# FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

**NORTH CAROLINA DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH DIVISION**



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## Executive Summary

The primary purpose of this report is to assess the State Plan’s progress in Fiscal Year (FY) 2022, in resolving outstanding findings from the previous FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report by the North Carolina Department of Labor, Occupational Safety and Health (OSHNC) Division 23(g) program. This report is also based on the results of quarterly monitoring visits, the State OSHA Annual Report (SOAR) and the State Activity Mandated Measures (SAMM). A review of the SAMM data for FY 2022 indicated that OSH generally met or exceeded federal activity results. The State has taken corrective action to effectively complete and close the FY 2021 finding. No new findings or observations were identified in FY 2022.

The OSHNC has established two outcome goals as part of the Five-Year Strategic Management Plan. Goal One is to reduce, by the end of FY 2023, the rate of workplace fatalities by 2%. Goal Two is to reduce by the end of FY 2023, the rate of workplace injuries and illnesses by 5%. The primary strategy for reducing the overall injury and illness rate and fatality rate entails designating and implementing performance goals affecting specific industry groups and workplace health hazards.

Based on the most current available data, North Carolina’s Total Recordable Case (TRC) rate for Calendar Year 2021 remains historically low. The private sector TRC rate was 2.2, and the Days Away, Restricted, or Transferred (DART) rate was 1.3. These rates are 19% lower and 21% lower, respectively, than the national average. When the state and local government sector numbers are included, the overall TRC rate was 2.4 and the DART rate was 1.4. These rates are 17% and 22% lower, respectively, than the national rates.

In FY 2022, 52,591 publications were distributed to promote a safe and healthy work environment. The Bureau of **Education, Training and Technical Assistance (**ETTA) Publications Desk served 2,425 customers and participated in 190 events, such as 10-and 30- hour courses, construction forums, webinars, outreach fairs and conferences. Most notably, ETTA participated with OSHA in the National Stand Down to Prevent Falls in Construction and during Safe + Sound Week, they hosted two webinars. To raise awareness across NC, ETTA contributed to the designs of five billboards: Grain Safety, Fall Prevention, Heat Stress, Trenching Safety and the Safe + Sound Initiative.

The Agricultural Safety and Health (ASH) Bureau continues to strengthen partnerships with groups, such as: NC State University cooperative extension, NC Agromedicine Institute, NCDHHS, NC Farmworker Health Program, NC Dept. of Commerce, NC Community Health Center Association, NC Farm Bureau, NC Agribusiness Council, and the NC Growers Association. In FY 2022, ASH completed 2,034 preoccupancy migrant farmworker housing inspections and 52 compliance inspections. ASH also distributed 6,752 safety & health publications to farmers and farmworkers and participated in multiple safety-at-work forums to raise awareness in the Hispanic community on workplace hazards and how workers can report unsafe working conditions.

## State Plan Background

The North Carolina Occupational Safety and Health State Plan received final approval under Section 18(e) of the OSH Act on December 10, 1996. The official designated as responsible for administering the program under the Occupational Safety and Health Act of North Carolina is the Commissioner of Labor. The Commissioner of Labor is a constitutional officer selected through a statewide election. The current Commissioner of Labor is Josh Dobson. Within the NC Department of Labor, the OSH Division is responsible for carrying out the requirements of the State Plan. In June 2022, the Commissioner of Labor announced several changes impacting the NCDOL senior staff. Kevin Beauregard, Deputy Commissioner/OSH Director of the OSH Division, announced his retirement effective October 1, 2022, and Jennifer Haigwood, NCDOL Director of Communications, was promoted into the OSH Director position. To ease the transition, Jennifer began working alongside Kevin in August 2022. In addition, the Commissioner announced that Scott Mabry, Assistant Director of the OSH Division, was being promoted to Chief of Staff effective August 1, 2022, due to the retirement of Art Britt. Further, Paul Sullivan, NCDOL West Compliance Bureau Chief, was promoted to the OSH Assistant Director position.

The Occupational Safety and Health Division is organized into the following operating units: East and West Compliance Bureaus; Bureau of Education, Training, and Technical Assistance (ETTA); Bureau of Consultative Services; Bureau of Planning, Statistics, and Information Management (PSIM), and the Agricultural Safety and Health (ASH) Bureau. The main office and a district office are in Raleigh, with four additional offices located throughout the State: Asheville; Charlotte; Winston-Salem; and Wilmington. Currently, there are 196.8 positions funded under the 23(g) grant, including 102 positions, which are 100% state funded.  These positions include 64 safety compliance officers and 45 health compliance officers assigned to district offices, throughout the State.  Additional safety and health professionals work in ETTA with responsibilities related to training, development of outreach materials, standards, and the Carolina Star Program (Voluntary Protection Program). The worker population in North Carolina consists of approximately 4,436,892 workers, and 282,534 establishments.

Employee protection from retaliation related to occupational safety and health is administered by the Employment Discrimination Bureau (EDB), which falls under the Deputy Commissioner for Standards and Inspections, in the North Carolina Department of Labor. This Bureau covers several types of employment-related retaliation, in addition to whistleblower protection that falls under the jurisdiction of the State Plan.

The North Carolina Department of Labor provides private sector onsite consultative services through a 21(d) Grant. There are 20.1 positions funded under the 21(d) grant, including consultants, administrative staff, and managerial employees. Four of the 21(d) positions are 100% state funded. State and local government agencies’ 23(g) grant consultative services, enforcement, and compliance assistance activities are accomplished by the same staff, in accordance with consultation procedures established for the private sector. North Carolina’s Star Program organizationally falls within ETTA.

The table below shows the OSHNC’s funding levels from FY 2018 through FY 2022.

**FY 2018-2022 Funding History**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Fiscal Year** | **Federal Award ($)** | **State Plan Match ($)** | **100% State Funds ($)** | **Total Funding ($)** | **% of State Plan Contribution** |
| **2022** | 6,029,800 | 6,029,800 | 8,535,199 | 20,594,799 | 70.72 |
| **2021** | 5,900,200 | 5,900,200 | 7,788,501 | 19,588,901 | 69.88 |
| **2020** | 5,810,300 | 5,810,300 | 7,782,005 | 19,402,605 | 70.05 |
| **2019** | 5,431,200 | 5,431,200 | 7,716,338 | 18,578,738 | 71.33 |
| **2018** | 5,326,000 | 5,326,000 | 7,578,359 | 18,230,359 | 70.78 |

**New Issues**

Effective October 1, 2022, the North Carolina State Plan’s minimum and maximum civil penalties associated with occupational safety and health standards’ violations increased. Subsequent annual penalty adjustments shall be made, in accordance with the United States Consumer Price Index published by the United States Department of Labor. These changes are reflected in the North Carolina General Statute §95-138(a), in accordance with the 13 North Carolina Administrative Code 07A.0301 and 29 CFR 1903.

## Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is a follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

* State Activity Mandated Measures (SAMM) Report
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

#### Findings (Status of Previous Items)

The State Plan completed the previous finding from the FY 2021 Comprehensive FAME Report. Appendix C describes the status of each FY 2021 finding and recommendation in detail.

**Completed Finding**

**Finding FY-2021-01:** OSHNC has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Status:** OSHNC’s FY 2023 Budget was approved by the Legislature on 7/1/22 and was signed into law by NC Governor Roy Cooper on 7/11/22. The new language in section 95-138(a)(1) adopts the current federal OSHA penalties, as depicted in 29 CFR 1903.15(d), effective 10/1/22. Penalty adjustments by OSHA that are associated with the Consumer Price Index (CPI) for Urban Areas will be adopted by the NC Department of Labor (NCDOL), per the North Carolina Administrative Code (NCAC), within 60 days of OSHA’s posting notice in the Federal Register. This item is completed.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL, which can be either a single number, or a range of numbers above and below the three-year national average. State Plan SAMM data that falls outside of the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2022 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded in OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plan’s whistleblower programs for FY 2022.

The State Plan was outside of the FRL on the following SAMMs:

**SAMM 7 – Planned v. Actual Inspections**

**Discussion of State Plan Data and Further Review Level (FRL)**: Actual safety and health inspections declined in FY 2022. The OSH Division conducted 1,954 inspections (1,172 safety and 782 health), 75% of the planned number of 2,597 inspections.

**Explanation:** The emergence of the Delta and Omicron variants of the coronavirus in early Fall and Winter of FY 2022, once again significantly impacted the OSH Division’s resources. During the first quarter of FY 2022, OSH was impacted by COVID-19 in the following manner: 907 emails/phone inquiries, 540 complaints, 23 referrals, 16 inspections and numerous other activities.  These COVID-19 related activities had the most significant impact on the compliance staff. Through the first four months of FY 2022, it became clear that the OSH Division would not be able to meet some previously established compliance activity goals, due to the pandemic impact and staffing challenges. Due to the circumstances, OSH submitted a revised FY 2022 safety and health inspection goal in February 2022. The revised goal submitted for safety was 1,195 inspections and OSHNC conducted 1,172 inspections (98%). The revised FY 2022 health inspection goal was 755 inspections and OSHNC conducted 782 inspections (103.5%). OSHNC was within +/- 5% of the FRL for the revised inspection goals.

**SAMM 8 – Average current serious penalty in private sector - total (1 to greater than 250 workers)**

**Discussion of State Plan data and FRL:** The FRL for SAMM 8, a total average current penalty per serious violation (1 to greater than 250 employees) is +/- 25% of the three-year national average of $3,259.35, which equals a range of $2,444.51 to $4,074.19. The North Carolina State Plan’s total average current penalty per serious violation (1 to greater than 250 employees) was $1,965.89.

**Explanation:** The FY 2022 data reflects the penalties before the adoption of OSHA’s maximum penalties, which has impacted the State Plan’s performance on this SAMM. However, as of October 1, 2022, OSHNC has adopted the increase in maximum penalties and as such, assessed penalty amounts are expected to increase .

**SAMM 9 – Percent in-compliance for safety inspections**

**Discussion of State Plan data and FRL**: The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 32.25% for safety inspections. The range of acceptable data not requiring further review was from 25.80% to 38.70% for safety. OSHNC had a safety in-compliance rate of 38.72%.

**Explanation:** OSH was within the range of the FRL for health in-compliance inspections but was slightly (0.02%) outside of the FRL for safety. The State Plan’s slightly elevated in-compliance rate for safety may be attributed to staff turnover and a lower number of experienced staff.

### Appendix A – New and Continued Findings and Recommendations

FY 2022 OSHNC Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 20XX-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| N/A |  |  |  |
|  |  |  |  |
|  |  |  |  |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 OSHNC Follow-up FAME Report

| **Observation #**  **FY 20XX-OB-#** | **Observation#**  **FY 20XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| N/A |  |  |  |  |
|  |  |  |  |  |

### Appendix C - Status of FY 2021 Findings and Recommendations

FY 2022 OSHNC Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 20XX-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY-2021-01 | OSHNC has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | The State Plan should work with their State authorities to complete the policy and procedure changes necessary to implement the adoption of maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels. | OSHNC FY 23 Budget was approved by the Legislature on 7/1/22 and was signed into law by NC Governor Roy Cooper on 7/11/22. The new language in section 95-138(a)(1) adopts the current federal OSHA penalties, as depicted in 29 CFR 1903.15(d), effective 10/1/22. Penally adjustments by OSHA that are associated with the Consumer Price Index (CPI) for Urban Areas will be adopted by the NC Department of Labor (NCDOL) per the North Carolina Administrative Code (NCAC) attached, within 60 days of OSHA posting notice in the Federal Register. | **10/1/2022** | **Completed** |

**Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report**

FY 2022 OSHNC Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 5.71 | 10 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 2.19 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 2.26 | 4 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 1.14 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | N/A | 100% | N/A – The State Plan did not receive any imminent danger complaints or referrals in FY 2022.  The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 2.04 | +/- 20% of  1.77 | 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 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.97 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 4.81% | +/- 5% of  5% | 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 4.75% to 5.25%. |
| 7a | Planned v. actual inspections (safety) | 1,172 | +/- 5% of  1,638 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,556.10 to 1,719.90 for safety. |
| 7b | Planned v. actual inspections (health) | 782 | +/- 5% of  962 | 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 913.90 to 1,010.10 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,965.89 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $1,302.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $1,786.77 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $2,798.57 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $4,723.98 | +/- 25% of  $6,725.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 38.72% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 38.91% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 50.53 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 52.87 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | 89.42% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 100% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | 1.02% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D are pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.