**FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

**State of Alaska**

**Department of Labor and Workforce**

**Development Labor Standards and Safety Division**

**Alaska Occupational Safety and Health (AKOSH)**



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# Executive Summary

The purpose of this report is to assess the Alaska Occupational Safety and Health’s (AKOSH’s) performance during Fiscal Year (FY) 2023 regarding activities mandated by the Occupational Safety and Health Administration (OSHA), and to gauge the State Plan’s progress toward resolving outstanding findings and observations from the FY 2022 Follow-up Federal Annual Monitoring and Evaluation (FAME) report. One finding and several observations were completed. However, there were new findings and observations added since the last comprehensive FAME.

There have been hiring and retention challenges over the past two years, specifically with the enforcement division, resulting in AKOSH not meeting some of their performance goals. Alaska’s Acting Commissioner asked AKOSH to develop new policies for enforcement penalties and abatement which were reviewed for at least as effective status by OSHA’s Regional and National Office and the results communicated with the State Plan.

The Whistleblower Investigator was able to significantly reduce the existing backlog noted in the FY 2021 FAME report. In FY 2023, the average days pending decreased from 819 to 534 and the total pending cases also decreased from 103 to 20, because of their dedication and hard work.

There are two findings and ten observations in this report. The one finding from the FY 2022 Follow-up FAME report was completed, there was one new finding, and one observation was converted to a finding. Nine observations from the FY 2022 follow-up FAME report were closed, two observations were continued, and there are eight new observations.

Appendix A describes new and continued findings, and recommendations. Appendix B describes observations subject to continued monitoring, the related federal monitoring plan, and closed observations. Appendix C describes the status of previous findings with associated completed corrective actions.

# II. State Plan Background

## Background

The State of Alaska, in accordance with Section 18 of the Occupational Safety and Health Act of 1970, operated an occupational safety and health program through its Department of Labor and Workforce Development, Labor Standards and Safety Division, Occupational Safety and Health. Alaska received approval for the state plan on August 10, 1973. On September 13, 1977, OSHA certified that all developmental steps were completed as specified in its plan and final approval was granted on September 28, 1984.

The Alaska Occupational Safety and Health Program is part of the Alaska Department of Labor and Workforce Development, which falls under the Division of Labor Standards and Safety. Two key leadership positions turned over in 2023, with the resignation of Commissioner Ledbetter, Deputy Commissioner Catherine Muñoz was appointed as Acting Commissioner and serves as the State Plan Designee. In 4th Quarter, the Acting Director Tanya Keith was appointed as Division Director. AKOSH is divided into two sections: Enforcement, and Consultation and Training. The Enforcement section was managed by W. Dale Williamson, who supervised five Industrial Hygienists (IH), five Safety Compliance Officers (SCOs), and one retaliation investigator. The Consultation and Training section was managed by Chief Elaine Banda, who supervised two IHs and six safety consultants. AKOSH funded 2.2 full time equivalent (FTE) of the safety consultation positions and one (1) FTE of the health consultation positions as state and local government consultants under the 23(g) grant. One (1) additional FTE was funded for compliance assistance activities and was split between several positions in both consultation and enforcement. The remainder of the consultation program activities and FTEs were funded by the 21(d) Cooperative Agreement and are evaluated in the Regional Annual Consultation Evaluation Report.

AKOSH exercises jurisdiction over all private sector employers except for employers at Denali National Park, Metlakatla Indian Reservation, maritime industries, federal government- owned and contractor-operated (GOCO) native health care facilities, artificial islands, and select military installations. The program does not cover federal agencies and federal employees. AKOSH retains jurisdiction in state and local government workplaces. AKOSH has developed and adopted state-specific standards for several hazardous operations in general industry and construction including oil and gas operations, logging, telecommunications, and electric power generation, transmission, and distribution.

According to the demographic profile provided in the FY 2023 23(g) grant application, there were approximately 328,400 workers. The initial award was $3,496,905 ($1,550,500 federal, $1,946,405 state funds). The State Plan did not accept a federal base increase of $131,100 offered in March 2023. The state reported final expenditures to be $3,222,727 ($1,550,500 federal, $1,672,227 state funds).

## New Issues

The enforcement program had hiring and retention issues with CSHOs over the past two years, which affected the number of inspections they completed and other performance goals. A policy memo dated (September 7, 2023) titled Informal Settlement Guidance-Diversionary Program for Inspections with Initial Citations, mandated that AKOSH implement a new penalty policy in which penalties could be substantially reduced for employers who have had no inspections, or no alleged violations within the past five years and agree to undergo a partial or comprehensive consultation within 45 days of the informal settlement agreement. This policy change was reviewed for at least as effective status by OSHA’s Regional and National Office and the results communicated with the State Plan.

III. Assessment of State Plan Progress and Performance

## Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A four-person OSHA team, which included a whistleblower investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the AKOSH State Plan office during the month of November 2024. Two OSHA Consultation Regional Program Officers audited the consultation program in April of 2023. A total of 169 enforcement, retaliation, and consultation case files were reviewed. The safety and health inspection files were randomly selected from inspections conducted during the evaluation period (Oct 1, 2022, through September 30, 2023) as well as 14 open inspection files well past the statute date. The files reviewed included:

* Three (3) fatality inspection files
  + Four (4) fatality UPAs that did not result in an inspection
* Twenty-one (21) complaint inspections
  + Twenty-two (22) complaint UPA files (no associated inspection)
* Twenty-two (22) referral inspections including employer reported case files
  + Two (2) referral UPAs (no associated inspection)
* Six (6) Programmed Planned inspection files
* One (1) Programmed Related inspection file

A total of 84 retaliation investigations were completed and 100 complaints were administratively closed in FY 2023. A random selection of completed and administratively closed investigation files were chosen for review according to the percentage each category made up of the total. This resulted in 76 case files reviewed which consisted of:

* Thirty-nine (39) Administratively Closed
* Twenty (20) Dismissed
* Three (3) Settled Other
* Four (4) Settled
* Five (5) Withdrawn
* Five (5) Merit

A total of 11 state and local government consultation visit files were also reviewed.

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 (Appendix D)
* State Information Report
* Mandated Activities Report for Consultation
* State OSHA Annual Report
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2023 State Activity Mandated Measures Report and includes the FRL for each measure.

## Review of State Plan Performance

### Program Administration

1. Training

AKOSH adopted PD 16-02 on November 23, 2013, in response to OSHA’s training directive, TED 01-00-019 Mandatory Training Program for OSHA Compliance Personnel, and the alternative approach was approved by OSHA. A comprehensive continuing education program was provided to ensure compliance officers and consultants maintained their knowledge and skills. In FY 2023, training opportunities for enforcement and consultation personnel included 8 OSHA Training Institute (OTI) courses, 25 OSHA Training Institute (OTI) courses via webinars, four University of Washington courses, and 21 other safety and health related and in-house courses.

AKOSH adopted PD 19-05, Mandatory Training Program for AKOSH Whistleblower Investigators on November 1, 2018, in response to the OSHA Whistleblower Training Program Directive from FY 2016. There is one AKOSH representative, who is a full-time investigator, that manages the whistleblower protection program by providing whistleblowers and newly staffed compliance officers informal training, guidance and assistance.

1. OSHA Information System (OIS)

Enforcement data was captured in OIS, and weekly reports were used as a management tool to assess the effectiveness of the program. Administrative officers were trained to run the reports on a recurring basis, and AKOSH was consistent in reviewing inspection files to ensure proper coding.

1. State Internal Evaluation Program Report (SIEP)

AKOSH revised its SIEP in March of 2021 and continues to run it quarterly. A self-assessment was used to conduct quality control checks on enforcement activities and case file reviews. The results will be documented, retained as part of the SIEP, and revisited or modified as issues are discovered.

Management conducted periodic reviews of fatality, inspection, and complaint case files, and continued to use a guide and tracking sheet for compliance and administrative officers to reference. This ensured that required actions were taken for each case file. The use of a tracking sheet was included in the case file to ensure all action items were completed to assist in closing case files. Management has implemented the use of the contact (diary) sheet to notate that the casefile was reviewed, returned to CSHO, sent to administrative officers for action, and to close case files.

1. Staffing

The FY 2023 23(g) grant provided for 11 compliance officers (6 safety, 5 health) and 3.2 FTE state and local government consultants (2.2 safety, 1 health). Maintaining staffing levels continued to be a major challenge for the program with a high turnover of compliance officers between transfers and new hires. Two key leadership positions turned over in 2023, with the resignation of Commissioner Ledbetter, Deputy Commissioner Catherine Muñoz was appointed as Acting Commissioner. In 4th Quarter, the Acting Director Tanya Keith was appointed as Division Director. At the end of the year, AKOSH had two vacancies in enforcement health compliance officer positions, which was 20% below full staffing levels. There was some turnover internally with transfers between enforcement and consultation.

### Enforcement

1. Complaints

There were 82 valid complaints in FY 2023, resulting in 23 inspections and 59 investigations. The average number of workdays to initiate complaint inspections was 5.12 days, slightly above the negotiated goal of five days (SAMM 1A) which does not indicate an observation. The average number of work days to initiate complaint investigations (SAMM 2A) increased from 1.47 days in FY 22 to four days in FY23, which outside of the negotiated goal of 1 day (SAMM 2A). This will be a continued observation **FY 2023-OB-01 (**FY 2022-OB-12).

**Observation FY 2023-OB-01 (**FY 2022-OB-12)**:** In FY 2023,the average workdays to respond to complaints was four days which is above the negotiated goal of one day.

**Federal Monitoring Plan:** OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations of complaint processing.

AKOSH responded to 100% (26 of 26) of imminent danger complaints and referrals within one day (SAMM 3). There were no outliers.

OSHA reviewed case files to determine the status of Observation FY 2022-OB-01 (FY 2021-OB-01). In FY 2023, in 1 of 6 of non-formal UPA complaint files reviewed, the electronic case files contained only the complaint form and lacked all other required documents, forms, and notes, as required by the State Plan’s Field Operations Manual (FOM). Documentation had improved in FY 2023, thus **Observation FY 2022-OB-01** is now closed.

For complaint inspections, the narrative did not state what the complaint items were and whether the complaint items were substantiated or not. The complaint inspection files also did not include the complaint summary indicating what actions were taken and on what dates. Also, the complaint files were not included in the inspection file. This item can be corrected by training compliance officers and does not rise to the level of a new observation at this time and can be discussed at quarterly meetings.

OSHA reviewed case files to determine the status of Observation FY 2022-OB-02. A review of case files revealed that in all 21 (100%) formal and non-formal complaint case files, the contact sheet was now used and updated in complaint and complaint inspection files. Thus, **Observation FY 2021-OB-02** is now closed.

OSHA reviewed case files to assess performance related to complaints and determine the status findings or observations from the previous year or comprehensive FAME. In 2 of 21 complaint inspection files (10%), there was no evidence that a copy of the complaint closure or inspection results letter was sent to the complainant. In all 21 complaint investigation files reviewed, the complainant was provided with a closing letter or the reason a final letter was not provided was noted in OIS (non-formal complaint, or complainant did not request.) As performance improved significantly in FY 2023, **Observation FY 2022-OB-03** is now closed.

There were zero denial of entries where entry was not obtained (SAMM 4). AKOSH met this measure.

1. Fatalities

OSHA selected four fatality case files for review. However, in one case, the incident was determined to be no OSHA jurisdiction, but coding had not been updated to indicate this at the time of the case file selection. Files were reviewed to assess whether AKOSH followed their policies and procedures and to assess communication with the next of Kin of fatality victims. The next of kin received both the initial contact letter and the final inspection letter, thus, **Observation 2022-OB-04** is now closed.

All fatality case files were reviewed, and deficiencies were noted. The review was conducted to determine whether the State was appropriately coding “no inspection” or “no jurisdiction”. AKOSH was not developing case files for fatalities which were opened and then later recoded to “not work related” or closed to “natural causes”. AKOSH stated this information was recorded in OIS. On cases which were later determined “natural causes,” there was no hospital report, police report, or medical examiner report to verify cause or manner of death. In three of three fatalities that were reported to AKOSH but were determined not to be work related and due to natural causes, supporting documentation was missing. In addition, three of four (43%) of fatality inspection files did not have the investigative summary and three of three (100%) fatality UPA files did not have the fatality/catastrophe report in the casefiles, were missing supporting documentation, the contact sheet and official cause of death. This is a new observation (FY 2023-OB-02).

**Observation FY 2023-OB-02:** In FY 2023, three of four (75%) fatality inspection files were missing the investigative summary. Three of three (100%) UPAs not inspected did not have the fatality/catastrophe report, were missing supporting documentation, the contact sheet, and official cause of death.

**Federal Monitoring Plan:** OSHA will continue to monitor throughout the course of the current fiscal year and encourage the state to conduct training and periodic evaluations of fatality investigation casefile development and management.

In one of four (25%) fatality inspections, one inspection was opened four days after notification and no explanation was provided on the narrative indicating the investigation delay. SAMM 10 requires fatality investigations to be opened within one working day and is a new observation.

**Observation FY 2023-OB-03:** In FY 2023,one of four (25%) fatalities in AKOSH’s jurisdiction was not opened as an inspection or investigation within one day as mandated (SAMM 10).

**Federal Monitoring Plan:** OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations of fatality investigation prioritization and opening an investigation within one day.

c) Targeting and Programmed Inspection

Percent of enforcement presence (SAMM 17) describes the number of safety and health inspections conducted compared to the number of employer establishments in the state. The State Plan had a percent enforcement presence of 1.52%, which was higher than the FRL range of 0.70% to 1.17%. AKOSH’s enforcement presence indicates that the State Plan is reaching more employers with enforcement activity than the national average.

A total of 208 safety and 89 health inspections were conducted in FY 2023, which did not meet the projected inspection goals of 265 for safety and 145 for health. The 297 enforcement inspections conducted (SAMM 7) did not meet the projected goal of 410. The number of safety inspections was 21% below the state negotiated goal (FRL range of 251 to 278 inspections), and the number of health inspections was 38% below the state negotiated goal (FRL range of 137 to 152 inspections). A significant factor that impacted the total number of inspections in FY 2023 was a high turnover rate of the enforcement staff which is documented in a separate appendix in the state annual SOAR. This is a new observation for this metric.

**Observation FY 2023-OB-04:** In FY 2023,the inspection goals were not met. The percentage of safety inspections conducted was 21% below the state negotiated goal. The percentage of health inspection conducted was 38% below the state negotiated goal.

**Federal Monitoring Plan:** OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations to encourage inspection activity for both inspection types.

The in-compliance rate for safety inspections was 39% (SAMM 9a), which was above the national average of 32%, but within the FRL range of 26% to 39%. The in-compliance rate for health inspections was 40%, which was below the national average of 44%, and within the FRL range of 35% to 53%. This metric indicated positive performance in identifying serious hazards during health inspections.

In the FY 2023 State Plan 23(g) grant, the annual performance plan established goals for enforcement inspections in construction, healthcare, and seafood processing industries. These industries were targeted through scheduled planned inspections, and consultation and training activities such as outreach, education, and compliance assistance. As noted in the AKOSH SOAR, 128 inspections and 107 compliance assistance activities were conducted in the construction industry. The projected goal of conducting 175 construction inspections was not met. The goal to reduce lost time injury and illness rate from 1.82 per 100 employees was met, the injury and illness rate was 1.29 per 100 employees.

AKOSH conducted 16 inspections in the seafood processing industry. The projected goal of 15 seafood processing inspections was met. The goal to reduce the lost time injury and illness rate to 3.87 per 100 employees was not met; the actual outcome was 4.93 per 100 employees. Overall, AKOSH met its annual goal in lost time injuries and illnesses rate reduction in seafood processing industry, but it did not achieve its strategic goal for the lost time reduction. Pandemic COVID-19 related illnesses played a major role in the growth of the number of workers compensation submitted claims, that consequently increased the annual lost time injuries and illnesses rate.

In the healthcare industry, AKOSH conducted 18 inspections and 11 compliance assistance activities. The projected goal of 80 healthcare inspections was not met. The goal to reduce the lost time injury and illness rate to 1.21 per 100 employees was met; the actual outcome was 0.85 per 100 employees. Overall, AKOSH met its annual and strategic goal in lost time injuries and illnesses rate reduction in the healthcare industry.

d) Citations and Penalties

The average number of serious, willful, repeat, and unclassified (SWRU) violations per inspection was 1.71, which was slightly below the national average of 1.75 and within the range of the FRL of 1.40 to 2.10 (SAMM 5a). The average number of other than serious violations was 1.02 which was slightly higher than the national average of 0.89 and within the FRL range of 0.71 to 1.07 (SAMM 5b). This was not a concern. Public sector inspections were 8% of total inspections, which is above the state negotiated goal of 7.3% (SAMM 6).

In general, in the inspection files reviewed by OSHA, AKOSH cited apparent violations using the appropriate classification and penalties (Table A). The average current penalty per serious violation for all employers was $3,814.42, which was within the FRL range of $2718.91 to $4531.51 (SAMM 8). AKOSH has been within the FRL range for this metric for the last three years. Penalties were within the FRL for all size categories of employers and are equivalent to OSHA.

Table A

AKOSH Average Penalties by Number of Workers

|  |  |  |  |
| --- | --- | --- | --- |
| **Number of Workers** | **AKOSH Penalty Average 2023** | **Three- Year National Average** | **Further Review Level** |
| 1 to 250 plus employees | $3814 | $3,100 | $2719 to $4532 |
| 1 to 25 employees | $2554 | $2,031 | $1761 to $2935 |
| 26 to 100 employees | $3278 | $3632 | $3125 to $5209 |
| 101-250 employees | $6325 | $5320 | $4539 to $7565 |
| 250 plus employees | $8213 | $6576 | $5498 to $9164 |

A case file review was conducted to evaluate performance in relation to observation **FY 2022-OB-05** (FY 2021-OB-05). AKOSH combined violations by grouping in accordance with the AKOSH FOM, Chapter 4, paragraph X. This observation is closed.

The lapse time for safety inspections was 78 workdays and was above the national average of 55 days and the high FRL (SAMM 11a) of 44 to 66 days. The lapse time for health inspections was 106 days which was above the national average of 70 days and the high FRL of 56 to 84 days (SAMM 11b). The lapse time has increased for both inspection types, but this is most likely due to high employee turnover and is not an observation at this time.

Of the case files reviewed, a majority of the case files included evidence critical to supporting a violation within the case files, as required by AKOSH PD 21-02, the Alaska Occupational Safety and Health Field Operations Manual, chapter 5. Case files documentation has been maintained since the FY 2021 comprehensive FAME; the case files included photographs, appropriate justifications for high gravity violations, employee exposure information and interviews, and employer knowledge of the hazard. OSHA 300 logs were located in the casefile as required by the AKOSH FOM.

1. Abatement-

Where documentation existed, both abatement periods were appropriate and interim abatements were missing in six of 53 (11.3%) files reviewed. In 12 out of 53 (22.6%) case files, there was no evidence of abatement in the case files. This occurred in case files where (1) high gravity, serious citations were issued (2) employee injuries occurred at the worksite (amputations) and (3) fall hazards were present in which serious disabling injury or death would be likely to occur. This was a previously completed Finding FY 2020-05in the FY 21 FAME and is a new observation (FY 2023-OB-05). None of the casefiles were marked for follow up or to verify abatement.

**Observation FY 2023-OB-05:** In FY 2023,in 12 out of 53 (22.6%) of inspection case files reviewed, there was no evidence of abatement in the case files.

**Federal Monitoring Plan:** OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations to evaluate case files for abatement.

1. Worker and Union Involvement

Employee involvement and interviews were not documented in 16 of 53 (30%) of inspection case files reviewed. One was a construction fatality and four were records only inspections where the site was not visited, and high gravity serious violations were issued. This will be a new finding.

**Finding FY 2023-01:** In FY 2023, in 16 out of 53 case files (30%) there were no employee interviews documented.

**Recommendation (FY 2023-01):** AKOSH should ensure that the inspection site is visited and workplace exposure to hazards including worker involvement is documented in high hazard industries, where injury has occurred, and where NEP and state emphasis programs are coded.

The percent of initial inspections with worker walk around representation or worker interview was 93% (SAMM 13), below the FRL of 100%. The on-site file review found that in one of six (17%) of inspections covered by a union, the union or employee representative was not involved in the inspection opening or contacted via telephone to participate during the inspection. OSHA will continue to monitor employee and union involvement with inspections.

### 3**. Review Procedures**

1. Informal Conferences

A new policy memo titled Informal Settlement Guidance-Diversionary Program for Inspections with Initial Citations (AKOSH memo), was adopted, implemented, and transmitted to OSHA on September 7, 2023. This new policy allows certain employers to complete AKOSH Consultation and Training (C&T) evaluations for large penalty reductions. OSHA notified AKOSH on receipt of the new policy, via email, that it was not “at least as effective” as OSHA regulations and policies for consultation and enforcement. OSHA reiterated via formal letter on February 8, 2024, that the AKOSH memo resulted in the State Plan not being “at least as effective” as OSHA with respect to informal settlement procedures and the enforceability of penalties. AKOSH responded with updates to the AKOSH memo on March 22, 2023, which were under review by OSHA when this FAME report was being drafted. OSHA will continue to work with AKOSH to resolve concerns about the AKOSH memo.

The OSHA file review found that in 18 of 24 (75%) of inspections with citations, where an informal conference was held, penalty reductions, deletions, and reclassifications were not documented in accordance with the AKOSH FOM, PD 21-02, Chapter 7, Section II., F. 3., which states that “at the conclusion of the conference, all main issues and potential courses of action will be summarized and documented” and “a copy of the summary, together with any other relevant notes of the discussion made by the Chief of Enforcement, will be placed in the case file.” Further requirements in the AKOSH FOM which require the AKOSH Chief or Assistant Chief to use evidence to justify reclassification of violations and/or modification and withdrawal of penalties is found in PD 2102, Chapter 8, Section I.A.2. While some documentation and brief notes of the informal conference settlement agreements were included in the case file, an explanation for penalty reductions was not included. Examples of potential justifications for a penalty reduction would be corporate wide settlement agreements, enhanced abatement, third-party consultation reductions and referral agreements to AKOSH C&T. There was also a lack of documentation related to the new AKOSH memo. Although some of the informal sheets stated that the employer may consider the new “diversionary program”, there was no mechanism to track the AKOSH C&T agreement or progression of the C&T agreements in the casefile, the casefile diary sheet, or with debt collection to revert penalties if the employer did not comply.

A lack of documentation for informal conferences was previous Observation FY 2022-OB-06 (FY 2021-OB-06) and has been converted into a finding (Finding FY 2023-04).

**Finding FY 2023-02:** In FY 2023, in 18 of 24 (75%) of inspections with citations where an informal conference was held, there was insufficient documentation for justification of penalty reductions for inspections in which willful, repeat serious, serious high gravity citations and disabling injuries occurred.

**Recommendation (FY 2023-02):** AKOSH should ensure that penalty modifications and withdrawals are adequately documented in the case file as required by the AKOSH FOM.

AKOSH retained 31% of its initial penalties, which was below the national average of 72% and outside the FRL range of 61% to 83% (SAMM 12) for penalty retention. This rises to the level of a new observation and has been noted and discussed throughout the year at quarterly meetings. This SAMM 12 measure relates to the finding above regarding appropriate penalty justification.

**Observation FY 2023-OB-06:** In FY 2023, the penalty retention rate was 31% which was less than half of the low range of the FRL.

**Federal Monitoring Plan:** OSHA will continue to monitor quarterly and encourage the state to conduct training or change policies on penalty retention especially in cases where injuries have occurred and where high gravity serious violations are issued.

1. Formal Review of Citations

In FY 2023, 70.77% (46/65) of violations were vacated after a contest was filed, above the national average of 15.30% (SIR 5B), and 63.16% (12/19) of violations were reclassified after the contest, above the national average of 12.40% (SIR 6B). However, the penalty retention rate following a contest was 76.39%, compared to the national average of 66.14% (SIR 7B). The enforcement case file review did not include formal settlement proceedings cases. However, one CASPA remains open related to a case under contest.

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

1. Standards Adoption

Certain sections of the safety and health Code of Federal Regulations (CFRs) have been adopted and are covered in the Alaska Administrative Code (AAC) under 8 AAC 61.1010. The regulatory language “as amended” provides that once a federal change to a CFR is adopted by reference and receives public notice in the Federal Register, the effective date in Alaska is the same as that published in the Federal Register. For new OSHA standards, with code numbers that do not fall under the previously adopted 8 AAC 61.1010, AKOSH must go through a regulation adoption process, which requires a period of public notice and comment.

Some federal standard adoptions require state legislative changes, such as the adoption of adjustments to the penalty structure. The Alaska state legislature meets for 90 days in regular session, unless extended. Regular sessions are January to April. Legislatures are two years long (e.g. 2021-2022, odd year to even year) and bills stay alive during that period. The process for submitting proposed legislation is located on the Alaska state website at <http://www.labor.alaska.gov/commish/regindex.htm>

OSHA issued six standards (Table A) that required adoption from FY 2022 to FY 2023 and three were adopted identically. Four intents were provided by the due date, one a day later. Four were adopted timely. The state can annually adjust their penalties even though this was not adopted identically. The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn.

Table B lists the federal program changes issued by OSHA that required a response during FY 2022 to FY 2023 and AKOSH responded to four intents timely. Seven of the eight were adopted timely, and all were adopted by the time of this FAME report.

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

(May include any delinquent standards from earlier fiscal years)

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 11/5/2021 | Yes | No | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | N/A | N/A | N/A | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 2/14/2022 | Yes | No | 7/15/2022 | 1/18/2022 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 11/17/2023 | Yes | Yes | 8/14/2022 | 2/14/2022 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 2/1/2023 | Yes | Yes | 7/15/2023 | 2/1/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 9/22/2023 | Yes | Yes | 1/21/2024 | 9/22/2023 |

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Required**

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 2/1/2023 | Yes | Yes | 7/30/2023 | 2/1/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 9/22/2023 | Yes | Yes | 1/9/2024 | 9/22/2023 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required**

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 9/8/2022 | Yes | Yes | 11/3/2022 | 9/13/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 9/8/2022 | Yes | No | 2/11/2023 | 3/2/2023 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/16/2023 | Yes | No | 3/15/2023 | 11/16/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 6/8/2023 | Yes | Yes | 8/6/2023 | 6/8/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/8/2023 | Yes | Yes | 10/28/2023 | 6/8/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 12/20/2023 | Yes | Yes | 3/27/2024 | 2/16/2023 |

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 5/5/2022 | No | No | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 8/14/2022 | No | No | N/A |

**Table E**

**FY 2022 and FY 2023 State-Initiated Changes**

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| 23-09- OSHA Technical Manual (OTM) | 12/8/2023 | 12/8/2023 |
| 23-08- National Emphasis Program Construction | 9/30/2023 | 9/30/2023 |
| 23-05- National Emphasis Program (NEP) | 6/7/2023 | 6/7/2023 |
| 22-02- Informal Settlement Guidance-Public Sector Employers | 6/30/2023 | 6/30/2023 |

### 5. VarianceS

### There were no variance requests during FY 2022 and FY 2023.

### 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

The penalty structure for state and local government employers was identical to private sector employers. There were 33 of 410 (8%) of total inspections conducted with state and local government employers, which was above the FRL range of 6.95% to 7.68% (SAMM 6) state negotiated goal and exceeded the 23(g) grant projection of 8.08% of total inspections.

### 7. WHISTLEBLOWER PROGRAM

Claims of workplace retaliation for reporting occupational safety and health issues are investigated by the AKOSH Whistleblower Investigations under Title 8, Part 4, Chapter 61, Article 7, of the Alaska Administrative Code.

Based on case files reviewed, OSHA policies and procedures outlined in the AKOSH Program Directive (PD) 18-07 Whistleblower Investigation Manual (WIM) were generally followed. AKOSH adopted PD 19-05, Mandatory Training Program for AKOSH Whistleblower Investigators on November 1, 2018, in response to the OSHA Whistleblower Training Program Directive from FY 2016. AKOSH’s new (PD 23-04) is currently under review for approval by Federal OSHA.

During FY 2023, AKOSH had one, new, whistleblower protection investigator. Rather than rotating a Safety and Health Officer into the position, AKOSH recategorized the position and hired someone with applicable investigatory experience. The investigator attended several mandatory and recommended classes during their first year of employment and will complete any remaining classes within three years from hiring, as outlined in the Whistleblower Investigation Manual (WIM).

In the investigator’s first year they were able to significantly reduce the existing backlog noted in the FY 2021 FAME report. In FY 2023 the average days pending decreased from 819 to 534 and the total pending cases also decreased from 103 to 20, as a result, **Observation FY 2022-OB-07** is closed.

During the case file review evidence that required documentation such as final signatures on settlement agreements, correspondence between AKOSH and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, etc. were noted.  This resolves **Observation FY 2022-OB-08** and is considered closed.

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 the case files reviewed proper documentation, specifically official letters, while in the file, there was no proof of delivery of some of these official letters. This is a new observation.

**Observation FY 2023-OB-07**: In FY 2023, 33% (25 of 76) of retaliation case files lacked the required documentation, specifically proof of delivery of official letters.

**Federal Monitoring Plan**: OSHA will monitor the lack of required documentation during quarterly meetings with AKOSH.

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

OSHA investigated four CASPAs during the period of FY 2022 and FY 2023.

CASPA AK-2022-01 alleged that: (1) the Alaska Attorney General’s Office declined to file a lawsuit related to the complainant’s retaliation claim, and as justification stated this was because they had not filed any such enforcement action in decades and (2) an inspector gave advanced notice of a safety and health inspection in a remote community. Both allegations were not substantiated and the CASPA was closed after the investigation.

CASPA AK 2023-01 alleged that the Whistleblower investigator did not conduct the investigation as outlined by AKOSH Whistleblower Manual by: (1) not recording the closing conference (2) refusing to conduct another recorded closing conference (3) not recusing himself from the case (4) not forwarding the case to the Attorney General’s Office and (5) not providing evidence upon the complainant’s request. This complaint was not substantiated and the CASPA was closed after the investigation.

CASPA AK 2023-02 alleged AKOSH: (1) did not follow their policies and procedures for processing complaints or inspections at a worksite after an inspection was contested and (2) numerous employee concerns regarding Process Safety Management (PSM) requirements as well as other programmatic and systemic issues were reported to the AKOSH office; however, AKOSH did not investigate the issues. As a result (a) there currently is an unacceptable safety risk to the workers, and consequently no reasonable assurance that the employer is operating safely and in compliance with its regulatory requirements (b) The employer did not take corrective action or institute any management of change (MOC) procedures, process hazard analyses (PHA), or mechanical integrity (MI) changes to equipment or processes on internal PSM audit findings and (c) The employer has not scheduled a 2023 internal Process Safety Management Audit. This CASPA is still under investigation.

CASPA AK 2023-03 alleged that AKOSH did not follow its policies and procedures from the AKOSH Whistleblower Investigations Manual when investigating case 20-792. Allegedly: (1) the complainant was not afforded the opportunity for a settlement before the case was forwarded to the Alaska Attorney General (2) relief sought by the Complainant was not determined by the investigator (3) AKOSH did not consult with the Alaska Department of Law early in the investigative process (4) AKOSH did not follow up with the Alaska Department of Law after the case was referred and (5) contact wasn’t made with all relevant witnesses. OSHA substantiated allegation 1, and asked AKOSH to follow their own policies and procedures in their Whistleblower Manual. The other allegations were not substantiated and the CASPA is now closed.

### 9. Voluntary Compliance Program

The Voluntary Protection Program (VPP) is administered under the 23(g) grant and managed by the Consultation and Training Section. There were seven VPP sites at the end of FY 2023. There were no additions or withdrawals from the program during the fiscal year. This is short of the five-year strategic plan goal to maintain at least eleven VPP sites and OSHA will continue to review during quarterly meetings.

In the FY 2023 State Plan 23(g) grant, the annual performance plan continued the goal to maintain at least one partnership agreement in construction, healthcare, seafood processing or the public sector over the course of the five-year strategic plan. At the end of FY 2023, there were six participants in the State Plan’s construction partnership agreement called Alaska’s Construction Health and Safety Excellence Program (CHASE). There were four gold level and five blue level contractors, and the partnership goal was met.

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

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

In FY 2023, 89 total consultation visits were conducted in state and local government workplaces, 74 of those visits were initial visits. Of these, 64 (86.49%) were in high hazard industries, which is slightly below the goal of 90% (MARC 1). Smaller businesses with fewer than 250 employees received 72 (97.3%) visits (MARC 2A), and businesses with fewer than 500 employees received 61 (82.43%) visits (MARC 2B). The consultant conferred with employees 100% of the time (MARC 3).

During this evaluation period, 188 serious hazards were identified, and 188 (100%) were corrected in a timely manner. There were 12 hazards corrected on-site, 122 within the original time, and 52 within the extension time frame. Of these, 134 of 188 (71.28%) were corrected within the original timeframe or on-site and exceeded the goal of 65%. No employers were referred to enforcement (MARC 4A-4D).

The file review conducted in FY 2023 revealed that the state and local government (SLG) workplace consultation cases filed did contain the proper classification of hazards, thus **Finding FY 2022-01** is closed. Also, SLG consultation visits were correctly identified as high hazard sites in OIS, thus **FY 2022-OB-09** is closed. Finally, SLG consultation files had a comparison of the employers’ Days Away, Restricted or Transferred (DART) and Total Recordable Case (TRC) to the national average, thus **FY 2022-OB-11** is closed.

The following observations were noted during the consultation case file review in April of 2023:

Coding errors were found in 5 out of 11 (45%) public sector files. Examples of deficiencies were missing codes and using codes that did not relate to the visit. This is a new observation.

**Observation FY 2023-OB-08:** In FY 2023, five of 11 (45%) state and local government consultation visit files, did not use appropriate emphasis codes.

**Federal Monitoring Plan:** OSHA will work with AKOSH and send them updated coding sheets and provide training to consultants as needed.

Incorrect OSHA standards were used in three out of 11 (27%) state and local government files. It is important to ensure the correct standards apply to the hazards identified. Assure the proper use of industry codes 1910, 1926, 1917 and 1918. This was a continued observation from FY 2021 and FY 2022.

**Observation FY 2023-09** (FY 2022-OB-10)**:** In FY 2023, three of 11 (27%) state and local government consultation files had incorrect OSHA standards for hazards identified.

**Federal Monitoring Plan:** OSHA will monitor AKOSH to ensure they are providing refresher training for consultants for 1910, 1926, and 1915 standards.

The list of hazards that is required to be transmitted to the employee representative was missing in seven of nine (78%) state and local government files at sites with a union. This is a new observation.

**Observation FY 2023-OB-10:** In FY 2023, in seven of nine (78%) state and local government consultation visit files, the consultant did not provide the list of hazards to the employee representative at union sites.

**Federal Monitoring Plan:** OSHA will ask AKOSH during quarterly meetings if they are providing the list of hazards to Union sites as a reminder and to keep it in their awareness.

### 11. **PRIVATE SECTOR (23g) ON-SITE CONSULTATION PROGRAM**

This section does not apply, consultation for the private sector is funded under Section 21(d) of the OSH Act and is evaluated separately in the Regional Annual Consultation Evaluation Report (RACER).

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | In FY 2023, in 16 out of 53 case files (30%) there were no employee interviews documented. | AKOSH should ensure that the inspection site is visited and workplace exposure to hazards including worker involvement is documented in high hazard industries, where injury has occurred, and where NEP and state emphasis programs are coded. | New |
| FY 2023-02 | In FY 2023, in 18 of 24 (75%) of inspections with citations where an informal conference was held, there was insufficient documentation for justification of penalty reductions for inspections in which willful, repeat serious, serious high gravity citations and disabling injuries occurred. | AKOSH should ensure that penalty modifications and withdrawals are adequately documented in the case file as required by the AKOSH FOM. | Converted to finding  FY 2022-OB-06  FY 2021-OB-06 |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-12 | In FY 2023, the average workdays to respond to complaints was four days, which is above the negotiated goal of one day. | OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations of complaint processing. | Continued |
| FY 2023-OB-02 | New | In FY 2023, three of four (75%) fatality inspection files were missing the investigative summary. Three of three (100%) UPAs not inspected did not have the fatality/catastrophe report, were missing supporting documentation, the contact sheet, and official cause of death. | OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations of Fatality investigation casefile development and management. | New |
| FY 2023-OB-03 | New | In FY 2023, one of four (25%) fatalities in AKOSH’s jurisdiction was not opened as an inspection or investigation within one day as mandated (SAMM 10). | OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations of Fatality investigation prioritization and opening an investigation within one day. | New |
| FY 2023-OB-04 | New | In FY 2023, the inspection goals were not met. The percentage of safety inspections conducted was 21% below the state negotiated goal. The percentage of health inspection conducted was 38% below the state negotiated goal. | OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations to encourage inspection activity for both inspection types. | New |
| FY 2023-OB-05 | New | In FY 2023, in 12 out of 53 (22.6%) of inspection case files reviewed, there was no evidence of abatement in the case files. | OSHA will continue to monitor quarterly and encourage the state to conduct training and periodic evaluations to evaluate case files for abatement. | New |
| FY 2023-OB-06 | New | In FY 2023, the penalty retention rate was 31%, which was less than half of the low range of the FRL. | OSHA will continue to monitor quarterly and encourage the state to conduct training or change policies on penalty retention especially in cases where injuries have occurred and where high gravity serious violations are issued. | New |
| FY 2023-OB-07 | New | In FY 2023, 33% (25 of 76) of retaliation case files lacked the required documentation, specifically proof of delivery of official letters. | OSHA will monitor the lack of required documentation during quarterly meetings with AKOSH. | New |
| FY 2023-OB-08 | New | In FY 2023, five of 11 (45%) state and local government consultation visit files did not use appropriate emphasis codes. | OSHA will work with AKOSH and send them updated coding sheets and provide training to consultants as needed. | New |
| FY 2023-OB-09 | FY 2022-OB-10  FY 2021-OB-10 | In FY 2023, three of 11 (27%) state and local government consultation files had incorrect OSHA standards for hazards identified. | OSHA will monitor AKOSH to ensure they are providing refresher training for consultants for 1910, 1926, and 1915 standards. | Continued |
| FY 2023-OB-10 | New | In FY 2023, in seven of nine (78%) state and local government consultation visit files the consultant did not provide the list of hazards to the employee representative at union sites. | OSHA will ask AKOSH during quarterly meetings if they are providing the list of hazards to Union sites as a reminder and to keep it in their awareness. | New |
|  | FY 2022-OB-01  FY 2021-OB-01  FY 2020-03 | In FY 2021, in two of 19 (10%) of case files that contained non-formal complaints, the electronic case files contained only the complaint form and lacked all other required documents, forms, and notes, as required by the State Plan’s Field Operations Manual (FOM). |  | Closed |
|  | FY 2022-OB-02  FY 2021-OB-02 | In FY 2021, in 18 of 91 (20%) of case files, the contact sheet was not used, nor were entries updated, as required by the State Plan’s Field Operations Manual (FOM). |  | Closed |
|  | FY 2022-OB-03  FY 2021-OB-03 | In FY 2021, in three out of 20 (15%) complaint files, the initial acknowledgement contact letter to the complainant was not in the case file, and in six out of 19 (32%) of non-formal complaint files, the closure letter to the complainant was not in the case file. |  | Closed |
|  | FY2022-OB-04  FY 2021-OB-04  FY 2020-04 | In FY 2021, in one of three (33%) final next-of-kin letters, there was no evidence that required next-of-kin letters were sent. |  | Closed |
|  | FY 2022-OB-05  FY 2021-OB-05 | In FY 2021, three of 51 (6%) of FAME inspection case files and in two of two files reviewed as part of CASPA AK-2021-01, AKOSH did not combine violations in accordance with the AKOSH FOM, Chapter 4, paragraph X. |  | Closed |
|  | FY 2022-OB-06 FY 2021-OB-06 | In FY 2021, in eight of 14 (57%) of cases with an informal conference, AKOSH did not document the justification for the penalty reductions in case files. |  | Elevated to Finding FY 2023-02 |
|  | FY 2022-OB-07  FY 2021-OB-07 | In FY 2022, compared to FY 2021 average days pending increased to 1589 (compared to 730), and average days to complete an investigation increased to 985 (compared to 834), and AKOSH staffing for retaliation investigators stayed at the same level. |  | Closed |
|  | FY 2022-OB-08  FY 2021-OB-08 | In FY 2021, in 28 out of 53 (53%) of retaliation case files reviewed, the files lacked the required documentation such as final signatures on settlement agreements, correspondence between AKOSH and the parties, evidence of review by a supervisor, letters of designation, complaint summaries, interview summaries, rebuttal interviews, medical information not protected, or other documents required to be in the retaliation case file. |  | Closed |
|  | FY 2022-OB-09  FY 2021-OB-09 | In FY 2020 and 2021, 12 of 17 (71%) of state and local government consultation visits were identified as high hazard in OIS where the employer’s industry  and worksite weren’t considered high hazard. |  | Closed |
|  | FY 2022-OB-11  FY 2021-OB-11 | In FY 2021, eight of 17 (47%) of state and local government consultation files reviewed, the written report to the employer did not have a comparison of the employer’s Days Away, Restricted or Transferred  (DART) and Total Recordable Case (TRC) to the national average. |  | Closed |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status** |
| --- | --- | --- | --- | --- | --- |
| FY 2022-01 | In FY 2020 and 2021, nine of 17 (53%) state and local government workplace consultation case files did not contain the proper classification of hazards. | AKOSH should ensure that hazards are classified appropriately. | AKOSH Consultation hired an Assistant Chief of Consultation who can assist the Program Manager with conducting case file reviews on a regular basis. Additional in-house training on hazard classification is scheduled for the Consultation staff. The Program Manager will pay closer attention on proper hazard classification. | 8/11/2023 | Completed |

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 5.12 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 2.44 | 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) | 4 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 1.87 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | 100% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.71 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 1.02 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 8.08% | +/- 5% of  7.32 | 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 6.95% to 7.68%. |
| 7a | Planned v. actual inspections (safety) | 208 | +/- 5% of  265 | 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 251.75 to 278.25 for safety. |
| 7b | Planned v. actual inspections (health) | 89 | +/- 5% of  145 | 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 137.75 to 152.25 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,814.42 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector  (1-25 workers) | $2,554.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector  (26-100 workers**)** | $3,277.66 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector  (101-250 workers) | $6,324.53 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector  (greater than 250 workers) | $8,213.25 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 39.02% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 39.39% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 80.00% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 77.86 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 105.87 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 31.04% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 92.59% | 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 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 1.52% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

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 14, 2023, as part of OSHA’s official end-of-year data run.