses and building a positive safety and health culture in the construction industry. Employers comply with requirements that go above and beyond the minimum standards and work together to address the complex safety and health issues related to larger construction

activities with a mix of employers. MOSH is currently reorganizing its CCP program and during the reorganization, maintained seven sites in the program. In addition, two new partnerships were signed in FY 2021. It is expected that several new applications will develop into partnerships under the program in FY 2022.

MOSH has implemented the Strategic Partnership for Excellence in Construction Safety (SPECS) which is a strategic partnership agreement signed with Associated Building Contractors, Inc., (ABC). Level 3 participants may designate a job site for exemption from programmed inspections for up to two years. Seven construction companies are currently recognized as partners under SPECS.

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

According to the FY 2021 Mandated Activities Report for Consultation (MARC), the MOSH Consultation Program conducted 35 on-site consultation visits at state and local government workplaces in FY 2021. Thirty-three consultation visits were reported as initial visits, one was reported as a follow-up, and one was reported as a training and education visit. All hazards were abated within the required timeframe. MOSH projected that 61 total visits would be conducted in state and local government workplace. Although it did not meet its goal, MOSH responded to all voluntary requests.

Appendix A – New and Continued Findings and Recommendations

FY 2021 Maryland Occupational Safety and Health Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	<p><i>Federal Program Changes (FPCs)</i> MOSH did not take action on FPCs within the required timeframes.</p>	MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes.	FY 2020-01 FY 2019-01 FY 2018-01 FY 2017-01 FY 2016-01 FY 2015-01
FY 2021-02	<p><i>Federal Program Change -Maximum Penalty Increase</i> MOSH has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.</p>	MOSH should work with its state authorities to complete the legislative changes necessary to enable it to adopt maximum and minimum penalty amounts that are at least as effective as federal OSHA’s maximum and minimum penalty levels.	
FY 2021-03	<p><i>State and Local Government (SLG) Inspection Goals</i> MOSH conducted 59 of 1,236 (4.77%) inspections in SLG workplaces – 125 fewer inspections than its anticipated goal of 8.4% of inspections.</p>	MOSH should develop a strategy to conduct more inspections in SLG as stated in its grant application.	FY 2020-OB-01 FY 2019-OB-01 FY 2018-OB-04 FY 2017-OB-05

Appendix B – Observations and Federal Monitoring Plans

FY 2021 Maryland Occupational Safety and Health Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01		<i>Complaint Enforcement</i> MOSH did not initiate enforcement action on 46 of OSHA e-complaints alleging serious and hazardous workplace conditions.	OSHA will conduct a review of OSHA e-complaints in FY 2022 to determine if MOSH initiated enforcement action in response to hazardous workplace allegations.	New
FY 2021-OB-02		<i>Complaint Response Time</i> MOSH did not accurately reflect the receipt dates for 50 of 89 (56%) OSHA e-complaints that OSHA deemed serious and that MOSH inspected or investigated.	OSHA will evaluate complaint receipt dates in FY 2022 to determine if receipt dates are accurately identified in OIS and impact SAMMs #1A and #2A.	New
FY 2021-OB-03		<i>NOK Notification Documentation</i> In six of 14 (43%) fatality case files, there was no documentation showing that the final NOK letter with the inspection results were sent to the family members.	In FY 2022, OSHA will evaluate fatality case files to determine if NOK letters with inspection results are sent to the family members at the conclusion of fatality investigations.	New
FY 2021-OB-04		<i>Fatality Documentation and Inspections</i> MOSH did not document and adequately perform inspections on two traffic-related fatalities ensuring that commonly employed traffic safeguards were in place where work was being conducted on or near roadways.	In FY 2023, during the next comprehensive FAME, OSHA will review OIS reports, UPA files, and inspections files for MOSH’s roadway and work zone incident and fatality response and documentation.	New

Appendix B – Observations and Federal Monitoring Plans

FY 2021 Maryland Occupational Safety and Health Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-05		<p><i>Abatement Verification and Documentation</i></p> <p>MOSH has not verified and documented abatement for 121 non-contested inspection cases that have been open for more than 60 days.</p>	OSHA will continue to monitor the status of open abatement for non-contested inspection cases in FY 2022.	New
	FY 2020-OB-01 FY 2019-OB-01 FY 2018-OB-04 FY 2017-OB-05	<p><i>State and Local Government (SLG) Workplace Inspection Goals</i></p> <p>MOSH conducted 147 of 2,046 (7.18%) inspections in SLG workplaces – 24 less than its anticipated goal 8.3%.</p>	In FY 2021, OSHA will continue to monitor MOSH’s activities in SLG workplaces, emphasizing the percent of inspections conducted each quarter.	Converted to a Finding
	FY 2020-OB-03 FY 2019-OB-03 FY 2018-02 FY 2017-02 FY 2016-02	<p><i>Informal Conferences</i></p> <p>In 70% of the case files reviewed, MOSH held informal conferences beyond the 15 working day contest period, and has not developed or implemented a policy ensuring that employers abate serious hazards when informal conferences were scheduled and held beyond the 15 working day contest period.</p>	In FY 2020, OSHA will monitor the number of cases with informal conferences held significantly beyond the 15 working day contest period to determine the effect on abatement verification.	Closed

Appendix C – Status of FY 2020 Findings and Recommendations
 FY 2021 Maryland Occupational Safety and Health Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	<p><i>Federal Program Changes (FPCs)</i> MOSH did not take action on FPCs within the required timeframes.</p>	<p>MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes.</p>	<p>As of April 2021, all outstanding FPC standard adoptions were completed. MOSH does not intend to adopt the Interim Final Rule on Maximum Penalty Increase or the Annual Adjustment to Civil Penalties for Inflation. MOSH is focusing on FPC directive adoption.</p>	<p>Not Applicable</p>	<p>Open (March 15, 2021)</p>
FY 2020-02	<p><i>Serious Hazard Complaint Validation and Processing Procedures</i> MOSH did not validate and process at least 43% of electronic complaints from former employees and other complainants alleging serious hazards.</p>	<p>MOSH should develop a strategy to ensure that all complaint allegations covered by MOSH are addressed.</p>	<p>MOSH developed a new streamlined process that evaluates each electronic complaint received.</p>	<p>March 15, 2021</p>	<p>Completed</p>

Appendix C – Status of FY 2020 Findings and Recommendations
 FY 2021 Maryland Occupational Safety and Health Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-03	<p><i>Whistleblower Complaints</i> MOSH did not generate an associated UPA or inspection for whistleblower complaints in six of 14 (43%) whistleblower complaints alleging serious safety and health concerns.</p>	<p>MOSH should develop a strategy ensuring that a safety and/or health investigation or inspection is conducted in accordance with MOSH policies and procedures when a whistleblower complainant alleges a safety and health concern.</p>	<p>MOSH evaluates each discrimination complaint independently for allegations of safety and health hazards and referring for inspection or investigation those situations that merit further review based on the information obtained during the investigation and in accordance with the FOM.</p>	July 10, 2020	Completed

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

FY 2021 Maryland Occupational Safety and Health Comprehensive FAME Report

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

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
1a	Average number of work days to initiate complaint inspections (state formula)	3.07	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.53	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	3.29	3	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.74	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5a	Average number of violations per inspection with violations by violation type (SWRU)	2.98	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (Other)	1.52	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further

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

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				review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	4.77%	+/- 5% of 8.40%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 7.98% to 8.82%.
7a	Planned v. actual inspections (safety)	1,117	+/- 5% of 1,968	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,869.60 to 2,066.40 for safety.
7b	Planned v. actual inspections (health)	119	+/- 5% of 222	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 210.90 to 233.10 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$871.24	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector	\$787.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national

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

FY 2021 Maryland Occupational Safety and Health Comprehensive FAME Report

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	(1-25 workers)			average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,037.60	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	c. Average current serious penalty in private sector (101-250 workers)	\$1,562.21	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$2,140.52	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in-compliance (safety)	15.35%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in-compliance (health)	28.57%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range

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

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				of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	83.33%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	46.79	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	83.01	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	89.66%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.92%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	36%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	14%	+/- 20% of 20%	The further review level is based on a three-year national average. The range

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

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				of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	133	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.17%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.