

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

State of Connecticut  
Division of Occupational Safety and Health  
(CONN-OSHA)



**Evaluation Period: October 1, 2020 – September 30, 2021**

**Initial Approval Date: January 4, 1974**  
**Conversion to State and Local Government Plan: November 3, 1978**  
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**Final Approval Date: N/A**

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## I. Executive Summary

The purpose of this report is to assess the performance of the Connecticut State Plan (CONN-OSHA) for Fiscal Year (FY) 2021 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

In FY 2021, CONN-OSHA confronted many challenges, such as staff exposure to COVID-19 during on-site inspections and consultation visits. In addition, many state and local government workers in Connecticut continued to perform their duties at alternative worksites. This made it difficult for compliance officers to conduct interviews and resulted in the State Plan receiving fewer complaints than anticipated.

However, the State Plan made up for the decrease in complaints by focusing on programmed inspections in high-hazard workplaces—such as public works, highway repair, and water/sewer departments—that continued to operate as they normally would despite the pandemic. Thus, CONN-OSHA surpassed its goal for inspections.

The State Plan came close to meeting the goal for 23(g) consultation visits, despite being down one consultant for half of the fiscal year. CONN-OSHA also met most of the annual goals in its new five-year strategic plan and did well on performance metrics. Heading into FY 2021, CONN-OSHA did not have to focus on resolving issues from prior FAME Reports. However, during the most recent case file review, OSHA identified one issue related to case file documentation that has been made an observation in this report. Nonetheless, CONN-OSHA continued its lengthy track record of performing at a high level.

This report contains no new or continued findings or recommendations. Appendix B describes observations and related federal monitoring plans and contains the one new observation from FY 2021. CONN-OSHA had no previous findings and, therefore, no associated completed corrective actions. In summary, this report contains one new observation and no findings.<sup>1</sup>

## II. State Plan Background

### A. Background

CONN-OSHA became operational on January 4, 1974, and covered both the private sector and state and local government. It operated effectively in that manner until 1977, when the Connecticut State Labor Council sponsored a bill in the state legislature to restrict enforcement of Connecticut's safety and health program to state and local government only. The bill was enacted with an effective date of June 30, 1978. Connecticut's previously approved 18(b) Plan

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<sup>1</sup> Findings are those issues that warrant corrective action by the State Plan to ensure it is at least as effective as OSHA. If data supporting an area of concern is limited, or if the concern cannot yet be determined to impact the effectiveness of the State Plan, it shall be noted in the FAME Report as an observation. Observations shall include a federal monitoring plan to be completed by OSHA (Source: State Plan Policies and Procedures Manual, pages 74-75).

was withdrawn on October 2, 1978, and officially converted to a State and Local Government Only State Plan on November 3, 1978.

In August 1986, CONN-OSHA was officially recognized by the U.S. Department of Labor as having completed all structural and developmental aspects of its approved State and Local Government Only State Plan, giving CONN-OSHA the distinction of being the first State and Local Government Only State Plan in the nation. CONN-OSHA is administered by the State of Connecticut, Department of Labor, under the leadership of the Commissioner of Labor. The State Plan's staff operates out of a state office building located in Wethersfield, Connecticut. CONN-OSHA adopts and enforces safety and health standards and provides consultation and outreach services to the state and local government workforce. In FY 2021, CONN-OSHA covered approximately 57,808 state government workers and 136,084 local government workers, as well as 10,000 volunteer firefighters.<sup>2</sup>

The Connecticut Department of Labor operates a workplace retaliation program covering state and local government workers pursuant to the Connecticut Occupational Safety and Health Act of 1973 (Chapter 571, Sections 31-367 through 31-385). Attorneys who administer the workplace retaliation program are employed by the Legal Division, a separate division within the Connecticut Department of Labor.

CONN-OSHA began FY 2021 fully staffed with a director, a program manager, five compliance safety and health officers (CSHOs), three 23(g) consultants, and two compliance assistance specialists. However, one 23(g) health consultant left state service in May 2021, and that position remained vacant for the remainder of the fiscal year.

Based on FY 2021 financial close-out forms, the State Plan's initial federal funding award was \$753,900. The State Plan contributed a total of \$1,881,721, which consisted of the 50 percent match of \$753,900 plus an additional \$1,127,821 in state funds. Thus, in FY 2021, CONN-OSHA's total funding amount was \$2,635,621, consistent with previous years' total funding amounts.

## **B. New Issues**

None.

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

## **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2021 was a comprehensive year, and as such, OSHA was required to conduct an on-site evaluation and case file review. From October 18 through 22, 2021, OSHA conducted an evaluation of CONN-OSHA's enforcement

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<sup>2</sup> Source: Bureau of Labor Statistics' Quarterly Census of Employment and Wages as of June 30, 2021 (preliminary). CONN-OSHA provided the estimate for volunteer firefighters.

program. OSHA's team consisted of five personnel who reviewed 45 safety and health inspection files, most of which were randomly selected from a universe of inspections that CONN-OSHA opened and closed during FY 2021. The review was conducted at a site near CONN-OSHA's headquarters. OSHA and the State Plan agreed that this arrangement would help reduce exposure to the pandemic.

The selected population consisted of:

- Thirty-three (33) programmed inspection case files
- Seven (7) complaint case files
- Three (3) referral case files
- One (1) fatality/catastrophe inspection case file
- One (1) accident inspection case file

OSHA also reviewed seven Alliance files, and the disposition of two contested cases. During the review, OSHA conducted interviews with the director, program manager, and two state attorneys. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as the status of the contested cases, standard and federal program change (FPC) adoptions, complaint processing, abatement tracking, etc.

### **Workplace Retaliation Program Case File Review**

On December 14 through 15, 2021, OSHA conducted the on-site evaluation of CONN-OSHA's workplace retaliation program. OSHA's review team consisted of the Assistant Regional Administrator and a Regional Supervisory Investigator for the Whistleblower Protection Program. OSHA interviewed the principal attorney with the Legal Division and reviewed the one investigation file that CONN-OSHA completed during FY 2021.

### **Monitoring Sources**

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)
- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- State Plan Grant Application
- OSHA Information System (OIS) Reports (Abatement Tracking, Fatality/Catastrophe, Inspection Summary, Open Inspection, and Scan Summary)
- OSHA IT Support System Reports (Case Summary, Activity Measures, Investigation Data and Length of Investigation)
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review

SAMMs are enforcement data points that OSHA and the State Plans have agreed are important in monitoring State Plan performance. Each SAMM has an agreed-upon further review level (FRL) that can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 SAMM Report and includes the FRL for each measure.

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

### **1. PROGRAM ADMINISTRATION**

#### *Training*

CONN-OSHA's Director and training coordinator plan the training and education program for CONN-OSHA staff. CONN-OSHA follows OSHA's Training and Education Directive 01-00-019, Mandatory Training Program for OSHA Compliance Personnel, which prescribes the requirements for training compliance officers. All the State Plan's CSHOs have completed the mandatory training track for compliance personnel as prescribed by the directive. CONN-OSHA also ensures each CSHO completes the technical courses required once initial training requirements have been completed. A listing of training completed by all CSHOs in FY 2021 is included in the CONN-OSHA SOAR.

#### *OSHA Information System*

CONN-OSHA understands the usefulness of OIS reports in monitoring case files and program activity. The State Plan is properly utilizing OIS, including entering data and information into OIS promptly and running reports to ensure proper monitoring of case files and program activities, etc. CONN-OSHA also uses OIS reports to monitor each CSHO's monthly activity.

#### *State Internal Evaluation Program (SIEP) Report*

Over the past several fiscal years, CONN-OSHA has monitored performance on SAMM 1a, average number of days to initiate complaint inspections, and SAMM 11, average lapse time. In the past, the State Plan's performance on these two metrics was not satisfactory. However, since FY 2018, CONN-OSHA has consistently met the FRL for SAMM 1a and SAMM 11. In terms of consultation, the State Plan uses the Consultation Customer Service Report to monitor days lapsed between opening conference and written report. Since FY 2016, CONN-OSHA's averages for safety and health have been consistently below the limit of 20 calendar days established in the Consultation Policies and Procedures Manual. Going forward, CONN-OSHA may evaluate other internal operations, instead of repeatedly focusing on the same three metrics.

#### *Staffing*

At the end of FY 2021, one longstanding safety compliance officer retired. CONN-OSHA filled that position in the second quarter of FY 2022. A 23(g) health consultant also left the State Plan

in May 2021. Instead of hiring another consultant, CONN-OSHA converted that position from consultant to that of a safety compliance officer and filled that new position in the first quarter of FY 2022.

## **2. ENFORCEMENT**

### **a) Complaints**

CONN-OSHA's procedures for handling complaints are set forth in Chapter 9 of the CONN-OSHA Field Operations Manual (FOM), which mirrors OSHA's FOM in this regard. SAMMs 1 through 3 assess efficiency in handling complaint inspections. SAMM 4 pertains to gaining access to the worksite. OSHA did not identify any major issues in the seven complaint files reviewed.

#### **SAMM 1a - Average number of work days to initiate complaint inspections (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL for this measure is five work days. CONN-OSHA's average in FY 2021 was 2.77 work days.

Explanation: CONN-OSHA met the FRL in FY 2021.

#### **SAMM 2a- Average number of work days to initiate complaint investigations (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL is one work day. CONN-OSHA's average of 0.25 work days in FY 2021 was outside (below) the FRL.

Explanation: CONN-OSHA's average of 0.25 work days was a positive result.

#### **SAMM 3 - Percent of complaints and referrals responded to within one work day (imminent danger)**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, CONN-OSHA did not have any data to report for this measure.

Explanation: The State Plan did not receive any imminent danger complaints or referrals in FY 2021.

#### **SAMM 4 - Number of denials where entry not obtained**

Discussion of State Plan Data and FRL: The FRL of zero is fixed for all State Plans. In FY 2021, CONN-OSHA's result was zero.

Explanation: CONN-OSHA did not have any denials of entry in FY 2021.

b) Fatalities

**SAMM 10 - Percent of work-related fatalities responded to in one work day**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, CONN-OSHA's result was 100 percent.

Explanation: In FY 2021, the State Plan responded to one work-related fatality within one work day. OSHA did not review this inspection because it was not closed in FY 2021. For this report, OSHA reviewed one inspection that involved a non-work-related fatality. OSHA did not identify any issues with this inspection.

c) Targeting and Programmed Inspections

**SAMM 7- Planned v. actual inspections – safety/health**

Discussion of State Plan Data and FRL: In FY 2021, the FRL range was from 142.50 to 157.50 for safety and from 76 to 84 for health. CONN-OSHA conducted 169 safety inspections. This total was outside (above) the FRL range, which was a positive outcome. CONN-OSHA conducted 87 health inspections in FY 2021; this result was also outside (above) the FRL range and was positive.

Explanation: The State Plan conducted 256 inspections (111 percent) of 230 inspections planned for FY 2021. By focusing programmed inspections on the high-hazard industries that continued to operate despite the pandemic, the State Plan was able to exceed the FY 2021 goal for inspections.

In the current five-year strategic plan, CONN-OSHA has targeted the following high-hazard industries for safety inspections: highway maintenance and repair operations; police and fire departments; environmental and energy protection services; automotive repair facilities; trade shops within school systems and correctional facilities; public works; parks and recreation; housing authorities; water distribution; waste and remediation services; water pollution; and animal control.

For health inspections, CONN-OSHA has targeted high-hazard workplaces prone to serious health hazards identified by OSHA in emphasis programs. Examples of hazards identified by OSHA in recent emphasis programs include lead, silica hexavalent chromium, respiratory protection, hazard communication, metals, asbestos, noise, bloodborne pathogens, and airborne and surface contaminants.

The program manager assigns programmed inspections to CSHOs based on a list of 169 cities and towns in the state. CONN-OSHA cycles through the list so that the next local government entity assigned for an inspection is the one where the most time has elapsed since the last time it received a programmed inspection. Each local government has at least one department (e.g., public works, water, animal control, etc.) that falls under one of the targeted high-hazard



industries, and CSHOs focus part of their inspections on inspecting these targeted industries.

For state government, CONN-OSHA randomly selects workplaces for programmed inspections, and prioritizes inspections of the various departments within state government entities based on whether they fall under one or more of the targeted industries. CONN-OSHA also evaluates OSHA's national emphasis programs (NEPs) and adopts them if they are applicable to state and local government workplaces.

### **SAMM 5 - Average number of violations per inspection with violations by violation type**

Discussion of State Plan Data and FRL: The FRL range for serious, willful, repeat, or unclassified (SWRU) violations was from 1.42 to 2.14 in FY 2021. CONN-OSHA's average of 2.99 for SWRU violations was outside (above) the FRL range. The FRL range for other-than-serious (OTS) violations was from 0.73 to 1.09; in FY 2021, CONN-OSHA's average of 0.86 for OTS violations was within the acceptable range. Both results were positive.

Explanation: SAMM 5 calculates the average number of SWRU violations, as well as the average number of OTS violations, per not in-compliance inspection. Having a low average for SWRU violations and a comparatively high average for OTS violations could indicate that the State Plan is not targeting the most hazardous worksites and/or tends to classify some violations as OTS that should be classified as serious. CONN-OSHA's results for SAMM 5 indicate that the State Plan targeted the most hazardous worksites for enforcement activity and that CSHOs are adept at identifying and classifying violations.

#### d) Citations and Penalties

##### *Citations*

CONN-OSHA must issue citations within six months of the occurrence of any violation. SAMM 11 measures the State Plan's timeliness in issuing citations.

### **SAMM 11- Average lapse time**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2021, the FRL range was from 41.94 to 62.90 for safety and from 52.88 to 79.32 for health. CONN-OSHA's average of 45.38 for safety was within the FRL range, and its average of 43.86 for health was outside (below) within the FRL range. Both results were positive.

Explanation: Lapse time is the number of work days from the opening conference date to the earliest issuance date. As noted earlier, CONN-OSHA has been monitoring lapse time in its SIEP because of a past concern. However, the State Plan has a solid record of meeting the FRLs in this metric over the past few years.

## **SAMM 9 – Percent in compliance**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2021, the FRL range was from 25.32 percent to 37.98 percent for safety and from 32.51 percent to 48.77 percent for health. CONN-OSHA’s in-compliance rate of 22.29 percent for safety inspections was outside (below) the FRL range, and its in-compliance rate of 18.60 percent for health inspections was outside (below) the FRL range; both in-compliance rates were positive outcomes.

Explanation: Low in-compliance rates indicate CSHOs are adept at identifying and citing violations.

The case file review did not identify any significant issues or trends related to violation classification or hazard identification. However, CONN-OSHA does not require CSHOs to include the narrative in case files for programmed inspections. This practice is not in keeping with the State Plan’s policy that “all” case files “must include” the narrative form (see Chapter 5 of the CONN-OSHA FOM). The narrative is distinct from other inspection forms in that it contains a written account of the inspection, which includes “accurate and concise information about the employer and the worksite,” as well as any other relevant comments that may be helpful, based on the CSHO’s professional judgment.<sup>3</sup>

**Observation FY 2021-OB-01:** In 14 (42 percent) of 33 programmed inspections, there was no narrative in the case file.

**Federal Monitoring Plan FY 2021-OB-01:** During quarterly meetings, OSHA will discuss the need for CONN-OSHA to follow Chapter 5 of the CONN-OSHA FOM, which requires that all case files contain the narrative.

**Status FY 2021-OB-01:** This observation is new.

### *Penalties*

CONN-OSHA’s penalties are established in the state’s Occupational Safety and Health Act, Section 31-382. Willful violations may incur a penalty of up to \$10,000 for each violation, and serious and other-than-serious violations may incur a penalty of not more than \$1,000 for each violation. The State Plan bases its penalty structure and penalty amounts on those contained in the OSHA FOM that was issued in December 1990.

#### e) Abatement

During the on-site review, OSHA reviewed 35 cases for abatement. OSHA did not identify any significant issues pertaining to abatement.

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<sup>3</sup> Chapter 5, CONN-OSHA FOM

f) Worker and Union Involvement

OSHA verified that CONN-OSHA has adequate policies and procedures addressing worker involvement during the inspection process and that most inspections had sufficient union and/or worker representation.

**SAMM 13 – Percent of initial inspections with worker walk around representation or worker interview**

Discussion of State Plan Data and FRL: The FRL of 100 percent for SAMM 13 is fixed for all State Plans. In FY 2021, CONN-OSHA's result for SAMM 13 was 100 percent.

Explanation: In FY 2021, CONN-OSHA met the FRL of 100 percent for SAMM 13.

**3. REVIEW PROCEDURES**

a) Informal conferences

CONN-OSHA's Occupational Safety and Health Act mirrors Chapter 7 of OSHA's FOM with respect to contesting citations and notifying employers of penalties or abatement dates. In 34 inspection files that had informal conferences, OSHA did not identify significant issues with the timeliness of the informal conference or with high numbers of violations being reclassified or vacated. CONN-OSHA does not have penalty reduction programs, such as expedited informal settlement agreements. However, the State Plan has a policy whereby the total of all penalty reductions does not average more than 50 percent of the total penalties leveled against all establishments per year.

b) Formal Review of Citations

In May 2018, CONN-OSHA had one contested case, which was the State Plan's first in many years. The Assistant Attorney General who is handling this matter for CONN-OSHA and the employer have been in settlement negotiations since that time (i.e., almost four years). Nonetheless, the Assistant Attorney General has indicated that the town has decided to accept the original citation, and that an agreement between the parties will be finalized by the spring of 2022. In August 2021, CONN-OSHA received another notice of contest. This case is awaiting a hearing with Connecticut's Occupational Safety and Health Review Commission which consists of five members appointed by the governor.

#### 4. STANDARDS AND FEDERAL PROGRAM CHANGE ADOPTION

##### a) Standards Adoption

In 1972, Connecticut enacted a state law known as the Uniform Administrative Procedure Act (UAPA). This law is codified in the General Statutes of Connecticut as Chapter 54, Section 4-166, *et. seq.* Connecticut’s UAPA contains the provisions governing the rulemaking process that all agencies must follow. A standing committee of the General Assembly, the Regulations Review Committee, must ultimately approve a regulation before it becomes law. Regulations have the same weight as statutes once the regulations have been properly enacted.

CONN-OSHA has adopted all of OSHA’s standards for general industry and construction. CONN-OSHA incorporates federal standards by reference. Therefore, the state and federal standards are identical except for Table Z-1, Limits for Air Contaminants, in 29 CFR 1910.1000, 29 CFR 1904.1, 29 CFR 1904.2, note to Subpart B and non-mandatory Appendix A to Subpart B of 29 CFR 1904.

Although CONN-OSHA undertakes all rulemaking with the intention of meeting the six-month deadline, the Regulations Review Committee controls adoption of CONN-OSHA’s standards. Thus, delays may occur during the process that the State Plan has no power to prevent. Table 1 summarizes the status of CONN-OSHA’s standard adoptions and is followed by a brief discussion of each standard. Overall, CONN-OSHA performed satisfactorily in FY 2021 and FY 2020 regarding standards adoption.

**Table 1  
FY 2020 and FY 2021 Federal Standards Adoption**

| <b>Standard:</b>  | <b>Response Due Date:</b> | <b>State Plan Response Date:</b> | <b>Intent to Adopt:</b> | <b>Adopt Identical:</b> | <b>Adoption Due Date:</b> | <b>State Plan Adoption Date:</b> |
|---|---------------------------|----------------------------------|-------------------------|-------------------------|---------------------------|----------------------------------|
| <i>Adoption Required</i>  |                           |                                  |                         |                         |                           |                                  |
| Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation<br>29 CFR 1903<br>(1/15/2020) | 3/15/2020                 | 2/27/2020                        | No                      | No                      | 7/15/2020                 |                                  |
| Final Rule on the Beryllium Standard for General Industry<br>29 CFR 1910<br>(7/14/2020)                                       | 9/14/2020                 | 8/5/2020                         | Yes                     | Yes                     | 1/14/2021                 | 1/13/2022                        |
| Final Rule on the Beryllium Standard for Construction and Shipyards<br>29 CFR 1915, 1926<br>(8/31/2020)                       | 10/30/2020                | 10/27/2020                       | Yes                     | Yes                     | 2/27/2021                 | 1/12/2022                        |

|   |            |            |     |     |                           |           |
|---|------------|------------|-----|-----|---------------------------|-----------|
| Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)                           | 3/16/2021  | 2/17/2021  | No  | No  | 7/14/2021                 |           |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard 29 CFR 1910 (6/21/2021)                                    | 7/6/2021   | 8/19/2021  | Yes | Yes | 7/21/2021                 | 9/30/2021 |
| <b><i>Adoption Encouraged</i></b>   |            |            |     |     |                           |           |
| Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020) | 9/28/2020  | 10/27/2020 | No  | No  | n/a adoption not required |           |
| Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (9/15/2020)                                      | 11/14/2020 | 10/27/2020 | Yes | Yes | n/a adoption not required | 1/13/2022 |

*Adoption Required*

**Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation Rule  
Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation Rule**

OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. This rule allows for an annual raise in penalties based on inflation. As a State and Local Government Only State Plan, CONN-OSHA is not required to adopt OSHA’s maximum and minimum penalties rule (and did not do so) and, therefore, is not required to adopt the annual adjustments to civil penalties for inflation. CONN-OSHA notified OSHA in a timely manner (i.e., within 60 days from publication of the standard in the *Federal Register*) that it did not intend to adopt these rules.

**Beryllium Standards**

OSHA’s beryllium standards require employers to implement protective measures for workers exposed to beryllium in their workplace. CONN-OSHA responded timely to both standards but was about one year late in completing their adoption, which should have been accomplished within six months from the effective date identified in the final *Federal Register* notice. Due to the pandemic and competing priorities, the Office of Policy and Management took much longer to review these standards than normal. Thus, CONN-OSHA’s attorney faced delays in circulating the rules through the approval process (public notice, approval by the Office of the Attorney General, and the Regulation Review Committee). Given these unique challenges, OSHA is not overly concerned with CONN-OSHA’s lateness in adopting these standards.

## **Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard**

OSHA has determined that employee exposure to SARS-CoV-2, the virus that causes COVID-19, presents a grave danger to workers in healthcare settings where people with COVID-19 are reasonably expected to be present and has issued an Emergency Temporary Standard (ETS) to address the hazard.

When Federal OSHA promulgates an ETS, State Plans must either amend their standards to be identical or “at least as effective as” the new standard or show that an existing state standard covering this area is “at least as effective” as the new federal standard (29 CFR 1953.5(b)). State Plans must complete adoption of the ETS within 30 days of the promulgation date of the final federal rule, and they must notify Federal OSHA of the action they will take within 15 days. The State Plan standard must remain in effect for the duration of the federal ETS.

On July 8, 2021, CONN-OSHA requested OSHA waive the requirement to adopt the Healthcare ETS, mainly because the state had a “high vaccination rate, low positivity rate, and an extremely low number of residents hospitalized with COVID-19.” Thus, CONN-OSHA concluded that in Connecticut, state and local government workers at sites covered under the Healthcare ETS were not in grave danger. On August 3, 2021, OSHA denied the State Plan’s request, stating (in part) that “The Occupational Safety and Health Act (OSH Act) does not authorize OSHA to grant such waivers or otherwise exempt State Plans from adopting and enforcing workplace safety and health requirements that are at least as effective as Federal OSHA.” Because the State Plan began the adoption process soon after receiving OSHA’s decision, CONN-OSHA’s lateness in responding to and adopting the Healthcare ETS is not overly concerning.

### *Adoption Encouraged*

## **Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records**

This rule describes internal procedures for obtaining and using personally-identifiable worker medical information. CONN-OSHA’s response was about a month late; adoption was not required, and the State Plan decided not to adopt this rule.

## **Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work**

OSHA revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications regarding the application of the standard to cranes and derricks used for railroad roadway work. CONN-OSHA responded timely but went far beyond the due date for adoption. The reasons for the State Plan’s late adoption are the same as those discussed under the beryllium standards. Thus, OSHA is not concerned with CONN-OSHA’s delay in adopting this standard.

b) Federal Program Change Adoption

Table 2 is followed by a discussion of CONN-OSHA's FPC adoptions. Although CONN-OSHA exceeded some deadlines, the State Plan's performance regarding FPCs was acceptable in FY 2021 and FY 2020.

**Table 2**  
**FY 2020 and FY 2021 Federal Program Change Adoption**

| <b>FPC Directive/Subject:</b>   | <b>Response Due Date:</b> | <b>State Plan Response Date:</b> | <b>Intent to Adopt:</b> | <b>Adopt Identical:</b> | <b>Adoption Due Date:</b> | <b>State Plan Adoption Date:</b> |
|---|---------------------------|----------------------------------|-------------------------|-------------------------|---------------------------|----------------------------------|
| <i><b>Adoption Required</b></i>   |                           |                                  |                         |                         |                           |                                  |
| Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)                          | 2/10/2020                 | 2/6/2020                         | Yes                     | Yes                     | 6/10/2020                 | 2/15/2020                        |
| Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)                                      | 4/4/2020                  | 4/3/2020                         | Yes                     | Yes                     | 8/4/2020                  | 4/6/2020                         |
| <i><b>Equivalency Required</b></i>  |                           |                                  |                         |                         |                           |                                  |
| Field Operations Manual CPL 02-00-164 (4/14/2020)   | 6/13/2020                 | 6/11/2020                        | Yes                     | No                      | 10/11/2020                | 6/30/2020                        |
| Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020) | 8/24/2020                 | 7/15/2020                        | Yes                     | Yes                     | 12/22/2020                | 7/20/2020                        |
| Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)  | 2/12/2021                 | 8/10/2021                        | Yes                     | No                      | 6/12/2021                 | 8/16/2021                        |
| Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)                           | 5/19/2021                 | 4/18/2021                        | Yes                     | Yes                     | 9/19/2021                 | 5/1/2021                         |
| Inspection Procedures for the COVID-19 Emergency Temporary Standard                             | 7/13/2021                 | 8/10/2021                        | Yes                     | Yes                     | 7/28/2021                 | 9/30/2021                        |

|  |           |           |     |     |                                 |           |
|--|-----------|-----------|-----|-----|---------------------------------|-----------|
| CPL DIR 2021-02 (CPL 02)<br>(6/28/2021)  |           |           |     |     |                                 |           |
| Compliance Directive for the Excavation Standard<br>29 CFR 1926, Subpart P<br>CPL 02-00-165<br>(7/1/2021)            | 8/30/2021 | 8/10/2021 | Yes | Yes | 12/28/2021                      | 8/31/2021 |
| Revised National Emphasis Program -<br>Coronavirus Disease 2019 (COVID-19) CPL<br>DIR 2021-03 (CPL 03)<br>(7/7/2021) | 7/22/2021 | 8/10/2021 | Yes | Yes | 8/7/2021                        | 9/30/2021 |
| <b><i>Adoption Encouraged</i></b>  |           |           |     |     |                                 |           |
| Voluntary Protection Programs Policies and<br>Procedures Manual<br>CSP 03-01-005<br>(1/30/2020)                      | 3/30/2020 | 2/27/2020 | No  | No  | n/a<br>adoption<br>not required |           |
| Electronic Case File System Procedures for<br>the Whistleblower Protection Program<br>CPL 02-03-009<br>(6/18/2020)   | 8/18/2020 | 8/6/2020  | No  | No  | n/a<br>adoption<br>not required |           |
| National Emphasis Program - Coronavirus<br>Disease 2019 (COVID-19)<br>CPL DIR 2021-01 (CPL-03)<br>(3/12/2021)        | 5/12/2021 | 4/18/2021 | No  | No  | n/a<br>adoption<br>not required |           |
| Communicating OSHA Fatality Inspection<br>Procedures to a Victim's Family<br>CPL 02-00-166<br>(7/7/2021)             | 9/7/2021  | 8/10/2021 | Yes | Yes | n/a<br>adoption<br>not required | 8/31/2021 |

CONN-OSHA's responses and adoptions were timely for the FPCs where adoption was required. The State Plan responded to and adopted all FPCs where equivalency was required in a timely manner, except for the SST directive, and two directives related to the pandemic (Inspection Procedures for the COVID-19 ETS and Revised NEP- Coronavirus Disease 2019). State Plans were required to respond to the SST directive by February 12, 2021; however, OSHA encountered a delay in notifying State Plans of this directive; thus, OSHA is not penalizing State Plans for responding past the traditional 60-day response due date. CONN-OSHA was late in



responding to and adopting the two directives pertaining to the pandemic because of its hesitancy to adopt the Healthcare ETS. CONN-OSHA adopted the pandemic-related FPCs on September 30, 2021, the same date it adopted the Healthcare ETS. The State Plan's responses were timely for all FPCs where adoption was encouraged but not required. Of these four FPCs, the only one CONN-OSHA adopted was the directive for communicating with the fatality victim's family, and it did so in a timely manner.

## **5. VARIANCES**

CONN-OSHA did not have any variances in FY 2021 or in FY 2020.

## **6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM**

CONN-OSHA is a State and Local Government Only State Plan.

## **7. WHISTLEBLOWER PROGRAM**

The Connecticut Department of Labor operates the State Plan's whistleblower protection program through its Legal Division. The major difference between OSHA's whistleblower protection program and CONN-OSHA's is that the Legal Division considers each case as having merit and, after the exchange of party documentation, immediately sends parties involved in workplace retaliation complaints to the mediation process (assuming threshold and jurisdiction issues are supported). Either a settlement is reached in mediation, or the matter is referred to a hearing officer, who after conducting a hearing in accordance with the state's UAPA, issues a proposed decision to the Commissioner of Labor. The Commissioner may then adopt the decision in whole, or modify it, and may also entertain the filing of briefs and presentation of oral argument from an aggrieved party. Thereafter, an aggrieved party may appeal to the Superior Court, and then, if applicable, the Appellate and Supreme Courts. OSHA does not immediately send parties to the mediation process; parties who bring a case to OSHA either go through the investigative process or choose to enter the Voluntary Mediation Program.

The State Plan's website has a link to workplace retaliation information on its homepage. The site also includes links to the online complaint form and workers' rights information. Complainants can easily find information on their workplace retaliation rights and can file a complaint from the website.

The Legal Division investigated one workplace retaliation case in FY 2021. For this case, the Legal Division conducted a successful mediation and followed all relevant procedures.

### **SAMM 14 - Percent of 11(c) investigations completed within 90 days**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, the Legal Division's result for this SAMM was zero. This outcome was not positive.

Explanation: Due to an increased workload during the pandemic, the Legal Division went far beyond the allowed 90-day period to close the one case docketed in FY 2021. The Legal Division also handles the legality and adjudication of unemployment claims, and over the past two years, the number of claims has skyrocketed. Thus, OSHA is not concerned with the Legal Division's result for SAMM 14. Once the Legal Division's workload returns to normal, it will have the capacity to handle workplaces retaliation cases more efficiently.

### **SAMM 15 - Percent of 11(c) complaints that are meritorious**

Discussion of State Plan Data and FRL: In FY 2021, the FRL range for SAMM 15 was from 16 percent to 24 percent. The Legal Division's percent of 11(c) complaints that were meritorious was 100, which is above the FRL.

Explanation: The Legal Division settled one case in FY 2021, which is the reason for the result of 100 percent. A settlement is a positive outcome for a complainant; therefore, it is "meritorious."

### **SAMM 16 – Average number of calendar days to complete an 11(c) investigation**

Discussion of State Plan Data and FRL: The FRL of 90 calendar days is fixed for all State Plans. In FY 2021, the Legal Division's average was 259 days.

Explanation: Although the delay in completing the investigation was significant, OSHA is not overly concerned because it was caused by the Legal Division's increased workload during the pandemic.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

CONN-OSHA did not have any CASPAs in FY 2021 or FY 2020.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

OSHA has determined that CONN-OSHA has adequate written policies and procedures for voluntary and cooperative programs. CONN-OSHA has an Alliance program that is patterned after the federal program. For example, CONN-OSHA's Alliances include the following core activities: training and education; outreach and communication; and promoting the national dialogue on workplace safety and health. The State Plan began FY 2020 with seven Alliances, but one agreement lapsed during that year. In FY 2021, another agreement lapsed, leaving the State Plan with five Alliances at the end of the fiscal year.

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

CONN-OSHA's 23(g) Consultation Program projected a total of 130 visits in both FY 2021 and FY 2020, but the State Plan did not meet the goal in either fiscal year. In FY 2021, CONN-OSHA ended the year with 119 visits, which was 92 percent of the goal. In FY 2020, the State Plan achieved only 52 percent of the year end goal with a total of 67 visits. Due to the pandemic, OSHA is not overly concerned that the State Plan did not meet the goal for visits over the past two fiscal years.

MARC 4A measures the percent of serious hazards corrected within the required timeframe (up to 14 days of the latest correction due date). The reference for this MARC is 100 percent. In FY 2021 and FY 2020, the State Plan's results were 99.48 percent and 100 percent respectively, which were acceptable. In terms of MARC 4D, percent of serious hazards corrected within the original time or on site, the State Plan's performance was satisfactory in FY 2021; CONN-OSHA's percent for MARC 4D was 61.72, which was only a bit outside (below) the reference of 65 percent. In FY 2020, the State Plan's percent was only 46.57 percent, which was far outside (below) the reference of 65 percent. These results are not cause for concern; due to the pandemic, CONN-OSHA had difficulty reaching some employers, which delayed hazard corrections beyond the original time.

## Appendix A – New and Continued Findings and Recommendations

### FY 2021 CONN-OSHA Comprehensive FAME Report

| FY 2021-# | Finding | Recommendation | FY 2020-# or<br>FY 2020-OB-# |
|-----------|---------|----------------|------------------------------|
|           | None.   |                |                              |

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

### FY 2021 CONN-OSHA Comprehensive FAME Report

| Observation #<br>FY 2021-OB-# | Observation#<br>FY 2020-OB-<br># or FY<br>2020-# | Observation   | Federal Monitoring Plan   | Current<br>Status |
|-------------------------------|--|---|---|-------------------|
| FY 2021-OB-01                 |  | In 14 (42 percent) of 33 programmed inspections, there was no OIS narrative in the case file. | During quarterly meetings, OSHA will discuss the need for CONN-OSHA to follow Chapter 5 of the CONN-OSHA FOM, which requires that all case files contain the narrative. | New               |

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

FY 2021 CONN-OSHA Comprehensive FAME Report

| <b>FY 2020-#</b> | <b>Finding</b> | <b>Recommendation</b> | <b>State Plan Corrective Action</b> | <b>Completion Date (if Applicable)</b> | <b>Current Status (and Date if Item Is Not Completed)</b> |
|------------------|----------------|-----------------------|-------------------------------------|--|---|
|                  | None.          |                       |                                     |  |   |

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

### FY 2021 CONN-OSHA Comprehensive FAME Report

| SAMM Number | SAMM Name   | State Plan Data | Further Review Level | Notes  |
|-------------|---|-----------------|----------------------|--|
| <b>1a</b>   | Average number of work days to initiate complaint inspections (state formula)         | 2.77            | 5                    | 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)       | 1.73            | N/A                  | 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)      | 0.25            | 1                    | 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)    | 0.25            | N/A                  | 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) | N/A             | 100%                 | N/A – The State Plan did not receive any imminent danger complaints or referrals in FY 2021.<br><br>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>5a</b>   | Average number of violations per inspection with violations by violation type (SWRU)  | 2.99            | +/- 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) | 0.86            | +/- 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                 | 100%            | 100%                 | Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces.   |
| <b>7a</b>   | Planned v. actual inspections (safety)  | 169             | +/- 5% of 150        | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The                                       |

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

### FY 2021 CONN-OSHA Comprehensive FAME Report

| SAMM Number | SAMM Name   | State Plan Data | Further Review Level  | Notes   |
|-------------|---|-----------------|-----------------------|---|
|             |   |                 |                       | range of acceptable data not requiring further review is from 142.50 to 157.50 for safety.  |
| <b>7b</b>   | Planned v. actual inspections (health)  | 87              | +/- 5% of 80          | 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 76 to 84 for health. |
| <b>8</b>    | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A             | +/- 25% of \$3,100.37 | N/A – This is a State and Local Government State Plan.<br><br>The further review level is based on a three-year national average.   |
|             | <b>a.</b> Average current serious penalty in private sector (1-25 workers)                | N/A             | +/- 25% of \$2,030.66 | N/A – This is a State and Local Government State Plan.<br><br>The further review level is based on a three-year national average.   |
|             | <b>b.</b> Average current serious penalty in private sector (26-100 workers)              | N/A             | +/- 25% of \$3,632.26 | N/A – This is a State and Local Government State Plan.<br><br>The further review level is based on a three-year national average.   |
|             | <b>c.</b> Average current serious penalty in private sector (101-250 workers)             | N/A             | +/- 25% of \$5,320.16 | N/A – This is a State and Local Government State Plan.<br><br>The further review level is based on a three-year national average.   |
|             | <b>d.</b> Average current serious penalty in private sector (greater than 250 workers)    | N/A             | +/- 25% of \$6,575.70 | N/A – This is a State and Local Government State Plan.<br><br>The further review level is based on a three-year national average.   |
| <b>9a</b>   | Percent in compliance (safety)  | 22.29%          | +/- 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.  |



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

### FY 2021 CONN-OSHA Comprehensive FAME Report

| SAMM Number | SAMM Name   | State Plan Data | Further Review Level | Notes  |
|-------------|---|-----------------|----------------------|--|
| <b>9b</b>   | Percent in compliance (health)  | 18.60%          | +/- 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>11a</b>  | Average lapse time (safety)   | 45.38           | +/- 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)   | 43.86           | +/- 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  | N/A             | +/- 15% of 69.08%    | NA – This is a State and Local Government State Plan and is not held to this SAMM.<br><br>The further review level is based on a three-year national average.      |
| <b>13</b>   | Percent of initial inspections with worker walk-around representation or worker interview | 100%            | 100%                 | The further review level is fixed for all State Plans.   |
| <b>14</b>   | Percent of 11(c) investigations completed within 90 days                                  | 0%              | 100%                 | The further review level is fixed for all State Plans.   |
| <b>15</b>   | Percent of 11(c) complaints that are meritorious  | 100%            | +/- 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                        | 259             | 90                   | The further review level is fixed for all State Plans.   |
| <b>17</b>   | Percent of enforcement presence   | N/A             | +/- 25% of 0.99%     | N/A – This is a State and Local Government State Plan and is not held to this SAMM.  |

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

FY 2021 CONN-OSHA Comprehensive FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes   |
|-------------|-----------|-----------------|----------------------|---|
|             |           |                 |                      | The further review level is based on a three-year national average. |

Note: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 8, 2021, as part of OSHA's official end-of-year data run.

