

# **FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

**Industrial Commission of Arizona (ICA)  
Arizona Division of Occupational Safety and Health  
(ADOSH)**



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## **I. Executive Summary**

The purpose of this report is to assess Arizona's Occupational Safety and Health (ADOSH) program performance for Fiscal Year (FY) 2021 and its progress in resolving outstanding findings from the FY 2020 Follow-Up Federal Annual Monitoring Evaluation (FAME) report. The criteria used to measure performance included those mandated by the Occupational Safety and Health Administration (OSHA).

ADOSH developed a five-year strategic plan to cover FY 2016 to 2020 and annual goals were established for measuring the performance and effectiveness of its programs and services. At ADOSH's request, the strategic plan was extended to the end of FY 2021. Details are addressed in ADOSH's FY 2021 State OSHA Annual Report (SOAR).

For several years, difficulties in hiring and high staff turnover have impacted safety and health enforcement presence in Arizona's workplaces. In FY 2021, low enforcement presence has been an acute problem, due to the declining number of enforcement staff. Some new compliance officers were not fully trained in the safety and health courses required to conduct inspections independently. Furthermore, OSHA Information System (OIS) reports were either not generated or underutilized. These reports would have alerted management of program deficiencies and vulnerabilities and created the opportunity to improve program performance. This, coupled with a failure to adopt or to timely adopt required safety and health standards and federal program changes, including OSHA's Healthcare Emergency Temporary Standard (ETS), prevented ADOSH from affording Arizona's workers equivalent protections as OSHA. As discussed in Section II.B. New Issues below, as a result of these shortcomings, OSHA has published a Federal Register Notice that initiates reconsideration and proposes revocation of Final Approval of the Arizona State Plan.

In FY 2021, ADOSH's enforcement inspections continued a four-year decline with only 44% (486 of 1,100) of the goal achieved. Furthermore, 55% of safety inspections that were conducted were in-compliance where no workplace hazards were identified. In inspections where citations were issued, penalty amounts were significantly lower than the national average. Lapse time, the time between when an opening conference is conducted and a case is closed, in safety inspections continued to be high, at an average of 74 days. OSHA's concerns with ADOSH's enforcement activity have been discussed during quarterly meetings and documented in several years of FAME reports.

The FY 2020 Follow-up FAME identified nine findings and three observations. Corrective action was implemented to close two findings and two observations but many of the findings have not been resolved. In FY 2021, there were 11 findings, of which seven were carried over from the FY 2020 Follow-up FAME, and seven new observations identified during this evaluation. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective action.

## **II. State Plan Background**

### **A. Background**

The State of Arizona operates an occupational safety and health program administered by ADOSH under the Industrial Commission of Arizona (ICA). James Ashley is the Director of the Agency and the State Plan Designee. Jessie Atencio is the Director for the ADOSH program with Phil Murphy as Assistant Director for the enforcement program and Steven Morgan as Assistant Director for the consultation program. There are two ADOSH offices, one located in Phoenix and another in Tucson.

Organizational units include Administration, Safety Compliance, Industrial Hygiene Compliance, Consultation, Education and Training, Boiler and Elevator Safety, and Research and Statistics. The Boiler and Elevator Safety, and Research and Statistics units were not funded by the OSHA 23(g) grant.

The 23(g) grant provided funding for full-time equivalent (FTE) staff comprised of two (1.98 FTE) managers, five (4.95 FTE) first line supervisors, 15 safety compliance officers, nine health compliance officers, one compliance assistance specialist, two whistleblower protection program investigators, five (5.4 FTE) clerical staff, and two trainers.

Seven consultants provided consultation for state and local government employers; 15% of their time was charged to the 23(g) grant and the remainder of their time was charged to a 21(d) cooperative agreement that covers private sector consultation activities. This report only covers services provided to state and local government. The private sector consultation program is evaluated separately in the FY 2021 Regional Annual Consultation Evaluation Report (RACER).

ADOSH jurisdiction includes state and local government entities as well as all private sector employees and workplaces, except federal workers, batch plants, mining operations, smelters, and most employers on tribal lands. The same penalty structure is used for state, local government, and the private sector. Inspections with proposed penalties in excess of \$2,500, fatality investigations, and citations relating to worker injuries were presented before the Commissioners of the ICA for approval prior to issuance.

### **B. New Issues**

In FY 2021, the initial federal base award to fund the 23(g) program was \$2,101,400. Arizona matched the federal funds for a total grant amount of \$4,202,800. In addition, the state matched an amendment increase of \$48,000 and a one-time only award of \$191,750 (including a reclamation of \$160,000) in federal funds, increasing the total federal and state funds to \$4,682,300. On February 18, 2021, Arizona's base award was permanently reduced by \$25,000 due to repeated de-obligation and lapse of federal funds. The total 23(g) expenses were \$5,098,324 and Arizona did not lapse any funds. Arizona spent an additional \$416,024 in 100% state funds of which \$412,320 was for the purchase and implementation of the Salesforce-AdvoLogix system that supports enforcement and whistleblower protection programs to interface with OSHA's

Information System (OIS). A financial review of the program was also completed. There were four findings on payroll costs not supported by records that reflected the work performed, costs incurred outside of the period, travel costs incorrectly charged to the grant, and documentation for termination of OIS access when no longer needed. All corrective actions from the financial audit were implemented and considered complete.

### **Healthcare Emergency Temporary Standard (Healthcare ETS)**

On June 21, 2021, OSHA adopted a Healthcare Emergency Temporary Standard (Healthcare ETS) to protect healthcare and healthcare support service workers from occupational exposure to COVID-19. OSHA had determined that employee exposure to SARS-CoV-2, the virus that causes COVID-19, presented a grave danger to covered workers, and that an ETS was necessary to protect those workers. All State Plans were notified of the requirement to, by July 21, 2021, either adopt the Healthcare ETS or demonstrate that promulgation is not necessary because the State's existing standard is already at least as effective as the federal standard change. Arizona informed OSHA on July 16, 2021 of its intent to adopt the Healthcare ETS with modifications where it would rely on existing state statutes, and submitted alternative language for review. OSHA identified several areas of the Arizona Revised Statute (ARS) on which Arizona intended to rely, such as earned paid sick time, anti-retaliation, and reporting of COVID-19 fatalities and hospitalizations, that were not at least as effective as the Healthcare ETS. Instead of addressing OSHA's concerns or taking action despite the already passed July 21 deadline, the ICA waited to present OSHA's findings at its October 7, 2021, meeting. At that meeting, the ICA made the decision to initiate the standard rulemaking process rather than expedite the Healthcare ETS despite OSHA having already made the prerequisite findings of grave danger and necessity, and the State's already overdue legal requirement to immediately implement a standard that is at least as effective as OSHA's ETS. The Arizona State Plan never adopted the Healthcare ETS, with the exception of two recordkeeping provisions adopted eight months after the Healthcare ETS's issuance, when OSHA advised that it considered those provisions to be permanent regulations under Section 8 of the OSH Act. Healthcare workers remained without the protections afforded by the Healthcare ETS in Arizona; consequently, ADOSH was not at least as effective as OSHA.

### **CASPA 2022-AZ-01**

On October 1, 2021, a Complaint About State Program Administration (CASPA) was filed alleging that ADOSH failed to adopt the Occupational Exposure to COVID-19 Healthcare ETS. On November 3, 2021, OSHA notified ADOSH that there was merit in the allegation. The due date for State Plan adoption of worker protection requirements that are at least as effective as OSHA's Healthcare ETS was July 21, 2021, and Arizona was more than three months past the required regulatory due date. OSHA's recommendation was for Arizona to immediately adopt and enforce worker protections that are at least as effective as the requirements of the OSHA Healthcare ETS, as an emergency standard, without further delay. On December 2, 2021, State Designee James Ashley formally objected to OSHA's recommendation, stating that the ICA and ADOSH did not have the legal authority or ability to act upon the recommendation. As noted above, the ICA decided to initiate the standard rulemaking process with the

Arizona Secretary of State to adopt a healthcare standard in compliance with Arizona law, rather than use an expedited ETS rulemaking process.

### **Federal Register Notice**

On April 21, 2022, OSHA published a Notice of Proposed Reconsideration and Revocation of Final Approval of the Arizona State Plan. In this Federal Register Notice, OSHA proposes to revoke its affirmative determination granting final approval to the State Plan. The Federal Register Notice also includes a request for comments, as well as an opportunity for stakeholders to request an informal public hearing, and to provide a Notice of Intention to Appear in the event a hearing takes place. OSHA will hold an informal public hearing if it determines substantial objections have been received. If, after considering all comments and information received, OSHA determines revocation to be appropriate, the Arizona State Plan will revert to initial approval and Federal authority for discretionary concurrent enforcement would resume, allowing Federal OSHA to ensure that private sector employees in Arizona are receiving protections that are at least as effective as those afforded to employees covered by Federal OSHA.

OSHA decided to reconsider and propose to revoke the Arizona State Plan's final approval because OSHA's continued evaluation of Arizona's State Plan has revealed that over the past decade, the State Plan has routinely failed to maintain its commitment to provide a program that is at least as effective as the Federal OSHA program in providing employee safety and health protection at covered workplaces, as required by Section 18(c) of the Act. OSHA documented a history of shortcomings with the Arizona State Plan, including effectiveness issues with Arizona's 2012 Fall Protection requirements and delinquencies in responding to and/or adopting Standards and other Federal Program Changes, including OSHA's Healthcare ETS and federal maximum penalties.

## **III. Assessment of State Plan Progress and Performance**

### **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. The FY 2021 report is a comprehensive year report where OSHA conducted an on-site program evaluation and case file review. A four-person OSHA team, which included a whistleblower program investigator, was assembled to conduct a full off-site electronic case file review due to the COVID-19 pandemic. The case file review was conducted remotely from December 13-18, 2021. Management and staff interviews were performed on January 21, 2022. A total of 135 safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period October 1, 2020, through September 30, 2021. The selected population included:

- Five (5) fatality case files
- Sixteen (16) complaint/referral case files
- Two (2) incident case files
- Twenty-three (23) programmed case files
- Ten (10) unprogrammed case files

A total of 28 retaliation investigations were completed and 98 complaints were administratively closed. A random selection of a statistically significant number of the completed and administratively closed investigation files were chosen for review. The percentage that each category comprised of the total completed cases was determined and applied to the sample size. A total of 75 case files were selected as follows:

- Two (2) withdrawn
- Fifteen (15) dismissed
- Three (3) settled
- Five (5) settled other
- Fifty (50) administratively closed

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

- State Activity Mandated Measures Report (SAMM, Appendix D dated 11/08/2021)
- State Information Report (SIR, dated 11/08/2021)
- Mandated Activities Report for Consultation (MARC, dated 12/06/2021)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- FY 2021 State Plan 23(g) Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review
- Web Integrated Management Information System (WebIMIS)
- OSHA Information System (OIS)
- Complaint About State Program Administration (CASPA) investigations
- State Plan Application (SPA) Portal

Each SAMM has an agreed-upon Further Review Level (FRL), which can be a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 SAMM Report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

This section is an assessment of ADOSH's performance in meeting mandated activities and program elements. ADOSH's progress in achieving its five-year strategic and annual performance plan goals is addressed in the FY 2021 SOAR.

### **1. Program Administration**

#### **a) Training**

OSHA's Mandatory Training Program for OSHA Compliance Personnel, TED 01-00-019, was published on July 21, 2014. ADOSH initially opted not to adopt this directive. However, ADOSH reversed this decision and started the adoption process of this directive on April 2, 2021. ADOSH submitted partial documentation of the non-identical directive in FY 2021. As a result, OSHA requested additional supplementary documentation which ADOSH submitted in FY 2022. This documentation is under review.

The training program includes technology-enabled learning, self-study packages, on-the-job experiences, and formal training during the first three years of a compliance officer's career.

Due to the high compliance officer turnover rate, the ADOSH two-week Compliance Officer School was suspended, and replaced with individual training. Each new compliance safety and health officer (CSHO) was provided with a training manual, course material, daily training schedule and updated Arizona Field Operations Manual (AZ FOM). To help supplement staff development, ADOSH developed a training matrix centered around weekly reading, tasks, research, on the job training, report generation (with experienced CSHO), field work, and signoffs were required. After completion of each section, a supervisor and Assistant Director would review the results and recommend any additional training or continue with the employee's progression. All new compliance staff were also given six-months of one-on-one training with experienced staff members, in addition to weekly and monthly progress reports and peer evaluations.

The case file review of CASPA 2021-AZ-01 (Section III.B.8) identified that compliance officers were not being trained in accordance with the requirements of OSHA's TED 01-00-019.

#### b) OSHA Information System (OIS)

All enforcement and retaliation investigation data were captured in OIS and WebIMIS for most of FY 2021. A substantial portion, approximately 20.47% of the FY 2021 23(g) grant expenses, was used for the purchase of a new Salesforce-AdvoLogix application system to interface with OSHA's OIS. Arizona committed \$315,699.41 of its 23(g) state funds, which was matched by federal funds. An additional \$412,320 overmatch of 100% state funds brought the total purchase price to \$1,043,718.82. By July 2021, the new data system was partially implemented and some compliance staff began inputting inspection data into Salesforce, while several staff continued to work directly with OIS. Through the end of the fourth quarter, ADOSH worked to integrate the two systems. Data was initially uploaded into OIS every 30 days, but following discussions with OSHA Information Technology staff, ADOSH commenced daily data uploads into OIS. Issues related to system integration continued into FY 2022 but are being addressed.

All data related to retaliation investigations is entered into the Salesforce-AdvoLogix database and then imported into WebIMIS. Whistleblower Protection management reports were utilized to ensure this program was properly managed.



### c) State Internal Evaluation Program Report

In lieu of a State Internal Evaluation Program (SIEP) Report, ADOSH utilized its Arizona Management System. This system is a process to oversee internal controls and integrate improvements. Supervisors held bi-weekly meetings to discuss internal and external matters regarding the inspection process and case file documentation. The meetings were also used to communicate upcoming internal policies and procedures, OSHA standards, compliance directives, goal tracking, and other issues related to the AZ FOM.

One-on-one meetings were held with all compliance staff where performance and upcoming changes to business operations was discussed. Quarterly meetings were held with all staff to disseminate updates regarding AZ FOM, internal policies and procedures, OSHA standards, grant funding opportunities, internal projects, SOAR, and FAME findings. The Assistant Director shared FAME findings and the Corrective Action Plan (CAP) for supervisors to address with staff they supervised. In addition, the transition to the Salesforce-AdvoLogix system provided the opportunity for frequent internal audits.

Despite the information available through the Arizona Management System, the processes were not employed to guide leadership to act on cases that required timely intervention. Through the CASPA process and standard OIS reviews, OSHA noted several case file irregularities and notified ADOSH leadership of concerns related to unaccounted eComplaints, inspections open after six-months with draft citations not issued or proposed citations which could no longer be legally executed, inspections with no abatement entered or not accounted for, inspections where penalty payments were received and not been entered into OIS, inspections open for no apparent reason, and complaints under federal jurisdiction that were not referred to OSHA.

An effective SIEP should be designed and utilized to detect vulnerabilities to the program allowing leadership to track and manage items requiring attention.

**Observation FY 2021-OB-01:** The internal evaluation system was not fully utilized to identify and act on issues such as unaccounted eComplaints, inspections open after six-months with draft citations not issued, inspections with no abatement entered or not accounted for, inspections where penalty payments had not been entered, other open inspections, and complaints in federal jurisdiction that were not referred to OSHA.

**Federal Monitoring Plan FY 2021-OB-01:** OSHA will monitor during quarterly meetings to ensure that the internal evaluation program tracks key metrics, so case files and complaints are handled appropriately.

### d) Staffing

Lack of adequate staffing remained an issue throughout this evaluation period. Staff retention and the time it takes to train new staff has affected the ability of the Arizona program to meet enforcement goals.

In February 2021, one experienced supervisor vacated a position, and the other vacated a position in April. At the end of the fiscal year, one supervisor position was filled and the other remained vacant.

ADOSH has not been able to fill vacancies with experienced candidates and retain compliance staff and supervisors. For five months, ADOSH staffing was below the required benchmarks of nine safety and six health compliance staff. At the end of FY 2021, the benchmark for nine safety positions was met and only three health positions were filled leaving ADOSH short of the required number of health professionals.

As ADOSH hires new compliance officers, they are directed into the training program to prepare them to work independently, but continued turnover prevents some of the new hires from attaining journey level status. Additionally, the number of compliance officers who completed approximately six-months of training and were eligible to perform inspections independently, decreased throughout the year. In January 2021, there were 13 compliance officers that completed the required training and were qualified to perform inspections independently and by September 2021 only five remained. This has impacted ADOSH's ability to meet performance plan goals and mandated activities.

**Observation FY 2021-OB-02:** The number of qualified compliance officers that were able to conduct inspections independently declined from 13 to five by the end of FY 2021.

**Federal Monitoring Plan FY 2021-OB-02:** OSHA will monitor and discuss the number of qualified compliance officers during quarterly meetings.

## **2. Enforcement**

ADOSH's version of OSHA's Field Operations Manual (AZ FOM) provides staff with guidance on how to conduct field enforcement.

### **a) Complaints**

A total of 934 complaint/referrals were received that resulted in 179 inspections (OIS Unprogrammed Activity (UPA) one liner detail). The average number of workdays to initiate a complaint inspection was 3.43 (SAMM 1A), which was below the negotiated goal of 7 workdays and an indication of commitment to responding timely to inspection complaints.

The negotiated goal for time to initiate complaint investigations is three working days. ADOSH did not meet this measure, as response time was 4.28 workdays (SAMM 2A) and warrants a closer look at the situation.

**Observation FY 2021-OB-03:** ADOSH's response time to initiate complaint investigations was 4.28 (SAMM 2A), which was above the goal of three working days.

**Federal Monitoring Plan FY 2021-OB-03:** OSHA will monitor and discuss ADOSH's progress to ensure complaints are processed timely during quarterly meetings.

There were no imminent danger complaints and referrals (SAMM 3). ADOSH had no denials of entry (SAMM 4).

b) Fatalities

During the evaluation period, nine of nine (100%) of the fatalities reported were responded to within one workday (SAMM 10). The FRL was to respond within one workday for 100% of the fatalities reported.

The five fatality inspections that were closed in FY 2021 were reviewed. The case files contained documentation that families of the victims were contacted. Therefore, Finding 2020-01 was completed.

There were two fatality inspections with major concerns. The first fatality had a citation that was issued for "failure to report a fatality within 8 hours" after the six-month statute of limitations for issuance under A.R.S § 23-415. This employer did not contest the late violation and paid a non-refunded penalty of \$800. The second fatality inspection had a proposed fall protection citation that was never issued and expired under the six-month statute of limitations in A.R.S § 23-415. Management stated this citation was not issued because the case file lacked information to support the violation.

**Finding FY 2021-01:** Citations proposed in two fatality cases were legally unenforceable because they were not issued within the six-month statute of limitation.

**Recommendation FY 2021-01:** ADOSH should track all fatality cases to ensure proposed citations are issued within the time limits required by A.R.S § 23-415.

c) Targeting and Programmed Inspection

Targeting programs for residential construction, falls in construction, field sanitation, government agencies, highway construction zones, Rate Reduction Awareness Programs (RRAP), and Public Entity Partnership Programs (PEPP) were continued through this evaluation period. Of the 486 inspections performed this fiscal year, 209 (43%) were targeted and programmed inspections.

SAMM 17 measures the percent of enforcement presence as described by the number of safety and health inspections conducted in comparison to the number of establishments in the state. ADOSH's enforcement presence was 0.43%, which was below the FRL range of 0.74% to 1.24%. This is directly related to ADOSH not meeting its inspection goals and indicates that an appropriate enforcement presence was not provided to ensure all tools were utilized to maximize safety and health compliance by employers.

Despite the modifications made to reduce the total projected inspection goal, Table 1 below shows that the number of enforcement inspections has consistently declined since FY 2018. During FY 2021, the projected number of inspections was reduced to 1,100, but only 486 enforcement inspections were conducted: 281 safety and 205 health (SAMM 7). Both were well below the FRL range of 679.25 to 750.75 for safety and 365.75 to 404.25 for health. The contributing factors were the lack of adequate staffing, staff retention, and the time it takes to train new staff.

**Table 1**  
**Projected versus Actual Inspections**

<b>Fiscal Year</b>	<b>Total Projected Goal</b>	<b>Actual Inspections</b>	<b>Percent Inspections Completed</b>
2021	1,100	486	44.18%
2020	1,295	540	41.70%
2019	1,295	545	42.09%
2018	1,115	613	54.98%

**Finding FY 2021-02 (FY 2020-02, FY 2019-02, FY 2018-08):** A total of 486 (44%) inspections were conducted and this was below the goal of 1,100 inspections (SAMM 7).

**Recommendation FY 2021-02 (FY 2020-02, FY 2019-02, FY 2018-08):** ADOSH should determine the cause and implement corrective action to meet inspection goals and provide a stronger enforcement presence to ensure worker safety.

The annual performance goal for construction in FY 2021 was projected at 525 enforcement inspections with 800 violations identified and corrected. Neither of these goals were achieved, only 276 (53%) construction inspections were performed with 185 (23%) violations cited.

**Finding FY 2021-03 (FY 2020-03):** A total of 276 of the projected 525 construction inspections (53%) were conducted. A total of 185 (23% of the goal of 800) violations were issued for FY 2021.

**Recommendation FY 2021-03 (FY 2020-03):** ADOSH should determine the cause of the low number of construction inspections and violations issued and implement corrective action.

d) Citations and Penalties

The in-compliance rate of safety inspections was 54.59% (SAMM 9A). This was higher than the FRL range of 25.32% to 37.98% and the +/- 20% of the three-year national average of 31.65%. The number of safety inspections decreased over the last two years and the in-compliance rate has risen.

**Table 2**  
**In-compliance Safety Inspections (SAMM 9A)**

<b>Fiscal Year</b>	<b>In-compliance Safety Inspection</b>	<b>Total number of Safety Inspections Conducted</b>	<b>Percent In-compliance</b>
2021	119	218	55% (54.59)
2020	123	290	42% (42.41)
2019	137	278	49% (49.28)

**Finding FY 2021-04 (FY 2020-04):** ADOSH’s safety in-compliance rate was 54.59%, which was above the FRL range of 25.32% to 37.98% (SAMM 9A).

**Recommendation FY 2021-04 (FY 2020-04):** ADOSH should determine the cause of the high safety in-compliance rate and implement corrective action.

The percent in-compliance for health, on the other hand, is 35.20% (SAMM 9B), which is better than three-year national average of 40.64% and the FRL range of 32.51% to 48.77%. Therefore, the percent in-compliance for health portion of this finding will be omitted.

In the 56 case files reviewed, 15 (27%) had citations. There were 23 violations in the citations that used inconsistent justification to explain how severity was assessed. In most cases, the severity assessed was lower than the actual “most likely” injury or illness to occur. For example, there were cases assessed as “low” severity where “fractures” or “silicosis” was listed as the most likely injury to occur.

**Finding FY 2021-05:** There were 23 violations where the severity assessed was not supported by the case file documentation.

**Recommendation FY 2021-05:** ADOSH should implement oversight of the case files to ensure the severity assessment supports the most likely injury to occur.

ADOSH management implemented a more rigorous review of violations cited to ensure compliance staff adequately documented the required information to support *prima facie* violations. Interviews revealed an inconsistent understanding of the times to group citations which is a common challenge for new compliance staff. Leadership should continue to discuss grouping policy with staff and review opportunities when grouping is appropriate and times when it is not.

The average lapse time was 74.02 days (SAMM 11A) for safety inspections. While this is an improvement from 87.67 days in FY 2020, this exceeds the FRL range of 41.94 to 62.90 days.

The average lapse time was 46.37 days (SAMM 11B) for health inspections and is below the FRL range of 52.88 to 79.32 days which is a positive development. Therefore, the health portion of Finding FY 2020-05 will be omitted.

**Finding FY 2021-06 (FY 2020-05):** The average lapse time of 74.02 days (SAMM 11A) for safety inspections was above the FRL range of 41.94 to 62.90 days.

**Recommendation FY 2021-06 (FY 2020-05):** ADOSH management should identify the factors contributing to the high lapse time and implement a corrective action to reduce it.

An internal guidance document titled "ADOSH Probability Factors Worksheet" was created several years ago for compliance officers to estimate the probability of an injury/illness occurring. Previously, the Probability Factors Worksheet only considered three of the seven factors required by the AZ FOM. This year, however, the worksheet was updated to include four additional factors: use of personal protective equipment, medical surveillance program, youth and inexperienced employee, additive and synergistic effects. Although these factors are now included in the Probability Factors Worksheet, they have not been assigned a numerical value like frequency of exposure, proximity to danger, and stress factors. As a result, the off-site review noted citations where workers were injured, but the citations were classified as lesser probability. Of the 32 serious violations reviewed, none were assessed as greater probability.

**Finding FY 2021-07 (FY 2020-06):** The Probability Factors Worksheet was not constructed to assign numerical value to calculate all the factors from the AZ FOM.

**Recommendation FY 2021-07 (FY 2020-06):** ADOSH should ensure all requirements listed in the AZ FOM are used to calculate probability.

For the last two years, ADOSH's average number of serious, willful, repeat, and unclassified (SWRU) violations per inspection increased from 1.47 to 1.48 (SAMM 5A). The FRL range for the average number of SWRU violations is +/- 20% of a three-year national average of 1.78 violations, which equaled a range of 1.42 to 2.14. The average number of other-than-serious violations per inspection increased from 1.02 to 1.19 (SAMM 5B), which was above the FRL range of 0.73 to 1.09.

**Observation FY 2021-OB-04:** ADOSH other-than-serious violations per inspection was 1.19 (SAMM 5B) and above the FRL range of 0.73 to 1.09.

**Federal Monitoring Plan FY 2021-OB-04:** OSHA will monitor the other-than-serious violations per inspections to ensure they are within the FRL.

Penalties act as a deterrent to non-compliance with OSHA regulations. Low penalties de-incentivize employers who are reluctant to protect workers. Table 3 shows the average current penalty per serious violation based on the number of workers controlled by an establishment which are below the three-year national average and respective FRLs (SAMM 8).

**Table 3  
Average Current Serious Penalty in Private Sector (SAMM 8)**

<b>Number of Workers</b>	<b>ADOSH FY 2021</b>	<b>3-Year National Average</b>	<b>FRL</b>
1-250+	\$1034.51	\$3,100.37	\$2,325.28 to \$3,875.46
1-25	\$863.00	\$2,030.66	\$1,523.00 to \$2,538.33
26-100	\$985.20	\$3,632.26	\$2,724.20 to \$4,540.33
101-250	\$1319.42	\$5,320.16	\$3,990.12 to \$6,650.20
250+	\$2109.56	\$6,575.70	\$4,931.78 to \$8,219.63

During the reporting period of FY 2021, ADOSH had not yet adopted maximum penalty increases commensurate to federal OSHA’s 2016 update, nor had the State Plan adopted the yearly consumer price index (CPI) increases. See section III.B.4 for more details regarding penalties.

e) Abatement

The case file review determined that compliance staff assessed abatement periods relative to the severity and likelihood of each hazard. Employers provided adequate documentation for timely abatement.

The case file review revealed a continued misapplication of the abatement classification “Corrected During Inspection.” In seven of 12 (58%) violations, the dates of abatement were after the compliance officer left the site but before citations were issued. The AZ FOM requires that abatement must be witnessed on-site by the CSHO to be classified as “Corrected During Inspection.” A discussion about this practice was held with the ADOSH leadership on February 11, 2022, and the Director issued a memorandum to staff prohibiting this practice on the same day. Based on these actions, Observation FY 2020-OB-01 was closed.

f) Worker and Union Involvement

The percentage of initial inspections with worker walk around representation or worker interviews was 99.79% (SAMM 13). Compliance staff goal is to conduct interviews with at least 10% of workers present. Interview statements or compact disk recordings were available in the case files reviewed. Employees were informed of their right to obtain a copy of their interview statements. Where organized labor was present, they were consistently invited to attend opening and closing conferences.

There were 14 case files reviewed where it appeared that only management was interviewed. All inspections were programmed planned. Compliance staff opened inspection activity with each employer on site and there were no workers present to interview. Therefore, OSHA is working with ADOSH leadership to address this issue.

**3. Review Procedures**

a) Informal Conferences

Informal conferences are held by supervisors from the corresponding compliance unit. Supervisors may reduce penalties for settlement. Reductions greater than 50% or violation classification changes require the approval of the Assistant Director.

Any proposed citations with penalties in excess of \$2,500, and any fatality investigation, must be presented before the Commissioners of the ICA. Employers, complainants, and/or labor representatives are provided with notices prior to ICA meetings. Agendas were publicly posted in advance, and interested parties had the opportunity to speak about the proposed violations or answer questions from the ICA, if they desired. The ICA accepted the proposed penalties or requests for modification during the meetings.

The average penalty retention rate was 93.90% (SAMM 12) of the original penalty, which is better than the FRL range of 58.72% to 79.44%. Supervisors used a locally developed form to standardize justification of penalty reductions, reclassifications, and deletions. The case file evaluation revealed six inspections that were settled informally and documentation appear to be consistent with standard procedures to expedite agreeable settlements for all stakeholders. Therefore, Observation FY 2020-OB-03 was closed.

#### b) Formal Review of Citations

The Arizona Office of Administrative Hearings (OAHs) adjudicates ADOSH's contested cases. Where litigants have continued concerns following a decision by the OAH, a case may be reviewed by the Review Board. The Review Board consists of five members appointed by the Governor and may affirm, reverse, modify, or supplement any decision. In turn, the Review Board's decision may be appealed to the Arizona Court of Appeals. The OAH, Review Board, and Arizona Court of Appeals decisions were made available to the public.

Most contested cases were settled informally by the Director or Assistant Director. Where cases did not settle at that level, the ICA Legal Division represented the State Plan. The review of 56 case files showed three were formally contested. No decisions were made that were adverse to the state and the contest process was transparent with no noted procedural issues. Cases were supported by the facts required to sustain penalties without undue deletions or reclassifications.

The average lapse time from receipt of a contest to a first level decision was 106.08 workdays (SIR 8), which is lower than OSHA's lapse time of 190.62 workdays and the national average of 189.28 workdays.

For FY 2021, 34.62% (SIR 5B) of violations were vacated and 25% (SIR 6B) of violations reclassified after a contest was filed. Both rates were higher than the national average of 14.48% and 12.17% respectively. The penalty retention rate following a contest was 85.12% (SIR 7B) which is above the national average of 63.3%.

**Observation FY 2021-OB-05:** The rate of violations vacated and reclassified after contest was 34.62% and 25% respectively, both higher than the national average of 14.48% and 12.17%.



**Federal Monitoring Plan FY 2021-OB-05:** OSHA will monitor rate of violations vacated and reclassified after contest during quarterly meetings.

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

##### **a) Standards Adoption**

The ADOSH Director is responsible for coordinating the adoption of standards through the ICA. Proposed standards are sent to the Governor's Office for approval, then forwarded to the Secretary of State to make available for public comment. After the Close of Record, standards are sent to the Attorney General's Office and published in the Arizona Register when approved and enforced.

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 CPI. See 2022 Annual Adjustments to OSHA Civil Penalties, available on OSHA's public website through a memo entitled [2022 Annual Adjustments to OSHA Civil Penalties](#) (<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.

Arizona State Plan is required to adopt maximum and minimum penalty increases that are at least as effective as the Agency's most recent increase issued in January 2022, without further delay. OSHA recognizes that the state has needed to implement legislative changes before this adoption can be completed. However, five years has passed since the initial adoption deadline. A letter to the Arizona State Plan informing them that failure to adopt these increases would very likely result in a FAME finding and requesting that the State Plan respond with an action plan for completing the necessary legislative changes, was sent on September 2, 2021. The Arizona State Plan responded on September 29, 2021.

Upon review, OSHA was concerned that the response did not sufficiently outline an action plan for adoption, and a second letter to the Arizona State Plan was sent on November 19, 2021. The Arizona State Plan responded on December 17, 2021, and provided an action plan to adopt OSHA maximum and minimum penalty amounts and indicated that they were working to identify a member of the Arizona legislature to sponsor such a bill. In January 2022, House Bill 2508 was introduced by Representative John Kavanagh to amend the Arizona Revised Statute § 23-418 and increase penalty levels. Although House Bill 2508 was never voted on by the legislature, a different bill, House Bill 2120 included language to address penalties and

provide for adoption of emergency temporary standards. House Bill 2120 was signed by the Governor on July 6, 2022, to be effective September 24, 2022. Until at least as effective maximum penalty levels take effect, the following finding will remain open.

**Finding FY 2021-08:** The Arizona State Plan has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Recommendation FY 2021-08:** The Arizona State Plan should work to update policies and procedures to implement adoption of maximum and minimum penalty amounts.

On June 21, 2021, OSHA adopted a Healthcare ETS protecting healthcare and healthcare support service workers from occupational exposure to COVID-19. All State Plans were notified of the requirement to adopt the Healthcare ETS or demonstrate that promulgation is not necessary because the State's existing standard is already at least as effective as the federal standard change. Pursuant to OSHA's regulations, all State Plans had 15 days from receipt of the federal Healthcare ETS notice to communicate their intended actions to OSHA, and 30 days to adopt identical or at-least-as-effective requirements. Thus, notice of intent to federal OSHA was due on July 6, 2021, and the deadline for State Plan adoption was July 21, 2021. The Arizona State Plan failed to meet either deadline. As previously discussed, the Arizona State Plan never adopted the Healthcare ETS, with the exception of two recordkeeping provisions adopted eight months after the Healthcare ETS's issuance, when OSHA advised that it considered those provisions to be permanent regulations under Section 8 of the OSH Act. Healthcare workers remained without the protections afforded by the Healthcare ETS in Arizona; consequently, ADOSH was not at least as effective as OSHA.

Arizona's failure to adopt the Healthcare ETS was consistent with several years of failed timely adoptions of standards as noted in Table 4, and this deficiency was continued as a finding.

**Finding FY 2021-09 (FY 2020-07):** OSHA standards were not adopted by the adoption due date.

**Recommendation FY 2021-09 (FY 2020-07):** ADOSH should ensure each standard is adopted by the due date.

**Table 4**  
**Status of FY 2021 Federal Standards Adoption**  
(May include 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
1910, 1926 Final Rule for Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment (4/11/2014)	6/11/2014	6/2/2014	Yes	Yes	1/11/2015	Not yet adopted
1926 Cranes and Derricks in Construction – Operator Certification Final Rule (9/26/2014)	11/26/2014	6/3/2015	Yes	Yes	3/26/2015	Not yet adopted
1926.1200 Final Rule for Confined Spaces in Construction (5/4/2015)	7/4/2015	6/3/2015	Yes	Yes	2/4/2016	Not yet adopted
1910, 1915, 1926 Final Rule for Occupational Exposure to Respirable Crystalline Silica (3/25/2016)	5/25/2016	6/30/2016	Yes	Yes	9/26/2016	7/23/2018
1910 Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Services) (11/18/2016)	1/18/2017	1/17/2017	Yes	Yes	5/18/2017	1/19/2017
1910, 1915, 1926 Final Rule on Occupational Exposure to Beryllium (1/9/2017)	3/9/2017	3/13/2017	Yes	Yes	7/9/2017	Not yet adopted
Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 2019 646(11/9/2018)	1/9/2019	2/1/2019	Yes	Yes	5/9/2019	Not yet adopted
Final Rule on the Standards Improvement Project – Phase IV 1904, 1910, 1915, 1926 (5/14/2019)	7/13/2019	6/12/2019	Yes	No	11/14/2019	Not yet adopted. Awaiting Plan Change Supplement
29 CFR Part 1903 Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation (1/10/2020)	3/15/2020	Pending	Pending	Pending	7/15/2020	Not yet adopted. Awaiting state intent

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
29 CFR 1910 Final Rule on the Beryllium Standard for General Industry (7/14/2020)	9/14/2020	Pending	Pending	Pending	1/14/2021	Not yet adopted. Awaiting state intent
29 CFR Part 1913 Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	Pending	Pending	Pending	1/26/2021	Not yet adopted. Awaiting state intent
29 CFR 1915, 1926 Final Rule on the Beryllium Standard for Construction and Shipyards (8/31/2020)	10/30/2020	10/30/2020	Yes	Yes	2/27/2021	Not yet adopted
29 CFR Part 1926 Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	11/13/2020	Yes	Yes	3/14/2021	Not yet adopted
29 CFR 1903 Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	Pending	Pending	Pending	7/14/2021	Not yet adopted
29 CFR 1910 Occupational Exposure to COVID-19; Emergency Temporary Standard (6/21/2021)	7/6/2021	7/6/2021	Yes	No	7/21/2021	Not yet adopted

b) Federal Program Change (FPC) Adoption

Table 5 and 6 shows the FPCs that have not yet been adopted that are awaiting the State Plan's intent to adopt responses.

**Table 5**  
**Status of FY 2021 Federal Program Change (FPC) Where Adoption Required**  
(May include delinquent standards 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
CPL 03-00-018 Revision-National Emphasis Program-Primary Metal Industries (10/20/2014)	12/20/2014	12/10/2014	Yes	Yes	4/20/2015	4/20/2015 Awaiting supporting documentation
CPL 02-00-161 National Emphasis Program on Trenching and Excavation (10/1/2018)	11/30/2018	6/12/2019	Yes	No	4/1/2019	Not yet adopted. Awaiting Plan Change Supplement*
CPL 03-00-022 Amputations in Manufacturing Industries NEP (12/10/2019)	2/10/2020	Pending	Pending	Pending	6/10/2020	Not yet adopted. Awaiting state intent*
CPL 03-00-023 Respirable Crystalline Silica NEP (2/4/2020)	4/4/2020	6/25/2020	Yes	Yes	8/4/2020	Not yet adopted. Awaiting supporting documentation*

\* Note: In FY 2022, the Arizona State Plan has provided OSHA documentation to review.

**Table 6**  
**Status of FY 2021 Federal Program Change (FPC) Where Equivalency Required**  
(May include delinquent standards 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
CPL 02-01-057 Compliance Directive for Cranes and Derricks in Construction Standard (10/17/2014)	12/17/2014	11/5/2014	Yes	Yes	4/17/2015	Not yet adopted. Awaiting supporting documentation
CPL 02-03-007 Whistleblower Investigations Manual (1/28/2016)	4/27/2016	4/18/2016	Yes	Yes	7/28/2016	Not yet adopted. Awaiting supporting documentation
CPL 02-00-164 Field Operations Manual (4/14/2020)	6/13/2020	Pending	Pending	Pending	10/11/2020	Not yet adopted. Awaiting state intent*

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
CPL 02-02-080 Inspection Procedures for the Respirable Crystalline Silica Standards (6/25/2020)	8/24/2020	Pending	Pending	Pending	12/25/2020	Not yet adopted. Awaiting state intent*
CPL 02-01-062 Site-Specific Targeting (SST) (12/14/2020)	2/12/2021	1/19/2022	Yes	Yes	6/14/2021	Not yet adopted. Awaiting state intent*
CSP 02-00-004 Consultation Policies and Procedures Manual (3/19/2021)	5/19/2021	Pending	Pending	Pending	9/19/2021	Not yet adopted. Awaiting state intent
DIR 2021-02 (CPL 02) Inspection Procedures for the COVID-19 Emergency Temporary Standard (6/28/2021)	7/13/2021	Pending	Pending	Pending	7/28/2021	Not yet adopted. Awaiting state intent.
CPL 02-00-165 Compliance Directive for the Excavation Standard, 29 CFR 1926, Subpart P (7/1/2021)	8/30/2021	Pending	Pending	Pending	12/28/2021	Not yet adopted. Awaiting state intent*
DIR 2021-03 (CPL 03) Revised National Emphasis Program – Coronavirus Disease 2019 (COVID-19) (7/7/2021)	7/22/2021	5/17/2022	Yes	No	8/7/2021	4/22/2022

\* Note: In FY 2022, the Arizona State Plan has provided OSHA documentation to review.

The Arizona State Plan adopted the three FPCs in the FY 2019 FAME report: CPL 02-02-078 Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis (6/30/2015), CPL 02-02-079 Inspection Procedures for the Hazard Communication Standard (7/9/2015), and TED 01-00-020 Mandatory Training Program for OSHA Whistleblower Investigators (10/8/2015). Supporting documentation is under OSHA's review to verify at least as effective as status.

In addition, the Arizona State Plan notified OSHA that it does not cover maritime standards. Therefore, the three FPCs were not required to be adopted and are considered by OSHA to be closed: CPL 02-01-060 Enforcement Guidance for Personal

Protective Equipment in Shipyard Employment (5/22/2019), CPL 02-01-061 Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment (5/22/2019), and CPL 02-00-162 Shipyard Employment Tool Bag Directive (5/22/2019).

Table 7 shows FPCs where adoption is encouraged, and OSHA is awaiting three plan change supplements.

**Table 7**  
**Status of FY 2021 Federal Program Change (FPC) Where Adoption Encouraged**  
(May include delinquent standards from earlier fiscal years)

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	State Plan Adoption Date
CPL 02-01-058 Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence (1/10/2017)	3/10/2017	3/13/2017	Yes	No	Not yet adopted. Awaiting Plan Change Supplement.
CPL 02-03-008 Alternative Dispute Resolution Processes for Whistleblower Protection Programs (2/4/2019)	4/5/2019	6/11/2019	No	Not Applicable	Not Applicable
CSP 03-01-005 Voluntary Protection Programs Policies and Procedures Manual (1/30/2020)	3/30/2020	Pending	Pending	Pending	Not yet adopted. Awaiting state intent*
CPL 02-03-009 Electronic Case File System Procedures for the Whistleblower Protection Program (6/18/2020)	8/18/2020	1/19/2022	No	Not Applicable	Not Applicable
DIR 2021-01 (CPL-03) National Emphasis Program – Coronavirus Disease 2019 (COVID-19) (3/12/2021)	5/12/2021	5/20/2021	Yes	Yes	5/12/2021 Under review.
CPL 02-00-166 Communicating OSHA Fatality Inspection Procedures to a Victim’s Family (7/7/2021)	9/7/2021	9/20/2021	Yes	No	Not yet adopted. Awaiting Plan Change Supplement*

\* Note: In FY 2022, the Arizona State Plan has provided OSHA documentation to review.

**Finding FY 2021-10 (FY 2020-08):** Requirements for adopting Federal Program Changes (FPCs) were not completed within six-months of the effective date of the

directive or official issuance date of the Federal Register Notice.

**Recommendation FY 2021-10 (FY 2020-08):** ADOSH should ensure that they meet the requirements for response and adoption of OSHA's Federal Program Changes.

## **5. Variances**

There were no new variances requested or granted during the review period.

## **6. State and Local Government Worker Program**

Proposed penalties for state and local government agencies are the same for private industry. In FY 2020, 2.96% (16 of 540) of all inspections were conducted in state and local government agencies. In FY 2021, this decreased to 1.85% (nine of 486) which was below the 75 projected inspections and below the bottom range for the FRL of 4.32% to 4.77% (SAMM 6). Since this has been a concern and an observation for the past three years, Observation FY2020-OB-02 was elevated to Finding 2021-11.

**Finding FY 2021-11 (FY 2020-OB-02):** ADOSH conducted 1.85% (nine of 486) of inspections in state and local government agencies, which was below the FRL range of 4.32% to 4.77% (SAMM 6).

**Recommendation FY 2021-11 (FY2020-OB-02):** ADOSH should ensure action is taken to meet inspection goals for state and local government agencies.

## **7. Whistleblower Protection Program**

During FY 2021, there were two investigators, one full-time supervisor, and one compliance officer who spent 33% of the time conducting workplace retaliation investigations. All attended the required OSHA whistleblower protection program training.

A total of 28 retaliation investigations were completed and 98 complaints were administratively closed. ADOSH completed 3% (SAMM 14) of its retaliation investigations within 90 days. This was below the national average of 27% and the FRL of 100%. The merit rate was 41% (SAMM 15), which is above the FRL range of 16% to 24% and the national average of 24%. In addition, the average number of calendar days to complete a retaliation investigation was 672 days (SAMM 16), above the national average of 325 days, and FRL of 90 days. This was an increase from 362 days in FY 2020 due to ADOSH's effort in closing its oldest cases. These metrics were discussed during quarterly meetings and the State Plan continues to make improvements.

The FY 2020 Follow-Up FAME findings were addressed and verified during the case file review of 75 retaliation cases. In the two retaliation cases withdrawn, the complainant was advised of the consequences of a withdrawal and procedural guidance was followed in settling cases to ensure complainants' rights were not infringed upon. As a result of the corrective actions taken and the case file review, Finding FY 2020-09 was completed and Observation FY 2020-OB-03 was closed.



When a complainant fails to participate in an investigation after it has been docketed, the case should be dismissed. In 16% (eight of 50) of cases reviewed, ADOSH converted the case back to administrative closure. ADOSH requested technical assistance on the procedures for closing complaints in which the complainant fails to cooperate. OSHA provided guidance that resulted in ADOSH correcting its process to be at least as effective. Because it was corrected during the year, it will not be an observation. OSHA will continue to monitor during quarterly meetings to ensure that ADOSH is dismissing investigations due to lack of cooperation instead of closing administratively.

Proper documentation in retaliation case files is important to ensure the totality of the case is recorded and understood by all parties conducting any type of review after the case has been completed. In 23 of 25 (92%) case files reviewed, proper documentation was not found for final signatures on settlement agreements, correspondence between ADOSH and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, or other documents required to be in the retaliation case file. In addition, medical information was not protected.

**Observation FY 2021-OB-06:** Retaliation case files lacked the required documentation such as final signatures on settlement agreements, correspondence between ADOSH and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, or other documents required to be in the retaliation case file. In addition, medical information was not protected.

**Federal Monitoring Plan FY 2021-OB-06:** OSHA will monitor the lack of required documentation during quarterly meetings.

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

One CASPA was filed in FY 2020 and two CASPAs were filed during this review period.

CASPA 2020-AZ-01 alleged that ADOSH did not investigate a safety and health complaint regarding bloodborne pathogens and workplace violence followed by a whistleblower complaint. The investigation found no merit to the allegations and concluded that ADOSH followed its policies and procedures.

CASPA 2021-AZ-01 was considered sensitive. There were seven allegations related to:

- staff performing field work without sufficient supervisory oversight,
- compliance officer training that was not conducted in accordance with the OSHA's training directive TED-01-00-019 or other policies and procedures,
- citations being issued to larger and smaller employers that were not consistent as it applied to the probability factors worksheet,
- potential citations were frequently deleted or penalties were lowered to stay below the ICA review level of \$2,500,

- employers part of the ADOSH alliance, were not inspected/cited in accordance with AZ FOM and Alliance agreements,
- complaints that warrant an inspection were handled as telephone inquiries, and
- case file information were changed to reflect inaccurate dates.

An on-site review was conducted June 14-18, 2021. The investigation found merit in two allegations. OSHA identified six compliance staff members that were not trained in accordance with OSHA's TED 01-00-019 or SPC 132 and 57 formal complaints with allegations in local, regional, and national emphasis programs that were not handled as inspections, as required in the AZ FOM. ADOSH will continue to prioritize CSHO training in accordance with TED 01-00-019 or an at least as effective as equivalent. While ADOSH disagrees that the 57 complaints did not meet its criteria for "formal" designation, steps will be taken to ensure complaints are correctly coded which were appropriate corrective actions to resolve this CASPA.

CASPA 2021-AZ-02 was considered significant. The two allegations were ADOSH did not address COVID-19 related complaints in accordance with the AZ FOM and citations were not issued for COVID-19 related inspections in accordance with the AZ FOM. An on-site review was conducted June 14-18, 2021. The investigation found merit in one allegation that a non-serious COVID-19 fatality citation was issued two days after the six-month statute of limitations. Corrective action to develop and implement a tracking tool to ensure citations are issued timely was taken to resolve this CASPA.

### **9. Voluntary Compliance Program**

Employers with outstanding occupational safety and health management systems were recognized through the ADOSH Voluntary Protection Program (VPP). Written policies and procedures were implemented in 1993 and were updated in 2020 and adopted in April of 2021.

At the close of FY 2021, there were 56 VPP and eight construction VPP (C-VPP) Star sites protecting over 37,000 employees in mobile and fixed industries. This included the addition of two new VPP and five new C-VPP sites. New applicants were partnered with existing VPP Star sites that served as mentors through the development process. The mentors provided on-site assistance in program development and implementation. In addition, ADOSH conducted 10 VPP re-certifications and three C-VPP re-certifications.

### **10. State and Local Government 23(g) On-site Consultation Program**

Consultation services are provided to state and local government employers through the Consultation, Education, and Training Section. Consultation for the private sector is funded under Section 21(d) of the Occupational Safety and Health (OSH) Act and is evaluated separately in the FY 2021 RACER. This section covers consultation services provided solely to state or local government agencies that are funded under Section 23(g) of the OSH Act.

In FY 2021, 59 initial consultation visits were conducted in the state and local

government workplaces. Of these 59 (100%) were in high hazard industries, exceeding the goal of 90% (MARC 1).

Smaller businesses with fewer than 250 employees received 57 (96.61%) visits (MARC 2A) and businesses with fewer than 500 employees received 40 (67.80%) visits (MARC 2B). The consultant conferred with employees 100% of the time (MARC 3).

During this evaluation period, 227 serious hazards were identified and all (100%) were corrected timely (MARC 4A). There were 57 hazards corrected on-site, 126 within the original timeframe, and 44 within the extension timeframe (MARC 4B). Of these 80.62% (183/227) were corrected within the original time frame or on-site, exceeding the goal of 65% (MARC 4C). No employers were referred to enforcement (MARC 4D). There were no serious hazards uncorrected beyond 90 days past their due date (MARC 5).

An off-site review was conducted of the state and local government consultation program on December 7-11, 2020. The purpose of the visit was to assess the quality of the program's services and its internal quality assurance program in accordance with Consultation Policies and Procedures Manual (CSP 02-00-003) and 29 Code of Federal Regulations (CFR) Part 1908 – Consultation Agreements.

Overall, there was improvement in meeting the program requirements. Of the 16 state and local government agency files reviewed, there were three new findings related to emphasis codes not recorded into OIS, comparison of Days Away, Restricted or Transferred (DART) and Total Recordable Case (TRC) rates to the national average, and written reports did not contain a description of training that was conducted or closing conference summary information. ADOSH submitted an action plan to resolve these items and is pending verification at the next consultation case file review.

Two state and local government agency case files indicated employees had union representation. However, there was no documentation that the List of Hazards was provided to employee representatives.

**Observation FY 2021-OB-07:** In two of 16 (13%) state and local government agency case files, there was no documentation of the List of Hazards being sent to the union representatives.

**Federal Monitoring Plan FY 2021-OB-07:** OSHA will monitor and discuss ADOSH's progress to ensure the list of hazards is transmitted to union representatives and documented in the case file.

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 Arizona Division of Occupational Safety and Health Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	Citations proposed in two fatality cases were legally unenforceable because they were not issued within the six-month statute of limitation.	ADOSH should track all fatality cases to ensure proposed citations are issued within the time limits required by A.R.S § 23-415.	
FY 2021-02	A total of 486 (44%) inspections were conducted and this was below the goal of 1,100 inspections (SAMM 7).	ADOSH should determine the cause and implement corrective action to meet inspection goals and provide a stronger enforcement presence to ensure worker safety.	FY 2020-02
FY 2021-03	A total of 276 of 525 projected construction inspections (53%) were conducted. A total of 185 of a projected 800 (23%) violations were issued for FY 2021.	ADOSH should determine the cause of the low number of construction inspections and violations issued and implement corrective action.	FY 2020-03
FY 2021-04	ADOSH's safety in-compliance rate was 54.59%, which was above the FRL range of 25.32% to 37.98% (SAMM 9A).	ADOSH should determine the cause of the high safety in-compliance rate and implement corrective action.	FY 2020-04
FY 2021-05	There were 23 violations where the severity assessed was not supported by the case file documentation.	ADOSH should implement oversight of the case files to ensure the severity assessment supports the most likely injury to occur.	
FY 2021-06	The average lapse time of 74.02 days (SAMM 11A) for safety inspections was above the FRL range of 41.94 to 62.90 days.	ADOSH management should identify the factors contributing to the high lapse time and implement a corrective action to reduce it.	FY 2020-05
FY 2021-07	The Probability Factors Worksheet was not constructed to assign numerical value to calculate all the factors from the AZ FOM.	ADOSH should ensure all requirements listed in the AZ FOM are used to calculate probability.	FY 2020-06

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-08	The Arizona State Plan has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.	The Arizona State Plan should work to update policies and procedures to implement maximum and minimum penalty amounts.	
FY 2021-09	OSHA standards were not adopted by the adoption due date.	ADOSH should ensure each standard is adopted by the due date.	FY 2020-07
FY 2021-10	Requirements for adopting Federal Program Changes (FPCs) were not completed within six-months of the effective date of the directive or official issuance date of the Federal Register Notice.	ADOSH should ensure that they meet the requirements for response and adoption of OSHA's Federal Program Changes.	FY 2020-08
FY 2021-11	ADOSH conducted 1.85% (nine of 486) of inspections in state and local government agencies, which was below the FRL range of 4.32% to 4.77% (SAMM 6).	ADOSH should ensure action is taken to meet inspection goals for state and local government agencies.	FY 2020-OB-02

## Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 Arizona Division of 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		The internal evaluation system was not fully utilized to identify and act on issues such as unaccounted eComplaints, inspections open after six-months with draft citations not issued, inspections with no abatement entered or not accounted for, inspections where penalty payments had not been entered, other open inspections, and complaints in federal jurisdiction that were not referred to OSHA.	OSHA will monitor during quarterly meetings to ensure that the internal evaluation program tracks key metrics, so case files and complaints are handled appropriately.	New
FY 2021-OB-02		The number of qualified compliance officers that were able to conduct inspections independently declined from 13 to five by the end of FY 2021.	OSHA will monitor and discuss the number of qualified compliance officers during quarterly meetings.	New
FY 2021-OB-03		ADOSH's response time to initiate complaint investigations was 4.28 (SAMM 2A), which was beyond the goal of three working days.	OSHA will monitor and discuss ADOSH's progress to ensure complaints are processed timely during quarterly meetings.	New
FY 2021-OB-04		ADOSH other-than-serious violations per inspection was 1.19 (SAMM 5B) and above the FRL range of 0.73 to 1.09.	OSHA will monitor the other-than-serious violations per inspections to ensure they are within the FRL.	New
FY 2021-OB-05		The rate of violations vacated and reclassified after contest was 34.62% and 25% respectively, both higher than the national average of 14.48% and 12.17%.	OSHA will monitor rate of violations vacated and reclassified after contest during quarterly meetings.	New

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-06		Retaliation case files lacked the required documentation such as final signatures on settlement agreements, correspondence between ADOSH and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, or other documents required to be in the retaliation case file. In addition, medical information was not protected.	OSHA will monitor the lack of required documentation during quarterly meetings.	New
FY 2021-OB-07		In 2 of 16 (13%) state and local government agency case files, there was no documentation of the List of Hazards being sent to the union representatives.	OSHA will monitor and discuss ADOSH's progress to ensure the list of hazards is transmitted to union representatives and documented in the case file.	New
	FY 2020-OB-01	In FY 2019, in 65% (13 of 20) of the violations, abatement was marked as "Corrected During Inspection;" however, the CSHO did not observe the abatement during the on-site inspection.	ADOSH issued a memorandum prohibiting the CSHO from using "Corrected During Inspection" when abatement was not observed while on the inspection site.	Closed
	FY 2020-OB-02	ADOSH conducted 2.96% (16 of 540) of inspections in state and local government agencies, which was below the FRL range of 5.50% to 6.08% (SAMM 6).	OSHA will monitor the number of inspections conducted at state and local government agencies during quarterly meetings using SAMM 6 data.	Elevated to Finding FY 2021-11

Observation # FY 2021-OB-#	Observation# FY 2020-OB-# or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
	FY 2020-OB-03	In FY 2019, in 100% (2 of 2) of settlement cases procedural guidance was not followed to ensure complainant's rights were not infringed upon.	As a result of corrective actions and a case file review, it is determined that this item has been corrected.	Closed



## Appendix C – Status of FY 2020 Findings and Recommendations

### FY 2021 Arizona Division of 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	In FY 2019, in 20% (2 of 10) of the fatality inspections reviewed, the case files did not contain evidence that the family of the victims were contacted.	ADOSH should ensure every effort is made to contact the victim's next-of-kin and maintain documentation in the case file. The State Plan's corrective action is considered completed, awaiting verification	ADOSH Assistant Director is conducting quarterly audits for all fatality files to ensure documentation of contact with next of kin are in the files.	6/24/2021	Completed
FY 2020-02	A total of 540 inspections (41%) of the goal of 1,295 inspections were conducted (SAMM 7).	ADOSH should ensure action is taken to meet goals for inspections.	ADOSH will recruit high quality candidates to fill vacancies and provide training so that each can perform individual inspections as soon as possible.	Not Applicable	Open
FY 2020-03	ADOSH issued 320 construction violations out of its annual performance plan goal of 800.	ADOSH should determine the cause of the low number of construction violations and implement a corrective action.	ADOSH will continue to hire qualified safety professionals and provide them with construction hazard awareness classes as needed. The classes will help the staff identify hazards associated with the construction industry.	Not Applicable	Open

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-04	ADOSH's safety in-compliance rate was 42.41%, which was above the FRL range of 24.82% to 37.24% (SAMM 9).	ADOSH should determine the cause of the high safety in-compliance rate and implement a corrective action.	ADOSH will continue to hire qualified safety and health professionals and provide them with safety and health related classes as needed. The classes will help them identify hazards associated with the industry they conduct an inspection for.	Not Applicable	Open
FY 2020-05	The average lapse time of 87.67 days for safety inspections was above the FRL range of 40.46 to 60.70 and the average lapse time for health inspections of 89.06 days was above the FRL range of 48.31 to 72.47 days. (SAMM 11).	Management should monitor lapse time and take action to reduce it.	Supervisors are conducting 1:1 coaching sessions on a regular basis for all compliance officers with lapse time over 45 days. Management is conducting 1:1 coaching with Supervisors on a regular basis for those supervisors with compliance officers with lapse time over 45 days. The Agency will continue, this year, with its Scorecard Goal and A3 Project to drive down lapse time	Not Applicable	Open
FY 2020-06	The Probability Factors Worksheet does not follow the Arizona Field Operations Manual (AZ FOM).	ADOSH should ensure the requirements listed in the AZ FOM are used to determine probability. The State Plan's corrective action is considered completed, awaiting verification	ADOSH will continue to train compliance officers to follow the FOM and the Probability Factors Worksheet in order to reduce the subjectiveness when determining probability. Management and Supervisor will review citations to ensure compliance officers are following the FOM when determining probability as well.	Not Applicable	Open

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-07	OSHA Standards were not adopted by the adoption due date.	ADOSH should ensure each standard is adopted by the due date.	ADOSH will continue to work with our internal Industrial Commission of Arizona, Legal Staff to submit paperwork for rulemaking sooner than the adoption due date. A formal transmittal will be sent to OSHA when standards have been adopted. The Federal SPA portal will also be updated with the adoption date.	Not Applicable	Open
FY 2020-08	Requirements for adopting federal program changes were not completed within six months of the effective date of the directive or official issuance date of the Federal Register Notice.	ADOSH should ensure that they meet the requirements for response and adoption of OSHA's federal program changes.	ADOSH Leadership will work to review and adopt federal program changes within six months. A meeting was held with Assistant Directors to ensure federal program changes were reviewed and changed within a six-month period. A formal transmittal will be sent to OSHA when Federal Program Changes (FPCs) have been adopted. The Federal SPA portal will also be updated with the adoption date.	Not Applicable	Open

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-09	In FY 2019, in 75% (3 of 4) of cases voluntary withdrawn by the complainant, there was not documentation that the complainant was advised of the consequences.	ADOSH should ensure complainants are advised that by entering a withdrawal they will be forfeiting all rights to appeal or object, and the case will not be re-opened, and ADOSH should document this in the case file. The State Plan's corrective action is considered completed, awaiting verification	Quarterly audits are being conducted of whistleblower cases, where the complainant withdrew, to ensure the case file has documentation advising the complainant that they are forfeiting all rights to appeal or object, and the case will not be re-opened.	December 2021	Completed

**Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report**  
 FY 2021 Arizona Division of Occupational Safety and Health Comprehensive FAME Report

**U.S. Department of Labor**

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

<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	3.43	7	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	1.17	Not Applicable	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	4.28	3	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	1.04	Not Applicable	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>5a</b>	Average number of violations per inspection with violations by violation type (SWRU)	1.48	+/- 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.
<b>5b</b>	Average number of violations per inspection with violations by violation type (other)	1.19	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
<b>6</b>	Percent of total inspections in state and local government workplaces	1.85%	+/- 5% of 4.55%	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 4.32% to 4.77%.
<b>7a</b>	Planned v. actual inspections (safety)	281	+/- 5% of 715	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 679.25 to 750.75 for safety.
<b>7b</b>	Planned v. actual inspections (health)	205	+/- 5% of 385	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 365.75 to 404.25 for health.
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,034.51	+/- 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.

<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>8a</b>	Average current serious penalty in private sector (1-25 workers)	\$863.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
<b>8b</b>	Average current serious penalty in private sector (26-100 workers)	\$985.20	+/- 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.
<b>8c</b>	Average current serious penalty in private sector (101-250 workers)	\$1,319.42	+/- 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.
<b>8d</b>	Average current serious penalty in private sector (greater than 250 workers)	\$2,109.56	+/- 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.
<b>9a</b>	Percent in compliance (safety)	54.59%	+/- 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.
<b>9b</b>	Percent in compliance (health)	35.20%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
<b>10</b>	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.

<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>11a</b>	Average lapse time (safety)	74.02	+/- 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.
<b>11b</b>	Average lapse time (health)	46.37	+/- 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.
<b>12</b>	Percent penalty retained	93.90%	+/- 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%.
<b>13</b>	Percent of initial inspections with worker walk-around representation or worker interview	99.79%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	3%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	41%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	672	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	0.43%	+/- 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%.