

FY 2011 Federal Annual Monitoring and Evaluation (FAME) Report

On the

ARIZONA DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (ADOSH)



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I. Executive Summary

A. Summary of the Report

The Fiscal Year (FY) 2011 Federal Annual Monitoring Evaluation (FAME) Report is an assessment of Arizona Division of Occupational Safety and Health (ADOSH) program activities covering the period from October 1, 2010 through September 30, 2011. The evaluation focused on the State's progress toward achieving their annual performance goals and the effectiveness of program areas related to enforcement activities. It also reviewed the State's response to the recommendations in the FY 2010 FAME contained in their final approved Corrective Action Plan (CAP).

The annual performance plan results reported in the State OSHA Annual Report (SOAR), indicated that the State continued to progress toward achieving its two main strategic goals – improve workplace safety and health for all workers and secure public confidence through excellence. Under Strategic Goal 1, two of the sub-elements were specific to private sector consultation and will be covered under a separate report. Four of the remaining 6 sub-elements were met. These included the reduction of injuries and illnesses in the framing construction and wood products manufacturing industry, increasing VPP membership and developing and producing a “Hazard Highlight” card. Strategic Goal 2 was not met. Specific details are provided in this report.

The majority of the issues identified in the 2010 FAME were completed; only one finding and recommendation (out of 37) was ongoing and the State continues to work cooperatively to finalize this issue. Findings suggested that ADOSH must continue to work on several issues such as ensuring next-of-kin letters are mailed in fatality investigations, increasing the percentage of inspections cited as serious, and reducing the safety lapse time. ADOSH did, however, enjoy notable successes and achievements such as maintaining a low lapse time for health, ensuring rapid response to complainants, and maintaining a high level of overall commitment to the safety and health of Arizona's workers.

B. State Plan Introduction

The State of Arizona implemented its Occupational Safety and Health plan under the provisions of Section 18(b) of the Occupational Safety and Health Act in 1974. The State plan was certified as having completed all of the developmental steps on September 18, 1981. Arizona was granted final approval and concurrent Federal enforcement authority was relinquished on June 20, 1985.

During the evaluation period, the Industrial Commission of Arizona (ICA) was the designated State agency for the administration of this program. Ms. Laura L. McGrory was the Director of ICA and the State Plan Designee. Within the ICA, ADOSH was responsible for both the enforcement and the voluntary compliance programs of the Arizona occupational safety and health plan. Mr. Darin Perkins administered the

ADOSH program. The Arizona program had a central office in Phoenix and a field office in Tucson.

The Arizona plan had jurisdiction over approximately 2.4 million workers in more than 145,000 private and public administration establishments. The Program covered all occupational safety and health issues within Arizona except for areas of exclusive Federal jurisdiction such as private contractors on Indian National lands, Federal employees, copper smelters, and concrete and batch plants that are physically located within mine property and under jurisdiction of the State Mine Inspector's Office. The Arizona plan also provided free safety and health consultation for public and private employers, including those working on Tribal lands. Arizona's enforcement program policies and procedures were similar to OSHA's. ADOSH generally adopts Federal OSHA's occupational safety and health standards and most of its interpretations and compliance policies.

In FY 2011, the program had a total projected budget of \$4,884,117 - \$3,942,093 for State Plan programs under 23(g) of the Act and \$942,024 for Consultation Program Activities under 21(d) of the Act. An accounting oversight discovered late in the fiscal year reduced the federal funding portion for 23(g) by \$500,000 making the total budget \$4,384,117. The State maintained a total of 47 authorized staff positions in its central office in Phoenix and its field office in Tucson. The two offices had 26 compliance officers, who conducted 913 enforcement inspections. There were 13 vacancies in FY 2011.

Consistent with the Federal Government Performance and Results Act, ADOSH developed a Five Year Strategic Plan that committed to the effective and efficient performance of the agency's activities and certain levels of reduction in the injury and illness rate of the employers/industries targeted. The goal of the Five Year Strategic Plan (2008-2012) was to be incrementally achieved through the implementation of Annual Performance Plans.

C. Data and Methodology

This Federal Annual Monitoring and Evaluation (FAME) report evaluates Arizona's performance of required (mandated) performance areas and related enforcement activities. It also provides an assessment of the State's performance at achieving its performance goals as outlined in its grant application. The FAME covers the federal FY 2011 which is the period from October 1, 2010, through September 30, 2011.

The analyses and conclusions in this report are based on information obtained from a variety of sources, such as:

- The State's "Corrective Action Plan" (Appendix B).*
- The State's Enforcement Comparison (Appendix C).*
- The "State Activity Mandated Measures" (SAMM) Report (Appendix D).*
- The "State Information Report" (SIR) data (Appendix E).*

- *The FY 2011 “State OSHA Annual Report” (SOAR) prepared by ADOSH (Appendix F).*
- *The State’s “Mandated Activities Report for Consultation” (MARC)*
- *Quarterly monitoring meetings between OSHA and ADOSH.*

A review was conducted of case files opened between October 1, 2010 and September 30, 2011 and included 10 fatalities, 20 inspections which fell under Standard Industrial Classification (SIC) 1791 “Structural Steel Erection” and 4 Whistleblower case files. The Integrated Management Information System (IMIS) report of OSHA Fatality/Catastrophe Forms (36s) listed 13 fatalities under the jurisdictional authority of ADOSH. Of the 13 fatalities, 10 of the case files were closed and had citations issued; these 10 were reviewed. A search was conducted in IMIS which identified 28 inspections in SIC 1791 conducted in FY 2011. Of the 28 inspections performed by ADOSH in their Phoenix and Tucson offices, 20 were identified as having had inspections performed and citations issued or were found in compliance; these 20 case files were reviewed. The four whistleblower case files reviewed were randomly selected and comprised 10% of all the case files in FY 2011.

Case files were reviewed for accuracy, completeness of information and conformance to policies and procedures. Compliance with requirements regarding contact with families of fatality victims was also noted for fatality case files.

Data was obtained primarily from the IMIS system, case file reviews, interviews, and the Bureau of Labor Statistics (BLS). The data was evaluated to determine improvements and trends and to verify program effectiveness.

On-site case file evaluations commenced on January 17-18 and again from February 14-17. To assess the State’s program and its management and to verify issues or findings that arose during case file reviews, nine interviews of staff and management were conducted. Throughout the process, Arizona management and staff were cooperative, shared information, and ensured employees were available to discuss cases, policies, and procedures.

D. Findings and Recommendations

There were 16 findings and recommendations as a result of this study; 9 of these were related to the Whistleblower program.

The State needs to ensure that initial contact is made with families of victims as soon as possible and that they are kept updated on the status of the investigation. Also of significance is the failure to meet the inspection goals and the increase of citation lapse times.

There were 9 findings related to the discrimination program. There was no consistent policy or procedure regarding the notification of complainants of their rights to dually file, there were problems identified with witness interviews and documentation, and certain

elements of a discrimination investigation were not always analyzed consistently or appropriately in the final report.

A full listing of the findings and recommendations are contained in Appendix A.

II. Major New Issues

On December 16, 2010, Federal OSHA cancelled the interim directive for residential fall protection and issued compliance directive STD 03-11-002 in its place. The new directive was adopted by ADOSH as STD 03-11-002 with a planned implementation date of June 16, 2011. On June 16, 2011, the Industrial Commission of Arizona, which has oversight responsibility over ADOSH, implemented a stay of enforcement preventing ADOSH from enforcing the new directive. Given the new stay of enforcement, ADOSH continued to enforce residential fall protection as they had in the past. The Commission decided to hold two public forum hearings regarding its implementation of STD 03-11-002 in September with one in Phoenix and one in Tucson.

Following the meetings, the Commission established a workgroup to guide the Commission in its decision regarding ADOSH's enforcement of residential fall protection. The results of the workgroup efforts were recommendations on criteria which they suggested would make the use of conventional fall protection infeasible. This information was presented to the Commission on November 30, 2011 and on that same day the Commission decided to lift the stay of enforcement effective January 1, 2012 though they followed Federal OSHA's ensuing enforcement extensions. ADOSH then produced a guidance document with its planned guidelines for how its compliance staff is to perform inspections where fall protection issues arise in residential construction (ADOSH Document 2011-01).

Presently, ADOSH compliance officers enforce residential fall protection using this guidance. A multi-party CASPA was filed with the Phoenix Area Office prior to the stay of enforcement alleging that ADOSH had not adopted STD 03-11-002 and that the Commission instituted a stay of enforcement which prevented ADOSH from citing lack of use of conventional fall protection in residential construction. As of this date the CASPA is open and under investigation.

One issue which has arisen since the end of the fiscal year is Arizona's passage of Senate Bill 1441. The State law allows, among other things, residential construction workers to be exposed to fall heights of up to 15 feet. At this time the bill is under review to determine whether it is as effective as the Federal regulation.

III. State Response to FY 2010 FAME Recommendations

During FY 2011, corrective actions were completed for all but one enforcement-related recommendations. These remaining recommendations are listed below. Appendix B describes details of the status of each FY 2010 recommendation.

Recommendation 10-16: *It was recommended that ADOSH adopt violation classification policies and procedures equivalent to OSHA regarding documentation for supporting a “Serious” classification.*

Status: *One measurement of ADOSH’s classification system used to gauge the effectiveness of this policy was the SWR citation rate. In FY 2011, this rate was still significantly below federal and national state plan levels and indicates perhaps only very limited improvement of ADOSH’s violation classification policy.*

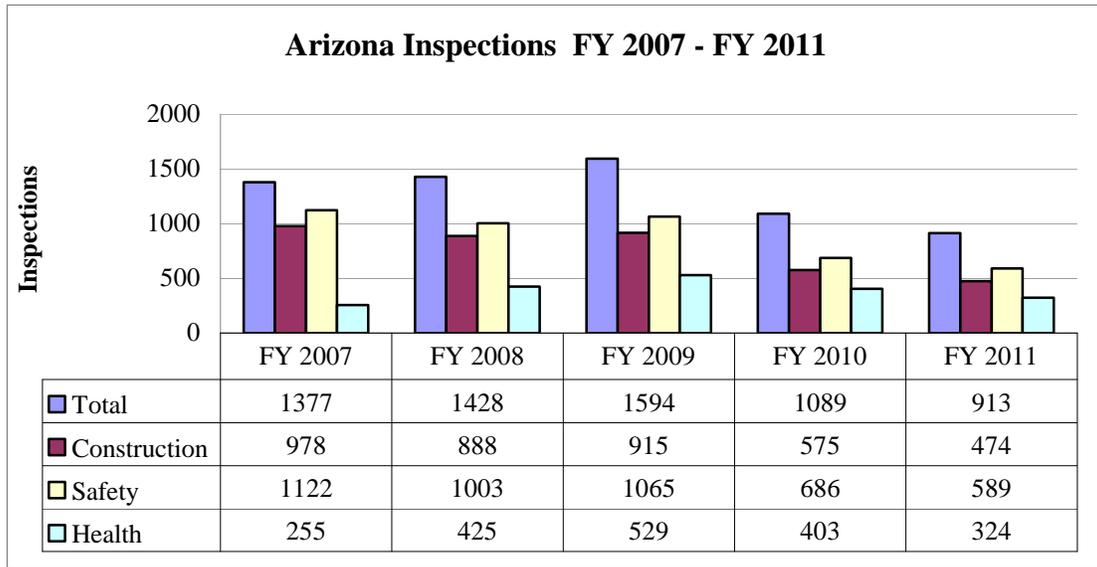
ADOSH’s significant achievement toward correcting the FY 2010 FAME report findings is evidence of the State’s commitment to program improvement. ADOSH continues to illustrate their commitment by allocating necessary resources and efforts to implement OSHA’s recommendations.

IV. Assessment of State Performance

As part of an approved state plan, each state must administer a program that meets its mandated responsibilities. The Occupational Safety and Health Act and regulations in 29 CFR 1902, 1953, 1954 and 1956 identify these core elements and responsibilities for an effective state occupational safety and health program. In FY 2011, ADOSH had the necessary authority and procedures in place to carry out these mandates and had adopted several required federal program changes during this monitoring period. This section provides an assessment of Arizona’s performance under specific mandated program areas. Monitoring data used were from grant assurances, statistical reports, case file reviews and interviews.

Chart 1 below shows the total inspection numbers for FY 2011. ADOSH conducted 913 enforcement inspections of which 589 were safety and 324 were health inspections; 474 of these inspections were in the construction industry (FY 2011 SOAR). The 913 inspections performed by ADOSH in FY 2011 were the fewest performed since before 2007 and is attributed to the number of staff capable of performing independent inspections.

Chart 1



A. Enforcement

1. Complaints

A total of 1,002 complaints were responded to in this fiscal year (FY 2011 SOAR). Of these complaints, 278 received an on-site inspection and 724 complaints were inquiries handled utilizing the phone/fax procedure (FY 2011 SOAR). The average response time to initiate a complaint inspection in FY 2011 was four days (FY 2011 SAMM 1). This response time was less than ADOSH's goal of seven days as well as the Federal goal of only five days. The average time for initiating responses to phone/fax complaints was 1.5 days which was slightly higher than the Federal goal of 1 day but well under the ADOSH goal of three days (FY 2011 SAMM 2).

Table 1

Complaints (SAMM 1,2,3)						
	FY 2007	FY 2008	FY2009	FY 2010	FY 2011	ADOSH Goal
<i>Days to Initiate Inspection (SAMM 1)</i>	5.74 days (1327/231)	3.08 days (914/296)	2.92 days (851/291)	11.22 days* (3436/306)	4.05 days (1126/278)	7 days
<i>Days to Initiate Investigation (SAMM 2)</i>	6.12 days (2933/479)	2.92 days (1218/417)	0.97 days (387/397)	1.26 days (581/459)	1.5 days (724/482)	3 days
<i>Complainants Notified Timely (SAMM 3)</i>	98.29% (230/234)	98.25% (281/286)	97.97% (289/295)	98.05% (301/307)	98.91% (273/276)	100%

2. Imminent Danger

No imminent danger situations were identified in FY 2011.

3. Fatalities and Catastrophes

In FY 2011, 13 fatal incidents in its jurisdiction were investigated (FY 2011 SOAR). This was a significant decrease from the 20 fatalities in the previous year. This 35% reduction may be an indicator that ADOSH was appropriately targeting its resources where they could be most effective. All fatal accidents were inspected within the time frames required by both state guidelines and federal OSHA.

Investigations into fatalities appeared to reveal the incidents' root causes and standards cited were based on facts discovered in the course of the incident investigations.

The Federal OSHA FOM was used to provide direction in situations where "no inspection" or "no jurisdiction" might be an issue. In FY 2011, fatality cases marked as "no inspection" or "no jurisdiction" were accurately coded. All cases were initiated in a timely manner and incident related findings were appropriate.

During a review of the 10 closed fatality inspection case files, the initial next of kin condolence letters were only present in half of the case files. In all of the cases there was no indication that a letter of the findings was sent to the next of kin following citation issuance.

Finding 11-01: Appropriate condolence letters to the families of victims notifying them of enforcement actions were not contained in all fatality case files.

Recommendation 11-01: Ensure that all appropriate letters are sent at the beginning of a fatality investigation and at the inspection's conclusion which notifies families of victims of the enforcement action(s) taken.

4. Targeting and Programmed Inspections

During FY 2011, 913 inspections were conducted which was 22.5% less than the established inspection goal of 1400. The inspections conducted in FY 2011 were 172 fewer than that which were conducted in FY 2010 (FY 2010 SOAR).

Table 2 shows where the State set and established reasonable inspection goals for FY 2011 based on their history of inspections in the past. ADOSH was affected by employee turnover which has changed from 14 CSHOs in 2007 to 26 in 2011. Despite the growing number of staff, the number of fully qualified staff has remained relatively constant varying from 14 in FY 2007 to 17 in FY 2011. Interestingly, the increase in overall hiring and qualifying of staff has not resulted

in more inspections being performed nor more significant cases issued. See table below:

Table 2

Inspections	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Compliance Staff	14	15	21	21	26
Goal	1700	1700	1702	1589	1,400
Conducted	1377	1428	1594	1089	913
Difference	(323)	(272)	(108)	(500)	(487)

Finding 11-02: ADOSH is not performing a sufficient number of inspections and inspection goals were not met.

Recommendation 11-02: *Ensure all available tools and resources are used to achieve inspection goals.*

Inspections were targeted primarily based on the stated goals from its performance plan, a local emphasis program on falls, adopted National Emphasis Program's (NEP's), and the Construction Targeting Plan.

The majority of the programmed inspections were conducted through the Construction Targeting Plan. The plan relied on Dodge reports for commercial construction projects starting within a specified timeframe, and was based on random selection from this on-going list of non-residential projects. Arizona's programmed construction safety inspections continued to result in a low rate of serious, willful and repeat violations due to the nature of inspection sites which were targeted by the Construction Targeting Plan. These sites tended to have few hazards due to the site's nature (e.g. highway building) or were in a stage of construction where few hazards were present (e.g. ground breaking)

In FY 2011, 28.5% of programmed safety inspections resulted in Serious, Willful, or Repeat violations, whereas 43.3% of programmed health inspections resulted in Serious, Willful, or Repeat Violations (FY 2011 SAMM 8). Both of these percentages were significantly below the national averages of 58.5% for safety and 51.7% for health. This indicates that improved targeting of programmed inspections should be considered to aid the discovery of serious workplace hazards.

5. Citations and Penalties

ADOSH followed federal OSHA's FOM in citing hazards and ensuring prima facie documentation of violations. Enforcement inspections produced citations for all hazards recognized by compliance staff but the low number of violations cited as Serious/Willful/Repeat (SWR) suggests improved targeting of inspections which

would reveal workers exposure to hazards. Violation groupings were consistent with that of Federal OSHA as are instances of willful and repeat.

Although the overall SWR has increased over the past three years, the rate of 1.0 was still significantly lower than that of the National Average. Furthermore, a high proportion of violations (3.0) was classified as “non-serious” which is the ADOSH equivalent to “other-than-serious,” see Table 3. Finally, ADOSH’s in-compliance rate was high at 22% (201 of 913 inspections without citations issued) (FY 2011 SAMM 9). ADOSH’s marginal improvement in its SWR rate still does not approach the FY2011 National Average of 2.1 due to reluctance to cite violations which Federal OSHA cites as serious.

Table 3

Violations/Inspection (SAMM 9)						
	FY 2007	FY 2008	FY2009	FY 2010	FY 2011	FY11 National Data
<i>S/W/R</i>	0.93 <i>(822/883)</i>	1.04 <i>(822/783)</i>	0.87 <i>(730/838)</i>	0.98 <i>(673/681)</i>	1.01 <i>(726/712)</i>	2.1
<i>Other</i>	2.66 <i>(2354/883)</i>	2.85 <i>(2237/783)</i>	2.70 <i>(2268/838)</i>	3.34 <i>(2275/681)</i>	3.03 <i>(2161/712)</i>	1.2

Finding 11-03 (10-16): Citations are not classified as serious in accordance with the FOM . The Percentage of inspections resulting in Serious, Willful and Repeat violations were significantly below the national average. This is substantially similar to the previous Finding 10-16 which stated “ADOSH’s policy on classification violations does not ensure violations that would be considered “Serious” under the Federal FOM are classified as “Serious”

Recommendation 11-03 (Continued 10-16): Adopt Violation Classification policies and procedures equivalent to Federal OSHA regarding descriptions on Supporting “Serious” Classification (Federal FOM, page 4-10 to 4-11), Supporting “Willful” Violations (Federal FOM, page 4-30 to 4-32), and Combining/Grouping Violations (Federal FOM, page 4-37 to 4-39).

In FY 2011, citation lapse time averaged 60.74 days for safety and 35.68 days for health, which is an increase of 6% for safety and a negligible decrease for health from FY 2010 results (FY 2011 SAMM 7). The lapse time for safety citations was more than the National average by 9 days (51.9 days) while health was below by 29 days (64.8 days).

The state has written procedures for imposing first-instance sanctions for violations of standards. The average penalty assessed per serious violation in FY 2011 was \$1,284 (FY 2011 SAMM 10). That average was insignificantly less than the corresponding average of \$1,306 in FY 2010 but was the lowest average penalty out of the previous four years as illustrated in Table 4. The downward trend is believed to be a result of ADOSH’s increased number of planned programmed inspections and fewer incident inspections. As discussed

above, targeting of programmed inspections was not effective in reaching high hazard construction establishments during the right phase of the projects. The State's average penalty of \$1,284 is below the national average of \$1,680 by \$396 or 24%. To increase the penalty amounts to be consistent with the National average ADOSH should improve inspection targeting to discovery of the most serious workplaces hazards.

Table 4

Average Initial Penalty Per Serious Violation (SAMM 10)						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2011 National Data
Serious	\$1,706	\$1,430	\$1,429	\$1,306	\$1,284	\$1,680

6. Abatement

Timely abatement of serious hazards was verified and documentation was provided by the employer in each case file. Abatements were generally required in 3 day or 14 day increments though some programmatic violations are given 21 days. Verification of abatement improved during the evaluation period and continued to approach the goal of 100%. Extensions were granted only in cases where abatement challenges have been presented by the employer and ADOSH Management was in agreement that more time was required. An internal program was maintained to ensure abatements were completed and submitted in a timely manner.

Follow-up inspections were conducted when an employer failed to provide adequate proof of abatement of serious violations. Follow-up inspections were also conducted after fatalities, for willful and repeat violations, or at a supervisor's discretion.

Table 5 shows the timely rate of abatement of Serious, Willful and Repeat violations was 95.5% for private sector violations and 83% for public sector violations (FY 2011 SAMM 6).

Table 5

Percent S/W/R Violations Timely Verified Abated (SAMM 6)						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	Goal
Private Sector	89.4% (514/575)	88.4% (466/527)	94.0% (425/452)	94.3 (443/470)	95.5 (467/489)	100%
Public Sector	86.4% (19/22)	89.3% (25/28)	100% (15/15)	95.0 (19/20)	83.3 (10/12)	100%

7. Employee and Union Involvement

The policy on employee participation in the inspection process was the same as OSHA's. Employee and union involvement was addressed in Arizona Revised Statutes ARS 23-408(D) and Arizona Administrative Code R20-5-615. During inspections, employees were given the opportunity to participate either through interviews or by having employee representatives accompany inspectors. Employees were also afforded the opportunity to privately express their views about the workplace away from the employer. In addition, inspection results were provided to employee representatives and complainants. Monitoring did not identify any cases where employees were not afforded the right to participate in the inspection process. However, in a review of 30 inspection case files, there were generally only one or two employees interviewed per case file, which may not have been substantial enough to document employee exposures to serious and non-serious hazards or to have heard employee concerns of hazards at the worksite. ADOSH policy is to interview ten percent of the workforce at sites not represented by a union. Following this policy would aid documentation efforts and improve compliance officers' discovery of employee safety concerns.

Finding 11-04: Sufficient employee interviews were not always documented in inspection case files.

Recommendation 11-04: Ensure employee interviews are of the appropriate number to document employee exposure to serious and non-serious hazards.

8. Special Study – ADOSH Performance Goal 1.2: Reduce the injury and illness rate by 2% in the structural steel and precast concrete industry.

Introduction:

A comprehensive special study was performed of ADOSH's Goal 1.2 where ADOSH planned to reduce injuries and illnesses in the structural steel and precast concrete industry. Specifically, ADOSH's 5-Year Performance Goal was to reduce by 10% the injury and illness rate in the structural steel and precast concrete industry (SIC 1791/NAICS 23812). ADOSH's Annual Performance Goal was to reduce by 2% the injury and illness rate in the structural steel and precast concrete industry.

Purpose:

The special study that was conducted focused on the inspections performed to achieve Goal 1.2. The goal of the study was to evaluate possible enforcement practices which may be inhibiting efforts toward reducing Arizona's injury and illness rates in the structural steel and precast concrete industry following three years of increases.

Methodology:

The study was conducted by OSHA's Phoenix Area Office which reviewed case files from inspections performed in both the Tucson and Phoenix offices in SIC 1791 and were both opened and closed in FY 2011. A search was conducted in OSHA's Integrated Management Information System (IMIS) which identified 28 inspections that were conducted in FY 2011. Of the 28 inspections conducted in the two offices, 20 were identified as having had citations issued or where the employer was found to be in compliance with ADOSH standards. These case files were collected and reviewed.

All case files studied were thoroughly reviewed to evaluate enforcement practices utilized by the State. A greater focus was given on some elements due to their potential to affect injury and illness in this industry. These elements were: source of inspection activity (e.g. complaint, fatality, or programmed planned), percent of in compliance inspections, the percent of Serious/Willful/Repeat (SWR), and the number of interviews conducted.

Results:

With respect to all of the case files studied, one finding was noted. The majority of inspections conducted (15 out of 20) were planned programmed. Most of these were generated from the Construction Industry Research and Policy Center of the University of Tennessee in Knoxville in a randomized list which the State received on a monthly basis. Inspections which were planned programmed were in compliance 27% of the time (4 of 15 inspections). Only 40% of the planned programmed inspections (6 of 15 inspections) had serious violations cited. As discussed above, targeting of programmed inspections was not effective in reaching high hazard construction establishments during the right phase of the projects.

Complaint inspections accounted for only two of the 20 inspections performed. Both of the complaint inspections found hazards which were cited and one of them yielded three serious citations. The single fatality inspection conducted in FY 2011 yielded one serious violation.

The percent of violations that were classified as S/W/R was 43% (16 of the 37 violations). The National Average for S/W/R for planned programmed safety inspections in FY 2011 was 59% meaning ADOSH's S/W/R percent in the emphasized area was 16% below the National Average.

Documentation sufficiency was reviewed for all cases where citations were issued. It was noted that the number of employees interviewed was not in accordance to State policy. No inspection had more than three interviews conducted and generally there was only one or two interviews documented in the case file. The policy was to conduct interviews with 10% of the workforce in workplaces that are not represented by a union.

Finding/Recommendations:

To achieve its goal of reducing the injury and illness rate by 2% in the structural steel and precast concrete industry one recommendation is suggested for enforcement. It may be helpful for ADOSH to try to increase the number and quality of inspections in SIC 1791 through a carefully developed targeting program and to expend resources for training of staff. Implementation of a Local Emphasis Program is also suggested as a measure to improve ADOSH's ability to discover more hazards in this industry.

Conclusion:

The results of the findings of this special study indicated that ADOSH may benefit from improving their targeting of inspections in SIC 1791. The inspections performed could be more thorough and there may be potential for citing a greater number of hazards during inspections. Additionally, increasing the number of onsite interviews may provide compliance staff with more knowledge of site hazards as well as bolster documentation.

Finding 11-05: ADOSH did not reduce the injury and illness rate in the structural steel and precast concrete industry and the FY 2011 annual performance goal 1.2 was not met.

Recommendation 11-05: *Implement additional measures to target the structural steel and precast concrete industry to ensure the injury and illness rate turns downward. ADOSH responded to this recommendation from FY 2010 FAME report by modifying their FY 2012 Annual Performance Goal. This was noted as corrected on the CAP for FY 2010.*

B. Review Procedures**1. Informal Conferences**

As with OSHA, ADOSH's procedures required that informal conferences be held prior to the expiration of a 15-day contest period. Based on the evidence presented at the informal conference, ADOSH may delete or reclassify the violations and may reduce the penalty.

If ADOSH and the employer are unable to resolve the employer's concerns through the informal conference, the employer may request a hearing before an Administrative Law Judge (ALJ) of the ICA. Any party aggrieved by a decision of a hearing may request a review by the Review Board. These procedures are adhered to and employer rights are explained.

Penalty reductions were used to settle cases where employer's efforts exhibited a positive attitude toward safety and health while maintaining 68% of the initial cited amounts which is similar to FY2010's 70% as can be seen in Table 6 (FY

2011 SIR 9). Violations are reclassified in less than 1% of ADOSH cases and are vacated in only 2.5% of cases (FY 2011 SIR 8, 7). Violations are reduced, reclassified, or vacated only where persuasive contravening evidence is presented. Informal conference documented the reasons behind decisions to reduce, reclassify, or vacate a violation.

Table 6

Informal Conference Penalty Negotiations			
	<i>% Violations Vacated</i>	<i>% Violations Reclassified</i>	<i>% Violation Penalty Retention</i>
FY 2010	2	0.9	70.6
FY 2011	2.5	0.4	67.8

2. Formal Review of Citations

The Review Board consisted of five members appointed by the governor. One member represented management, another represented labor, and three members represented the general public. Members of the review board were appointed to five-year terms and all decisions made by the Board were determined by a majority. The Review Board may affirm, reverse, modify or supplement the decision of the ALJ. The Board’s decision may be appealed to the Superior Court.

Post-contest data reflected the outcomes of hearings with the ICA. A lower percentage of violations (2.5%) were vacated in FY 2011 as compared to the federal percentage of 7% (FY 2011 SIR 7). The retention rate for penalties after contest was 67.8% compared to the federal rate of 62.8% (FY 2011 SIR 9). Violations were reclassified at a significantly lower rate (0.4%) than the federal rate of 4.6% (FY 2011 SIR 8). State defenses are adequate and documentation tends to support citations.

C. Standards and Federal Program Changes (FPCs) Adoption

1. Standards Adoption

ADOSH adopts most federal standards by reference. By using these procedures, standards are automatically adopted within the time frame allowed and they use the same effective date as the federal standards. For standards not adopted by reference, the state has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA.

During this evaluation period, there were three final rules issued by OSHA. The state adopted all three in a timely fashion as shown in Table 7.

**Table 7 Federally Initiated Standards Log and Arizona's Response
FY 2011**

Federal Standard Number	Intent to Adopt	Adopt Identical	State Standard Number	Date Promulgated	Effective Date	FR Published Date
<u>29 CFR 1926,(various) 2010 41: Cranes and Derricks in Construction, Final Rule</u>	Yes	Yes	N/A	6/13/2011	6/13/2011	N/A
<u>29 CFR 1910, 1926, 1915 2010 39: Hexavalent Chromium Direct Final Rule</u>	Yes	Yes	N/A	6/13/2011	6/13/2011	N/A
<u>29 CFR 1910,1926.754 2010 40: Safety Standards for Steel Erection</u>	Yes	Yes	N/A	6/13/2011	6/13/2011	N/A

2. Federal Program/State Initiated Changes

OSHA policy requires states to acknowledge each Automated Tracking System (ATS) change within 70 days of a program change's transmittal date. Acknowledgement by the state must include whether it intends to adopt the change or adopt an alternative. The ATS also requests the State's projected date of adoption. In FY 2011, ADOSH enforced all NEPS and utilized Federal OSHA's penalty policy as prescribed.

In FY 2011, no State Initiated Changes were submitted. Eight Federal Program Changes (FPCs) were transmitted by ATS which required acknowledgement by the state during the period. Two FPCs which were transmitted in FY 2010 were due for acknowledgement into FY 2011. All 10 of the FPCs were acknowledged and adopted 100% in a timely manner as shown in Table 8.

Most of the FRCs were adopted and there are none delinquent from earlier years. The following are FY 2011 FPC's that were not adopted:

- *CPL-02-11-03 2011 463 Site-Specific Targeting 2011 (SST-11) was not adopted because the State maintains its own targeting program*
- *CPL-02-01-051 2011 443 Confined Spaces in Shipyards and CPL-02-01-049 2011 402 PPE in Shipyard Employment were not adopted due to the lack of any maritime industry in Arizona*
- *CPL-02-00-150 2011 442 Revisions to Field Operations which contained only changes to maritime enforcement and federal agency programs both of which do not affect the ADOSH program.*

Table 8

Directive Number	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical	State Adoption Date
CPL-02-11-03 2011 463 Site-Specific Targeting 2011 (SST-11)	No	Yes	No	N/A	N/A
CPL-02-01-052 2011 462 Enforcement Procedures for Incidents of Workplace Violence	Yes	Yes	Yes	Yes	11/19/2011
CPL-02-00-151 2011 445 Commercial Diving Operations	Yes	Yes	Yes	Yes	08/12/2011
CPL-02-01-051 2011 443 Confined Spaces in Shipyards	No	Yes	No	N/A	N/A
CPL-03-00-013 2011 444 NEP Primary Metals	Yes	Yes	Yes	Yes	07/05/2011
CPL-02-00-150 2011 442 Revisions to Field Operations Manual - April 2011	Yes	Yes	No	N/A	N/A
CPL-02-01-050 2011 422 PPE in General Industry	Yes	Yes	Yes	Yes	05/15/2011
CPL-03(11-01) 2011 423 NEP Microwave Popcorn Processing Plants	Yes	Yes	Yes	Yes	05/15/2011
STD-03-11-002 2011 403 Compliance Guidance for Residential Construction	Yes	Yes	Yes	Yes	06/16/2011
CPL-02-01-049 2011 402 PPE in Shipyard Employment	No	No	No	N/A	N/A
CPL-02(10-07) 2011 401 Recordkeeping NEP - September 2010 Changes	Yes	Yes	Yes	Yes	11/16/2010

D. Variances

Though Arizona Revised Statutes 23-411 and 23-412 and Arizona's Administrative Codes R20-5-655 and R20-5-656 provided guidelines on the variance process, no permanent or temporary variances were issued in FY 2011. To date ADOSH has granted a single variance in FY 2003 to allow scaffolds to have 6' x 6' ½' thick plywood used under scaffold legs instead of standard base plates. This single variance is providing employees with adequate alternative protection.

E. Public Employee Program

Arizona's enforcement program for state and local government was identical to that in the private sector. ADOSH scheduled inspections and issued citations and penalties for both in the same manner but state agencies were represented by the

Attorney General's Office if citations were contested. Table 9 shows that during FY 2011, 2.1% of the inspections were conducted in the public sector, down slightly but consistent with the FY 2010 number of 2.4% though significantly less than 11.5% in FY 2009 (FY 2011 SAMM 11).

In FY 2011, there was one fatal incident investigated involving a City of Phoenix employee. As with other public entities under ADOSH jurisdiction the City was fined as a means to compel future compliance.

Table 9

Percentage of Total Inspections in Public Sector (SAMM 11)						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	3-Year State Data
	5.4% (74/1379)	4.9% (69/1424)	11.5% (184/1594)	2.4% (26/1089)	2.1% (19/928)	6.2%

F. Discrimination Program

Make-up of the State Program

There were two full-time discrimination investigators at the main Phoenix office. Their supervisor, located in the same office, performed other enforcement duties besides supervising the two discrimination investigators.

Five additional employees located in the Tucson office were assigned to investigate discrimination complaints. These 5 employees were primarily assigned enforcement duties and conducted discrimination investigations on a part-time, as needed basis during FY2011. Of the investigators located in the Tucson office, one has retired and another left ADOSH. Although there was a supervisor in the Tucson office, the Tucson investigators' discrimination work was usually handled by the Phoenix supervisor.

Methodology

According to data in IMIS, 43 discrimination complaints were completed in Fiscal Year 2011. To conduct this FAME, Federal OSHA selected 10% of cases closed in Fiscal Year 2011 (or four cases) by considering the following three factors: determination, age of the case, and investigator. Based on these three factors, Federal OSHA chose one non-merit case, one withdrawn case, one settled case, and one merit/litigation case. All four cases chosen ranged in the number of days they took to close out and were investigated by different ADOSH investigators where possible.

Because this FAME focuses on ADOSH's operations in FY 2011, ADOSH was reviewed against the policies and procedures outlined in the Whistleblower Investigations Manual, DIS-0.09. However, during the last week of the fiscal year, a new Whistleblower Investigations Manual was issued, CPL 02-03-003. All of the recommendations discussed in this section would be applicable under CPL 02-03-

003. In addition, citations to ADOSH's internal manual are included where appropriate.

Investigative Case File Reviews

1. Screening

The complainants in all four cases reviewed were screened. However, there were no notes of the screenings in the files, only intake questionnaires completed by the complainants. In addition, there was no documentation that these complainants were informed of their right to dual file with federal OSHA. Dual filing procedures are outlined in the OSHA Whistleblower Investigations Manual (DIS 0-0.9), Chapter 7, Section VI, B(1) and B(2). The ADOSH Investigations Manual does not contain a similar section on dual filing. More recently, this practice appeared to have been instituted for some Fiscal Year 2012 cases, with a brief reference to dual-filing rights in correspondence sent to complainants. Complainants could be informed orally at the intake screening, and/or in the opening letters mailed to them.

Finding 11-06: There was not a consistent policy or practice of informing discrimination complainants of their right to dually file with federal OSHA.

Recommendation 11-06: To ensure that discrimination complainants understand their right to dual file with federal OSHA, ADOSH needs to adopt a consistent procedure for informing complaints of their dual-filing right. ADOSH should revise its Investigations Manual to specify the procedure for dual filing of complaints with federal OSHA.

2. Investigation

In the four cases reviewed, the complainants were interviewed. However, complainant interview notes were not kept in three of the four files, and in the remaining file, notes of the complainant interview were relatively sparse and handwritten.

In all four cases, all appropriate witnesses were interviewed or adequate substitutes were obtained (i.e., witness statements written and signed by the witnesses). However, in two of the case files, notes for some witness interviews were relatively scant or not kept. In addition, one of the four cases contained audio recordings of some of the witness interviews.

In three of the four cases, third party non-management witnesses were contacted for interviews. However, there was nothing in the case files to indicate that such witnesses were offered or given conditional confidentiality. In at least one of these cases the non-management witnesses were contacted through the respondent, with respondent's knowledge that specific witnesses were being interviewed at respondent's facility. ADOSH lacks a consistent policy and practice regarding the treatment of third party non-management witnesses. Such witnesses should have been approached privately where possible, not through

respondents, and respondents' management or attorneys should not have been allowed to have knowledge of or to be present during the interviews. It should also be standard practice to discuss and offer third party non-management witnesses conditional confidentiality. These requirements were outlined in the OSHA Whistleblower Investigations Manual (DIS 0-0.9), Chapter 3, Section IV (E) (5) and (G) (1)-(5) (pp. 3-7 to 3-9). There were no comparable sections in the ADOSH Investigations Manual.

Witnesses should be approached privately for interviews, via information provided by the complainant or other sources, without going through the respondent's management or representatives. Alternatively, contact information of relevant 3rd party witnesses could be obtained from the respondent without revealing to the latter of the investigator's plans for interviews. Respondents do not have the right to be present or involved in the interview of 3rd party non-management witnesses, and their presence or involvement in this regard could compromise investigators' ability to obtain reliable information from witnesses. In addition, to protect 3rd party non-management witnesses from possible intimidation and/or retaliation and to encourage their full participation in the investigation, such witnesses should be offered conditional confidentiality during the course of the investigation. The identity of and information provided by 3rd party non-management witnesses should be kept in separate files or tabs and clearly marked "confidential." More specific or complex questions regarding how to manage 3rd party non-management witnesses should be directed to the appropriate regional federal OSHA office.

In all four cases, a closing conference was held with the complainant. However, no notes were kept of the closing conferences in the files.

Finding 11-07: There was no consistent policy or practice regarding contacting third party non-management witnesses privately for discrimination complaints, where possible (without going through respondent's management or representatives), nor was it a standard practice to discuss and offer such witnesses conditional confidentiality.

Recommendation 11-07: ADOSH should adopt a consistent policy on the treatment of 3rd party non-management witnesses for discrimination complaints. ADOSH should revise its Investigations Manual to specify the policy for handling 3rd party non-management witnesses.

3. Report Writing

In all four cases, a final investigative report was included in each case file. The final investigative reports were organized properly and contained lists of witnesses interviewed, a timeliness section, and a closing conference section, as well as cited to exhibits in the case files. In three of four cases, the final investigative reports were dated and signed by the supervisor.

4. Case File Management

The case files were largely assembled in the manner prescribed in the whistleblower investigative manual. However, the exhibits in the case files were sometimes not sub-divided properly in accordance with ADOSH Investigations Manual, Chapter V Report Writing & Case file Documentation. For instance, settlement agreements should not have been placed on the left side of file but placed in their own separate exhibits. In addition, notes on interviews with third party non-management witnesses and other information provided by such witnesses should have been kept in separate exhibits and clearly marked “confidential” whenever appropriate. The left side of the file should have been reserved for IMIS documents and non-evidentiary correspondence with the parties.

5. Timeliness

In two of the four cases reviewed, the investigation was not completed within 90 days of complainant filing the complaint. However, it should be noted that these two cases, which took longer than 90 days, were both merit cases that went to ADOSH’s legal department for litigation/settlement. Of the two cases that were closed within 90 days of being filed, one was a non-merit dismissal and the other was dismissed due to complainant’s withdrawal.

6. Appropriateness of State Findings and Decisions

Overall, all four cases under review were investigated and decided appropriately by ADOSH, as discussed in more detail below.

In one case that was dismissed as non-merit, the complainant was screened, and all prima facie elements were properly analyzed. Although additional third party witnesses were not interviewed for this case, the respondent provided written statements signed by relevant witnesses, and the investigator properly relied on surveillance video evidence that proved to be dispositive on the merits. However, as the video evidence could not be included in the case file (it belonged to the respondent and apparently could not be copied or transcribed), a more detailed description or summary of what was seen on the video should have been included in the case file; instead, the video evidence was only briefly referenced in the final investigative report. In addition, the video evidence should be discussed in terms of evaluating the complainant’s credibility in the analysis section of the final investigative report.

In the second case reviewed, the complainant was screened, and all prima facie elements were properly analyzed. Although this case eventually ended in a withdrawal of the complaint by the complainant, the investigator completed interviews of several third party non-management witnesses. However, these interviews were arranged through the respondent’s management or attorney, and the witnesses were not offered or given conditional confidentiality. In addition, as both parties indicated that they reached a settlement after investigation began

and a settlement agreement was submitted, this case should have been coded "Settled Other" on IMIS, rather than "Withdrawal." (See the discussion below.) Although not required in DIS 0.09, CPL 02-03-003 required that private settlement agreements between the parties be reviewed for adequacy of relief and public interest considerations (e.g., whether the agreement contained over-broad future employment waivers that might exclude the complainant from the profession, or gag provisions that might restrict the complainant's ability to engage in future protected activity), which was not performed here.

In the third case reviewed, the complainant was screened, and all prima facie elements were properly analyzed. This case was coded as a "Settlement," though it actually reached a merit determination and was sent to the attorneys for litigation. Although the respondent demonstrated that the complainant had performance issues, the totality of evidence was properly evaluated and evidence was uncovered that some witness statements in support of the respondent's position were not credible. In light of the dual motive present in this case, the analysis section of the final investigative report should also contain a fuller discussion of the dual motive, and the reason(s) why the preponderance of evidence still favored the complainant's contention over respondent's position. In addition, the final investigative report was missing the last signature and date page. Overall, despite these missing elements, it is clear that a full investigation of this complaint was conducted and reached the proper finding.

In the fourth case reviewed, the complainant was screened, and all prima facie elements were properly analyzed. This case also reached a merit finding and was litigated by the legal department. Although the investigation took somewhat longer than 90 days, ADOSH nevertheless completed its merit finding efficiently under the circumstances. A third party witness who provided critical information that undermined the respondent's pretext for terminating the complainant was interviewed. However, the case file was once again missing notes for the interview of the complainant, and as the third party witness was a non-management employee, the witness should have been offered conditional confidentiality and information should have been kept in a separate tab in the case file and clearly marked "confidential." In addition, although the final investigative report mentioned as background information the respondent's persistent and unjustified contesting and appeals of the complainant's unemployment benefits application, as well as irrelevant innuendos that the complainant was engaged in unsubstantiated illegal activity unconnected to her employment, these facts instead should be analyzed in the framework of possible "animus" from the respondent directed toward the complainant. The animus discussion would also support a recommendation of punitive damages (which were a part of the initial remedies demand by ADOSH attorneys). Overall, except for some missing elements discussed above, it is clear that a full investigation of this complaint was conducted and the proper finding reached.

Under Chapter 3, Section IV (D) Complainant Interview (p. 3-5), (G) Further Interviews & Documentation (p.3-8), and (K) Document File (p. 3-10) of the OSHA Whistleblower Investigations Manual (DIS 0-0.9), proper documentation of complainant and witness interviews and contacts is required. These OSHA requirements are mirrored in the ADOSH Investigations Manual, Chapter 3, Section C(5) Interviews & Documentation and Section F Document File.

Finding 11-08: In three of the cases reviewed, the discrimination case files did not contain any notes of the interviews and other communications with the complainant or relevant witnesses, though brief references were made to these interviews or communications in the final investigative report for each case.

Recommendation 11-08: *ADOSH should consistently document all discrimination complainant and witness interviews to comport with the manual requirements listed above. Notes of the interviews should be taken and kept in the case files.*

Finding 11-09: Certain elements of whistleblower complaints were not fully or consistently analyzed in some of the final investigative reports, including dual motive, animus, and credibility assessment.

Recommendation 11-09: *In cases in which the respondents appeared to have dual or mixed (both retaliatory and legitimate) motives in taking adverse actions against the complainants in question, ADOSH should always discuss and evaluate respondents' dual/mixed motives in the final investigative reports for discrimination complaints.*

7. Policies and Procedures

With some exceptions, policies and procedures were generally followed that comport with federal OSHA standards, as discussed in this report. Efforts were made to keep records of the major steps of investigation, but the documentation was not complete in all cases. For instance, copies of complaints to respondents were forwarded, and both respondents and complainants were notified with closing letters upon the conclusion of the investigations. When a complainant filed a complaint orally, the screening was recorded and a follow-up questionnaire to be completed and returned by the complainant was mailed, the receipt of which constituted a complaint to be docketed and investigated. However, the original date the complainant filed a complaint orally with ADOSH should have been used as the filing date rather than the date the complainant returned the follow-up questionnaire. Potential complainants who failed to respond to the questionnaires were followed up with. However, during FY 2011, there was not a practice of sending an opening letter to each complainant as required under Chapter 2, Section III (A) & (D) Screening and Docketing (pp. 2-3 & 2-4) of the federal OSHA Whistleblower Investigations Manual (DIS 0-0.9). The template in the OSHA Whistleblower Investigations Manual (DIS 0-0.9), "Sample Complainant Notification Letter" (p. 2-10), or a substantially similar letter with all the required information should be used.

Finding 11-10: The original date the complainant filed a discrimination complaint orally with ADOSH should have been used as the filing date rather than the date the complainant returned the follow-up questionnaire.

Recommendation 11-10: *The original date a complainant files a discrimination complaint orally with ADOSH should be used as the filing date of the complaint.*

Finding 11-11: The review of case files indicated that ADOSH was not sending an opening letter to each discrimination complainant.

Recommendation 11-11: *An opening letter shall be sent to each and every discrimination complainant for whom an 11(c) complaint was opened and docketed. The ADOSH Investigations Manual, Chapter III: Conduct of the Investigation, should be revised to reflect the OSHA requirement for an opening letter to be sent to each complainant.*

Program Management

1. Web IMIS

Web IMIS was used to enter data for discrimination complaints. The IMIS reports were used to track cases based on timeliness and other factors of quality control. Investigators were responsible for data entry on IMIS during the course of the investigation, and management was responsible for the final data entry at resolution of the complaints. Based on the cases reviewed, the data were entered accurately for the most part. However, one case that was coded as a "Withdrawal" should have been more appropriately entered as "Settled Other," as the parties settled the cases on their own and provided a private settlement agreement to ADOSH including the monetary amount for the settlement, which should have been entered on IMIS. Similarly, another case that was coded as "Settlement" should have been classified as "Merit/Litigation," because the case reached a merit determination and was turned over to ADOSH attorneys for litigation. (See OSHA Whistleblower Investigations Manual (DIS 0-0.9), Chapter 6, Section III (A) (Early Voluntary Resolution), p. 6-1.)

Finding 11-12: The selective review of discrimination cases indicated that some cases were misclassified as to the way they were resolved on IMIS.

Recommendation 11-12: *ADOSH should ensure that the resolution of discrimination cases is classified correctly and entered into IMIS under the proper categories.*

2. Other Data Management Reports

During the evaluation period, ADOSH used another database to keep track of its discrimination cases, the Microsoft ACCESS program. In particular, ACCESS was used to generate local case numbers for cases, and the generated information was then entered into IMIS. With the recent upgrades on IMIS,

ADOSH plans to phase out ACCESS and transition to using IMIS for all its discrimination case management in FY 2012.

3. Appeals

Under ADOSH's procedures, a complainant whose complaint was dismissed is mailed a dismissal letter that outlines the appeal process and deadlines. A complainant may appeal his or her dismissal to the Arizona Industrial Commission, which has full discretion whether to affirm, modify, or reverse the dismissal decision of the ADOSH Director. The ADOSH Director keeps a list of appeals for each year. In Fiscal Year 2011, there was one appeal of a dismissed complaint, which was affirmed by the Industrial Commission.

4. Administratively Closed Cases

After screening, if a complaint was determined to be non-jurisdictional, untimely, or as alleged, clearly lacked one or more of the requisite prima facie elements (protected activity, employer knowledge, adverse action, and nexus), a local case number for the complaint was generated using the ACCESS program and a letter sent to the complainant about the dismissal of the complaint. The discrimination program supervisor maintained a list of these "administratively closed" cases as well as the associated screening information and letters to complainants. However, during FY 2011 ADOSH did not record information about these administratively closed cases on IMIS. It should be noted IMIS did not allow users to administratively close cases until approximately half way through the fiscal year.

Finding 11-13: "Administratively closed" discrimination cases were not being recorded in IMIS. Complainant inquiries which were closed due to lack of jurisdiction, untimeliness, or, as alleged, was missing one or more prima facie elements were maintained in a separate file by the Phoenix supervisor, but were not recorded on IMIS.

Recommendation 11-13: *To ensure that accurate data is kept about each discrimination complaint and inquiry, ADOSH should track and record "administratively closed" discrimination complaints or inquiries on IMIS, which now has the functionality to enable the recording of such complaints or inquiries, including the generation of a local case number.*

5. Merit, Settlement, Litigation and Timeliness Rates

Of the 43 discrimination cases closed during the evaluation period, 9 settlements, 6 withdrawals, 1 merit/litigation, and 1 settled/other resolution were recorded. The rest of closures were non-merit dismissals. As discussed above, however, the review of cases indicated that the true number of merit/litigation cases should have been at least two (reducing the number of settlements by one), and "Settled Other" resolutions should have numbered at least one (reducing the number of withdrawals by one), due to IMIS coding errors.

Fifteen of its 43 closed cases were resolved within 90 days of opening the complaints, for a “timeliness rate” of about 35%. The closed cases showed a normal distribution of investigation duration, with the longest case taking 484 days¹ and the shortest case (a settlement) taking 28 days to complete.

Resources

1. Training

Both of the full-time discrimination investigators attended the two-week OSHA OTI 1420 Basic Investigations course recently in January 2012. Both investigators as well as the supervisor in the Phoenix office also attended an informal three-day training given by Federal OSHA Region IX in February 2009. The Phoenix supervisor has not attended the OTI 1420 training but is scheduled to do so in May 2012.

Of the five part-time discrimination investigators in Tucson, three received the aforementioned informal February 2009 training. None of the Tucson investigators have attended the OSHA OTI 1420 basic investigations training. At this point, only one is scheduled to take the OSHA OTI 1420 basic training in May 2012. The supervisor in the Tucson office has not received any whistleblower investigator training, although he does not review discrimination complaint investigations.

Finding 11-14: Some but not all investigators who investigated discrimination complaints attended OSHA OTI 1420 Basic Investigations course or received comparable basic whistleblower investigations training.

Recommendation 11-14: ADOSH should ensure that all its investigators conducting discrimination investigations take the OSHA OTI 1420 Basic Investigations course or its equivalent.

2. Number of Staff Resources Assigned

There were two full-time discrimination investigators in the Phoenix office. Both investigators usually investigated between four to seven cases at any given time during the evaluation period. In FY 2011, one of the full-time investigators closed 8 cases, whereas the other investigator closed 14 cases. All of the Tucson investigators performed predominantly non-discrimination investigatory duties, and the one who conducted the vast majority of Tucson discrimination investigations closed 15 cases.

The Phoenix discrimination supervisor indicated that given the limitations in resources and staff, the discrimination complaints were assigned based on the individual investigator’s case load, experience, and training. Geography or

¹ This was a case in which the original investigator retired from ADOSH before completing the investigation, and the case was subsequently completed by the Phoenix discrimination supervisor. Another factor for the length of time it took to complete this case was because it received a merit finding and was then turned over to ADOSH’s legal department for further review and litigation.

location of the cases did not play a significant role in the assignment of cases, given that there were offices in two different locations (Phoenix and Tucson) with staff who could be assigned to the cases as needed.

G. Complaint Against State Plan Administration (CASPA)

Six new CASPAs were filed in FY 2011; ADOSH responded in a timely manner to all six CASPAs which were investigated and closed within the same period. None of the CASPAs were determined to have valid allegations.

CASPA 2011-AZ 21: *When a complaint was filed alleging an air quality hazard, the State did not perform an adequate inspection and the complainant was not informed of whistleblower protection rights. It was determined that ADOSH performed an adequate inspection and appropriately handled the whistleblower's subsequent discrimination complaint. It was recommended that ADOSH ensure complainants are informed in writing when whistleblower complaints are initiated.*

CASPA 2011-AZ 22: *The allegation was that the State did not perform an adequate whistleblower investigation of a complaint. It was determined that ADOSH did perform an adequate investigation into the whistleblower's concerns. No recommendations were advised to ADOSH.*

CASPA 2011-AZ 23: *A complainant alleged having been fired for filing worker's compensation claims and that the State performed an inadequate whistleblower investigation. This CASPA was closed and it was recommended that ADOSH reopen the complaint for further investigation.*

CASPA 2011-AZ 24: *The complainant alleged that the State verbally dismissed the complainant's whistleblower complaint. The CASPA was closed when it was determined that the complainant had not exhausted all appeals through ADOSH. No recommendations were made.*

CASPA 2011-AZ 25: *It was alleged that the State dismissed the complainant's whistleblower claims. The CASPA was closed when it was determined that the complainant had not exhausted all appeals through ADOSH. No recommendations were made.*

CASPA 2011-AZ 26: *The allegation was that the state tried to persuade the complainant not to file a safety and health complaint and to instead contact the state consultation program to receive a voluntary compliance visit. It was determined that the complaint was not valid.*

Finally, OSHA received a CASPA (2012-AZ 27) with multiple complainants in CY 2011 (FY12) which alleged that the state of Arizona failed to adopt the residential fall protection directive and that a stay of enforcement prevented the state from protecting workers in residential construction from falls in a manner at least as effective as the

federal requirements. Due to the complexity and significant nature of the complaint items, OSHA is currently reviewing the state's response to this CASPA. No actions have been determined at this time and no recommendations have been made for program improvement at this time. OSHA will continue to investigate this CASPA.

H. Voluntary Compliance Program

The State maintained a Voluntary Protection Program (VPP) which was consistent with federal OSHA's policies. ADOSH's Voluntary Protection Program Manual shared the principal VPP concepts with the Federal OSHA version. In response to three OSHA policy memorandums of improvements to the VPP program dated August 3, 2011, November 9, 2009, and June 29, 2011, ADOSH had adopted the memos and administered the VPP program in accordance with federal OSHA though it had not yet updated their VPP Manual. This included providing onsite assistance to VPP employers when a Star Participant's TCIR and/or DART rates exceeded the required level, evaluating VPP applicants' safety and health incentive programs, and ensuring that all issues requiring correction would have completion dates that do not exceed 90 days.

In FY 2011 ADOSH made a notable increase in membership of their Voluntary Protection Program during. In total, they have welcomed 17 employers into this program, which is only three fewer than their five year Strategic Plan goal of 20. It was anticipated that their goal will be met for VPP in FY 2012.

I. Public Sector On-Site Consultation Program

ADOSH operated its occupational safety and health programs under the Occupational Safety and Health Administration's 23(g) and 21(d) federal grant agreements. The 23(g) operational program agreement covered enforcement of private and public sector employees and consultation of public sector employees whereas the 21(d) consultation program agreement covered consultation of private sector employees. The enforcement program for State and local government employees was the same as that for the private sector. Inspections were scheduled and citations were issued for penalties in the same manner as the federal programs. However, State agencies were represented by the Attorney General's Office if citations are contested.

Federal OSHA maintained a set of mandated activity measures or standards of acceptable performance for consultation programs. Quarterly data relating to each of those standards were reported in the Mandated Activities Report for Consultation (MARC). The MARC and supplemental monitoring data were used to assess states' performances. MARC data revealed that ADOSH conducted only four consultation visits in FY 2011 (FY 2011 MARC Public 1). Additionally it was revealed that in FY 2011, 25% (one of four visits conducted) of ADOSH's public sector initial consultation visits occurred at high-hazard establishments. This is significantly below the National Reference of 90%. At each of these visits Consultants conferred with employees. Furthermore it was found that 100% of the serious hazards identified by consultants

was verified as corrected in a timely manner. However, it should be noted that there was only one serious hazard identified. For the purposes of this measure, verification is considered timely when it occurred within 14 days or fewer from the latest correction due date for each visit. The MARC Reference Standard was 100% and ADOSH successfully met this standard.

Given that ADOSH 23(g) was funded at \$3,942,093.00 and future grant amounts are expected to remain stable ADOSH should increase its consultation visits for public sector employees. Staffing levels and public sector targeting likely contribute to the difficulty in making more visits however a FY 2011 fatality of a public employee indicates the need for more public sector consultation visits.

J. Private Sector 23(g) On-Site Consultation Program

This section is not Applicable to Arizona.

K. Program Administration

In FY 2011, the State program had a total projected budget of \$4,884,117 to \$3,942,093 for 23(g) and \$942,024 for 21(d) (FY 2011 SOAR). An accounting oversight which was discovered late in the fiscal year reduced the federal funding portion for 23(g) by \$500,000 making the total budget \$4,384,117. The State maintained 47 authorized staff positions between its central office in Phoenix and its Tucson field office. The two offices had 26 compliance officers, who conducted 913 enforcement inspections. The Program had 13 vacancies in 2011.

Due to the State's economic situation in recent years distant out of state travel restrictions have made training opportunities difficult to come by for both compliance officers and consultants. To ensure training of new staff and to maintain training for seasoned staff the State has utilized several resources such as in-house training. Fortunately recent progress has allowed more out of State training opportunities to be afforded to compliance staff to attend courses at the OSHA Training Institute (OTI). Additionally, the State has collaborated with the nearby Nevada program to share training opportunities in the Las Vegas and Phoenix areas. ADOSH has also adopted an alternative training approach and has developed a training matrix for compliance personnel using the University of California San Diego (UCSD) Education Center and other professionals to support their training needs. ADOSH continues to its commitment to funding OTI trainers' travel to Arizona to conduct OTI courses. Finally, a Plan Change Supplement has recently been submitted to OSHA for review. This was a previous finding in the FY 2009 and FY 2010 FAME reports and once OSHA has granted approval that the training plan is at least as effective as OSHA's, this item will be considered corrected from the FY 2010 FAME report findings. ADOSH leadership is committed to ensuring training for all staff.

For Information Management, ADOSH continued to utilize the OSHA IMIS system. The State frequently utilized IMIS reports in a manner similar to federal OSHA to target

inspections, verify abatement and ensure overall program effectiveness in enforcement and consultation. ADOSH's laboratory requirements were met through its contract with Galson Laboratories in East Syracuse, NY. The laboratory provided analysis of samples from both the compliance and consultation sections. ADOSH also used OSHA's Salt Lake Technical Center for any work that cannot be performed by Galson Laboratories. Galson Laboratories participated in the American Industrial Hygiene Association's (AIHA) Proficiency Analytical Testing (PAT) program and was consistently in good standing with the AIHA.

The State used two separate internal audit programs to ensure program integrity. ADOSH audited the work of all compliance officers, trainers, whistleblowers and consultants. Supervisory staff were required to perform biannual onsite job evaluations of each of their subordinates. The State also oversaw their program by performing abatement verification audits for compliance staff, trainers, whistleblowers, and consultants.

V. Assessment of State Progress in Achieving Annual Performance Goals

This section assesses ADOSH's accomplishments toward achieving their FY 2011 Annual Performance Plan goals and progress in meeting their Five-Year Strategic Plan goals. Consistent with the Federal Government Performance and Results Act (GPRA), ADOSH developed a Five-Year Strategic Plan (2008-2012) that committed to the effective and efficient performance of the agency's activities and certain levels of injury and illness rate reductions in Arizona's industries (e.g. North American Industry Classification System (NAICS)) as reported by the Bureau of Labor and Statistics (BLS).

The goals of Arizona's Five Year Strategic Plan were to be incrementally achieved through the implementation of Annual Performance Plans. This is Arizona's fourth year in working toward their Strategic Goals.

Based on its annual report, Arizona continued to focus its resources and strive to fulfill obligations despite budgetary and personnel constraints. ADOSH had mixed results with respect to the various performance goals. The state was able to meet some activities projected for various goals, but not others. It is believed that the staffing and budgetary constraints have negatively impacted ADOSH's ability to achieve all of its goals. In summary, out of the eight enforcement goals ADOSH met three goals, partially met three goals and has failed to meet two goals.

OSHA's assessment in this part was largely based on the State's end of the year report and State program requirements (Mandated State Plan Activities) which was outlined in 29 CFR 1902.3 Criteria for State plans and 29 CFR 1902.4 State Plan Indices of Effectiveness.

ADOSH indicated that the goals would be measured by using primary outcome measures and intermediate outcome measures. The primary outcome measure was

the reduction of the total case rate of injury and illness rate for the specified industry. The intermediate outcome measure was the accomplishment of a specified number of compliance inspections performed in the specific industry with a targeted number of serious hazards identified and cited. Goals 1.1 – 1.4 use the above approach.

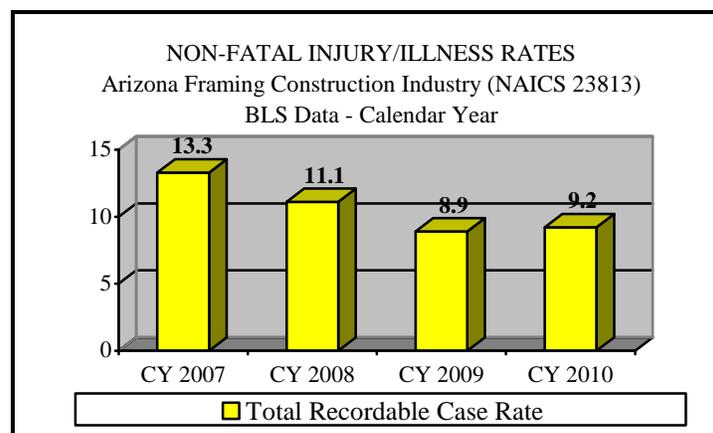
Strategic Goal 1: Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses and fatalities.

FY 2011 Annual Performance Goal 1.1 (Construction): Reduce the injury and illness rate by 2% in the framing construction industry (NAICS 23813).

Results: ADOSH met this goal.

Outcome: In FY 2011, ADOSH completed 20 compliance inspections in the framing construction industry and identified 52 hazards (FY 2011 SOAR). These inspections were part of the total 730 construction inspections ADOSH achieved this year. ADOSH did meet their construction inspection goal of 20 construction inspections finding 52 hazards (FY 2011 SOAR). Chart 3 below illustrates the change in the Total Recordable Case Rate for NAICS 23813 over the last four years of BLS data.

Chart 2

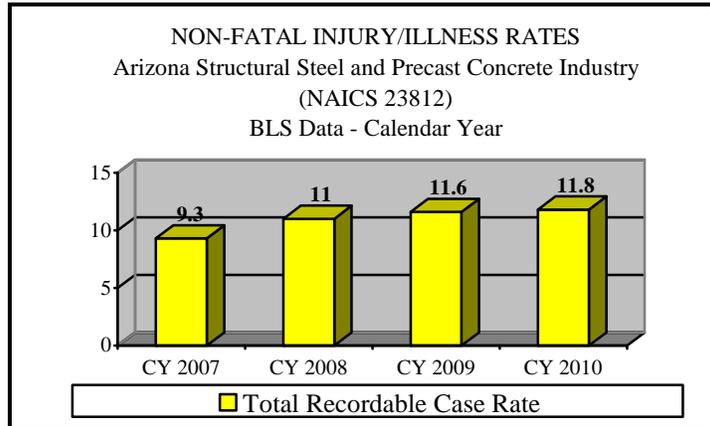


FY 2011 Annual Performance Goal 1.2: Reduce the injury and illness rate by 2% in the structural steel and precast concrete industry (NAICS 23812).

Results: ADOSH did not meet this goal.

Outcome: In FY 2011, ADOSH completed 26 compliance inspections in the structural steel and precast industry and identified 56 hazards (FY 2011 SOAR). Based on available data from BLS, the overall industry case rate in Arizona has dropped by 21% (FY 2010 BLS data for NAICS 23812). Unfortunately, since 2007, the rate has increased by 25% as illustrated in Chart 4.

Chart 3



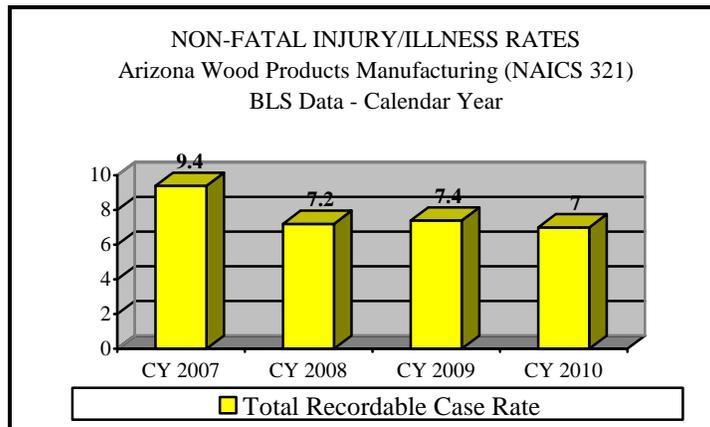
See Finding 11-5: ADOSH did not meet FY 2011 annual performance goal 1.2 because the TRCR increased from 11.6 to 11.8.

FY 2011 Performance Goal 1.3: *Reduce the injury and illness rate by 2% in the wood products manufacturing industry (NAICS 321).*

Results: *ADOSH met this goal.*

Outcome: *In FY 2011, ADOSH completed 12 compliance inspections in the wood products manufacturing industry and identified 127 hazards (FY 2011 SOAR). Since 2006, the overall industry case rate in Arizona has dropped by 23.9% (FY 2010 BLS data for NAICS 321). Chart 4 below illustrates the change in the Total Recordable Case Rate for NAICS 321 over the last four years of BLS data.*

Chart 4

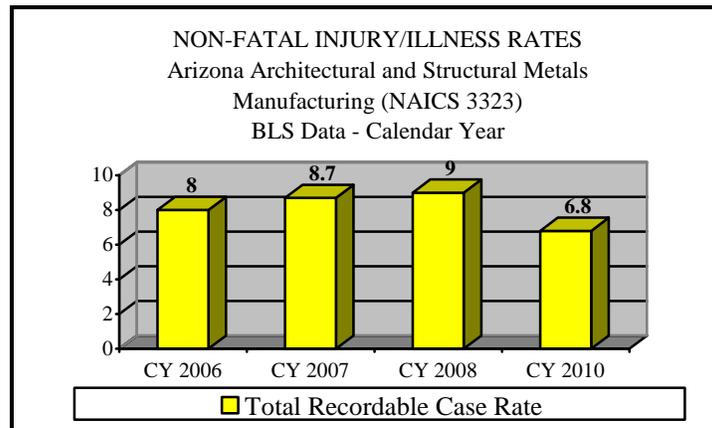


FY 2011 Performance Goal 1.4: *Reduce the injury and illness rate by 2% in the architectural and structural metals manufacturing industry (NAICS 3323).*

Results: *ADOSH did not meet this goal.*

Outcome: *In FY 2011, 10 compliance inspections were conducted in the architectural and structural metals manufacturing industry and 98 hazards were identified (FY 2011 SOAR). Their annual performance activity goal was to conduct 50 inspections in this industry, with at least 200 hazards identified. In 2009 BLS eliminated NAICS 3323 and grouped this industry under NAICS 332, therefore there was no BLS TRCR data available for NAICS 3323 in CY 2009 or 2010. At this time there is insufficient data to formally evaluate this goal in its entirety. However, it is clear ADOSH did not meet their annual performance activity goals of conducting 50 inspections and identifying at least 200 hazards. Although the annual performance goals were not met, a generalized finding and recommendation was identified as a whole for ADOSH to re-evaluate their inspection goals and allocate resources where they are most effective. Arizona responded to the FY 2010 CAP that they could not break down the data on the available BLS data. Chart 5 below illustrates the change in the Total Recordable Case Rate for NAICS 3323 for calendar years 2006, 2007, 2008 and 2010 BLS data.*

Chart 5



Finding 11-15: **ADOSH should re-evaluate annual performance goal 1.4 to ensure inspections are made and hazards are identified.**

Recommendation 11-15: *Assign an adequate number of staff and resources to ensure the annual performance goal of 50 inspections and 200 hazards are identified.*

FY 2011 Annual Performance Goal 1.5: *Identify at least two workplaces and initiate an intervention at those workplaces. Begin a working relationship with the goal of ultimately reducing injury and illness rates in those workplaces by 25%. Continue working with the three employers identified through the 2008 performance plan.*

This goal is specific to Arizona's private sector consultation activities and is evaluated in ADOSH's FY 2011 Regional Annual Consultation Evaluation Report (RACER).

FY 2011 Annual Performance Goal 1.6: *Increase SHARP membership by at least eight new employers.*

This goal is specific to Arizona's private sector consultation activities and is evaluated in ADOSH's FY 2011 RACER.

FY 2010 Annual Performance Goal 1.7: *Increase membership in the VPP by at least four new employers.*

Results: *ADOSH met this goal.*

Outcome: *In FY 2011, only two new employers were added to the Voluntary Protection Program (VPP). However, the state was already on track for their five-year Strategic Goal to approve at least 20 new workplaces for inclusion in the Arizona Voluntary Protection Program (VPP) in that they already had 19 workplaces with VPP status as of the end of FY 2011.*

FY 2011 Annual Performance Goal 1.8: *Develop and produce at least one "Hazard Highlight" card for a selected industry/hazard.*

Results: *ADOSH met this goal.*

Outcome: *In FY 2011, ADOSH developed a Hazard Highlight card that provides information on the hazards associated with the construction crane standard.*

Strategic Goal 2: Secure public confidence through excellence in the development and delivery of ADOSH services.

FY 2011 Annual Performance Goal 2.1: *Obtain first-level decision in 80% of discrimination investigations within 90 calendar days of receipt.*

Results: *ADOSH did not meet this goal. The state is making notable progress in settling these cases however only 34.7% are being settled within 90 days as noted in Table 10. No current recommendation will be made. OSHA will continue to monitor this item through FY 2012.*

Outcome: *ADOSH completed 78 discrimination investigation complaints in FY 2011. 71.8% of the discrimination investigations were completed within 90 days (FY 2011 SOAR). The goal was to obtain first-level decision in 80% of discrimination investigations within 90 calendar days of receipt.*

Table 10

Discrimination (SAMM 13, 14, 15)						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2010 National Data
% Completed Within 90 Days (SAMM 13)	77.8% (49/63)	39.2% (29/74)	50.0% (38/76)	34.5% (10/29)	34.6% (16/45)	100%
% Merit Cases (SAMM 14)	4.8% (3/63)	28.4% (21/74)	17.1% (13/76)	20.7% (6/29)	24.4% (11/45)	23%
% Merit Cases Settled (SAMM 15)	33.3% (1/3)	47.6% (10/21)	92.3% (12/13)	100.0% (6/6)	90.9% (10/11)	87.5%

FY 2011 Performance Goal 2.2: *Reduce citation lapse times by 5%.*

Results: *ADOSH did not meet this goal.*

Outcome: *In FY 2011, ADOSH's citation lapse time averaged 60.7 days for safety and 35.7 days for health, which, as Table 11 shows, is an increase of 6% for safety and negligible decrease for health from FY 2010 result (FY 2011 SAMM 7). ADOSH's lapse time for safety citations is above the National average by 9 days (51.9 days) while health is below by 29 days (64.8 days). Inspections should be completed and turned in to management, then reviewed, edited, signed, and mailed more quickly.*

Table 11

Citation Lapse Time in Calendar Days (SAMM 7)						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY10 Nat. Avg.
Safety	56.3 days (39157/69)	60.1 days (33286/55)	58.8 days (30113/51)	57.6 days (23022/40)	60.7 days (28245/46)	51.9 days
Health	43.3 days (8096/187)	34.6 days (7930/229)	30.8 days (10052/32)	35.7 days (10025/28)	35.7 days (8707/244)	64.8 days

Finding 11-16: **Case files are not processed expeditiously causing citation lapse time for safety inspections to increase notably higher than the national average.**

Recommendation 11-16: *Ensure that citations for safety inspections are issued in a timely fashion with a goal to meet at least the national average.*

Appendix A
 FY 2011 Arizona State Plan FAME Report
 Findings and Recommendations

FY 2011	Findings	Recommendations	FY 2010
11-01	<i>Appropriate condolence letters to the families of victims notifying them of enforcement actions were not contained in all fatality case files.</i>	<i>Ensure that all appropriate letters are sent at the beginning of a fatality investigation and at the inspection's conclusion which notifies families of victims of the enforcement action(s) taken.</i>	
11-02	<i>ADOSH is not performing a sufficient number of inspections and inspection goals were not met.</i>	<i>Ensure all available tools and resources are used to achieve inspection goals.</i>	
11-03	<i>Citations are not classified as serious in accordance with the FOM . The Percentage of inspections resulting in Serious, Willful and Repeat violations were significantly below the national average. This is substantially similar to the previous Findings 10-16 which stated "ADOSH's policy on classification violations does not ensure violations that would be considered "Serious" under the Federal FOM are classified as "Serious".</i>	<i>Adopt Violation Classification policies and procedures equivalent to Federal OSHA regarding descriptions on Supporting "Serious" Classification (Federal FOM, page 4-10 to 4-11), Supporting "Willful" Violations (Federal FOM, page 4-30 to 4-32), and Combining/Grouping Violations (Federal FOM, page 4-37 to 4-39).</i>	10-16
11-04	<i>Sufficient employee interviews were not documented in inspection case files.</i>	<i>Ensure employee interviews are appropriate number to document employee exposure to serious and non-serious hazards.</i>	
11-05	<i>ADOSH did not reduce the injury and illness rate in the structural steel and precast concrete industry and the FY 2011 annual performance goal 1.2 was not met.</i>	<i>Implement additional measures to target the structural steel and precast concrete industry to ensure the injury and illness rate turns downward. ADOSH responded to this recommendation from FY 2010 FAME report by modifying their FY 2012 Annual Performance Goal. This was noted as corrected on the CAP for FY 2010.</i>	

Appendix A
 FY 2011 Arizona State Plan FAME Report
 Findings and Recommendations

FY 2011	Findings	Recommendations	FY 2010
11-06	<i>There was not a consistent policy or practice of informing discrimination complainants of their right to dually file with federal OSHA.</i>	<i>To ensure that discrimination complainants understand their right to dual file with federal OSHA, ADOSH needs to adopt a consistent procedure for informing complaints of their dual-filing right. ADOSH should revise its Investigations Manual to specify the procedure for dual filing of complaints with federal OSHA.</i>	
11-07	<i>There was no consistent policy or practice regarding contacting third party non-management witnesses privately for discrimination complaints, where possible (without going through respondent's management or representatives), nor was it a standard practice to discuss and offer such witnesses conditional confidentiality.</i>	<i>ADOSH should adopt a consistent policy on the treatment of 3rd party non-management witnesses for discrimination complaints. ADOSH should revise its Investigations Manual to specify the policy for handling 3rd party non-management witnesses.</i>	
11-08	<i>In three of the cases reviewed, the discrimination case files did not contain any notes of the interviews and other communications with the complainant or relevant witnesses, though brief references were made to these interviews or communications in the final investigative report for each case.</i>	<i>ADOSH should consistently document all discrimination complainant and witness interviews to comport with the manual requirements listed above. Notes of the interviews should be taken and kept in the case files.</i>	
11-09	<i>Certain elements of whistleblower complaints were not fully or consistently analyzed in some of the final investigative reports, including dual motive, animus, and credibility assessment.</i>	<i>In cases in which the respondents appeared to have dual or mixed (both retaliatory and legitimate) motives in taking adverse actions against the complainants in question, ADOSH should always discuss and evaluate respondents' dual/mixed motives in the final investigative reports for discrimination complaints.</i>	

Appendix A
 FY 2011 Arizona State Plan FAME Report
 Findings and Recommendations

FY 2011	Findings	Recommendations	FY 2010
11-10	<i>The original date the complainant filed a discrimination complaint orally with ADOSH should have been used as the filing date rather than the date the complainant returned the follow-up questionnaire.</i>	<i>The original date a complainant files a discrimination complaint orally with ADOSH should be used as the filing date of the complaint.</i>	
11-11	<i>The review of case files indicated that ADOSH was not sending an opening letter to each discrimination complainant.</i>	<i>An opening letter shall be sent to each and every discrimination complainant for whom an 11(c) complaint was opened and docketed. The ADOSH Investigations Manual, Chapter III: Conduct of the Investigation, should be revised to reflect the OSHA requirement for an opening letter to be sent to each complainant.</i>	
11-12	<i>The selective review of discrimination cases indicated that some cases were misclassified as to the way they were resolved on IMIS.</i>	<i>ADOSH should ensure that the resolution of discrimination cases is classified correctly and entered into IMIS under the proper categories.</i>	
11-13	<i>“Administratively closed” discrimination cases were not being recorded in IMIS. Complainant inquiries which were closed due to lack of jurisdiction, untimeliness, or, as alleged, was missing one or more prima facie elements were maintained in a separate file by the Phoenix supervisor, but were not recorded on IMIS.</i>	<i>To ensure that accurate data is kept about each discrimination complaint and inquiry, ADOSH should track and record “administratively closed” discrimination complaints or inquiries on IMIS, which now has the functionality to enable the recording of such complaints or inquiries, including the generation of a local case number.</i>	
11-14	<i>Some but not all investigators who investigated discrimination complaints attended OSHA OTI 1420 Basic Investigations course or received comparable basic whistleblower investigations training.</i>	<i>ADOSH should ensure that all its investigators conducting discrimination investigations take the OSHA OTI 1420 Basic Investigations course or its equivalent.</i>	

*Appendix A
 FY 2011 Arizona State Plan FAME Report
 Findings and Recommendations*

<i>FY 2011</i>	<i>Findings</i>	<i>Recommendations</i>	<i>FY 2010</i>
<i>11-15</i>	<i>ADOSH should re-evaluate annual performance goal 1.4 to ensure inspections are made and hazards are identified.</i>	<i>Assign an adequate number of staff and resources to ensure the annual performance goal of 50 inspections and 200 hazards are identified.</i>	
<i>11-16</i>	<i>Case files are not processed expeditiously causing citation lapse time for safety inspections to increase notably higher than the national average.</i>	<i>Ensure that citations for safety inspections are issued in a timely fashion with a goal to meet at least the national average.</i>	

*Appendix B
FY 2011 Arizona State Plan FAME Report
Status of FY 2010 Findings and Recommendations*

<i>Ref #</i>	<i>Finding</i>	<i>Recommendations</i>	<i>Corrective Action Plan</i>	<i>State Action Taken</i>	<i>Status</i>
10-01	<i>Documentation in case files were not organized according to established case file set-up procedures.</i>	<i>Ensure diary sheets or similar daily/chronological logs are maintained.</i>	<i>Establish order of documents in file and update written direction on case file organization plan and provide a copy to CSHO's. Train Staff on file organization plan. Implement use of telephone logs in each case file</i>	<i>ADOSH has established the order of documents in the file and provided written direction to CSHO's. CSHO's have been trained on the case file organizational plan, the use of telephone logs have been implemented.</i>	COMPLETED
10-02	<i>ADOSH did not always ensure that citation penalties were appropriate based on the hazard.</i>	<i>Ensure that citation penalties are assessed in accordance with the FOM.</i>	<i>Increase compliance supervisory oversight. Train CSHO's on proper hazard assessment.</i>	<i>Supervisory oversight has been increased and assistant director reviews all noncompliance inspections</i>	COMPLETED
10-03	<i>ADOSH did not meet their inspection goals in FY 2009.</i>	<i>Evaluate resources and schedule inspections to ensure inspection goals are met.</i>	<i>Review historical data and current staffing levels. Consider adjusting inspection goals.</i>	<i>Inspections goals were modified in the yearly performance plan.</i>	COMPLETED
10-04	<i>ADOSH did not adopt new Federal OSHA standards in a timely manner.</i>	<i>Ensure standard adoption is within six months of the federal promulgation date.</i>	<i>Request for permanent exemption from AZ Governor's moratorium on new standard adoption. Draft policy on use of general duty standard to be used as an interim measure for use for standards with delayed adoption dates. Provide copy of policy to OSHA AD by 01/14/2012.</i>	<i>Governor has rescinded moratorium. ADOSH has now adopted new Federal OSHA standards in a timely manner.</i>	COMPLETED

Appendix B
FY 2011 Arizona State Plan FAME Report
Status of FY 2010 Findings and Recommendations

10-05	Arizona has not submitted an appropriate Plan Change Supplement to OSHA for review of their formal training program for compliance personnel and for their targeting system which differ from the Federal system.	Adopt a formal training program for compliance personnel and submit a Plan Change Supplement for OSHA's review.	Develop a state initiated change plan supplement for CSHO training. *Submit state initiated Plan Change Supplement for targeting systems by 01/14/2012	A CSHO training plan has been developed and submitted.	Pending
10-06	ADOSH took an average of 190 days to complete each discrimination investigation.	Continue efforts to complete discrimination investigations within 90 days.	Create a "separate" discrimination section that will focus on 11c discrimination complaints and processing. Submit plan to ICA for approval. Improve screening of complaints, focus on improving lapse time.	State has set long term goals for a separate discrimination section. Screening of complaints has improved, lapse time has been addressed with each investigator.	COMPLETED
10-07	ADOSH did not always send letters to Complainants and Respondents, informing them that the investigation has been opened or closed as appropriate.	Discrimination investigators need to be appropriately trained. Discrimination complainants and respondents of discrimination complaints should be notified when the investigation is opened.	Update discrimination policies and procedures. Arrange for lead whistleblower investigator to receive training at OTI. Provide supervisory review of case files to ensure closing letters have been sent out. Notify complainant by phone on opening of investigation and document on telephone log.	Discrimination policies and procedures have been reviewed and updated as needed. Complainants are notified by phone for opening of investigation and conversation is documented on telephone log. Whistleblowers have been scheduled for OTI training for May or June of 2012. Lead Investigator attended the Whistleblower conference in Florida. Closing letters are included in the case file.	COMPLETED

*Appendix B
FY 2011 Arizona State Plan FAME Report
Status of FY 2010 Findings and Recommendations*

10-08	<i>ADOSH did not appropriately accept and docket orally filed discrimination complaints.</i>	<i>ADOSH should accept, docket and investigate orally filed discrimination complaints.</i>	<i>Discuss options with Federal OSHA and determine if a phone call from the complainant will stop the clock for the 30 day time limit for the filing of a whistleblower complaint.</i>	<i>Background Info: Arizona state law requires all discrimination complaints to be in writing. Options were discussed with Federal OSHA and the implementation of a policy accepting a complainant's phone call meets policy intent.</i>	COMPLETED
10-09	<i>ADOSH allowed 23(g) grant funds to be lapsed and failed to timely notify Federal OSHA. Arizona again returned unspent funds at the end of FY 2010.</i>	<i>Ensure funds that will not be spent by September 30 are appropriately returned to Federal OSHA with adequate time to allocate.</i>	<i>Hire an accountant to oversee funds returned to Federal OSHA and the monitoring of due dates</i>	<i>ADOSH hired a new accounting representative who will be overseeing the timeliness of funds being returned to Federal OSHA and monitoring due dates.</i>	COMPLETED
10-10	<i>ADOSH was unable to maintain a fully staffed program in that they experienced up to 7 safety and 2 health position vacancies during this evaluation period.</i>	<i>Ensure the inspector positions are fully staffed to the extent possible and develop a plan to address the challenges in hiring and retaining experienced personnel.</i>	<i>Ensure benchmark staffing levels of 9 safety and 6 health compliance officers. Develop and use staffing plan to fill allocated staff of 15 safety and 11 health compliance officers.</i>	<i>Benchmark staffing levels were maintained, 3 positions have been filled and currently interviewing to fill remaining positions.</i>	COMPLETED
10-11	<i>Several of the compliance staff has not received all the required classes.</i>	<i>Ensure that compliance staff receives at least the basic required courses as required by Federal OSHA's directive.</i>	<i>Develop and submit a training plan to Federal OSHA that meets the intent of the federal directive. Go through the formal process of submitting a plan change process for Federal OSHA review in the ATS.</i>	<i>OIT training has been approved by department and CSHO's are currently on the waiting list for several OSHA courses. (Plan change is now not required.)</i>	COMPLETED

*Appendix B
 FY 2011 Arizona State Plan FAME Report
 Status of FY 2010 Findings and Recommendations*

10-12	Arizona conducted 50 inspections of framing contractors, which was below their goal of 150. This resulted in the identification of 88 hazards, which was below their goal of 300.	Evaluate [Performance Goal 1.1] and implement a plan to ensure that resources are available to meet the targeted number of inspections.	Modify inspection goals to reflect current staffing resources.	AZ goals for 2011 were modified to include 20 framing inspections and 50 hazards identified.	COMPLETED
10-13	The injury and illness rates in the architectural and structural metals manufacturing industry increased during this evaluation period and from the CY 2006 baseline (11.1%) for the Five-Year Strategic Plan goal. ADOSH should re-evaluate annual performance goal 1.4 in light of the BLS NAICS change or implement additional methods to measure this goal.	Re-evaluate [Performance Goal 1.4] efforts in reducing injury and illness in the architectural and structural metals manufacturing industry. Re-evaluate performance goal 1.4 and determine if the BLS data for this industry can be broken out.	Re-evaluate performance goal 1.4 and determine if the BLS data for the industry can be broken out.	ADOSH determined available BLS data cannot be broken down.	COMPLETED
10-14	Citation lapse time for safety citations remains above the FY 2007.	Develop a plan to reduce safety citation lapse time.	Track individual CSHO citation lapse time. Determine if Commission procedures can be modified.	Individual SCHO citation lapse time is now tracked. Commission procedure has been modified.	COMPLETED

Appendix B
FY 2011 Arizona State Plan FAME Report
Status of FY 2010 Findings and Recommendations

10-15	<p><i>There were 27 S/W/R violations in the private sector where the employer abated after receiving follow-up letters, phone calls and, in some cases, a follow-up inspection.</i></p>	<p><i>Ensure all managers and compliance personnel know that they can cite an employer for failure to verify abatement rather than continued requests to employers about sending abatement verification.</i></p>	<p><i>Implement use of the abatement tracking report. Conduct early audit in January. Include abatement documentation in case file. Train CSHO's on abatement documentation vs. verification. Train CSHO on appropriate use of all available coding for abatement. Enforce abatement documentation policy.</i></p>	<p><i>ADOSH has implemented the use of the abatement tracking report, as well as additional abatement codes and an annual audit that is performed every January. CSHO's have been trained on abatement.</i></p>	COMPLETED
10-16	<p><i>ADOSH's policy on classifying violations does not ensure violations that would be considered "Serious" under the Federal FOM are classified as Serious.</i></p>	<p><i>Adopt Violation Classification policies and procedures equivalent to Federal OSHA regarding descriptions on Supporting "Serious" Classification (Federal FOM, page 4-10 to 4-11), Supporting "Willful" Violations (Federal FOM, page 4-30 to 4-32), and Combining/Grouping Violations (Federal FOM, page 4-37 to 4-39).</i></p>	<p><i>Ensure state follows policies and procedures under their Field Operations manual in accordance with their intent to adopt and implement the Federal Directive as written.</i></p>		INCOMPLETE

*Appendix B
 FY 2011 Arizona State Plan FAME Report
 Status of FY 2010 Findings and Recommendations*

10-17	<i>ADOSH did not meet FY 2010 annual performance goal 1.2 because their TRCR increased from 11 to 11.6, or by 5.46%.</i>	<i>Implement additional measures to target the structural steel and precast concrete industry to ensure the injury and illness rate turns in a downward direction.</i>	<i>Modify 2012 performance goals for compliance and consultation.</i>	<i>Performance goals for 2012 compliance and consultation were modified.</i>	COMPLETED
10-17	<i>ADOSH did not meet FY 2010 annual performance goal 1.3 because their TRCR increased from 7.2 to 7.4, or by 2.8%.</i>	<i>Implement additional measures to target the wood products manufacturing industry to ensure the injury and illness rate turns in a downward direction.</i>	<i>Modify 2012 performance goals for compliance and consultation.</i>	<i>Performance goals for 2012 were modified for compliance and consultation.</i>	COMPLETED

Appendix C
FY 2011 Enforcement Activity

	AZ	State Plan Total	Federal OSHA
Total Inspections	905	52,056	36,109
Safety	591	40,681	29,671
% Safety	65%	78%	82%
Health	314	11,375	6,438
% Health	35%	22%	18%
Construction	466	20,674	20,111
% Construction	51%	40%	56%
Public Sector	19	7,682	N/A
% Public Sector	2%	15%	N/A
Programmed	490	29,985	20,908
% Programmed	54%	58%	58%
Complaint	281	8,876	7,523
% Complaint	31%	17%	21%
Accident	18	2,932	762
Insp w/ Viols Cited	623	31,181	25,796
% Insp w/ Viols Cited (NIC)	69%	60%	71%
% NIC w/ Serious Violations	46.5%	63.7%	85.9%
Total Violations	2,752	113,579	82,098
Serious	643	50,036	59,856
% Serious	23%	44%	73%
Willful	2	295	585
Repeat	11	2,014	3,061
Serious/Willful/Repeat	656	52,345	63,502
% S/W/R	24%	46%	77%
Failure to Abate	-	333	268
Other than Serious	2,096	60,896	18,326
% Other	76%	54%	22%
Avg # Violations/ Initial Inspection	3.9	3.4	2.9
Total Penalties	\$ 660,498	\$ 75,271,600	\$ 181,829,999
Avg Current Penalty / Serious Violation	\$ 953.30	\$ 963.40	\$ 2,132.60
% Penalty Reduced	40.1%	46.6%	43.6%
% Insp w/ Contested Viols	6.8%	14.8%	10.7%
Avg Case Hrs/Insp- Safety	20.4	17.1	19.8
Avg Case Hrs/Insp- Health	28.9	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	47.3	35.6	43.2
Lapse Days Insp to Citation Issued- Health	28.8	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	21	1,387	2,436

Note: Federal OSHA does not include OIS data.
The total number of inspections for Federal OSHA is 40,684.

Appendix D
FY 2011 State Activity Mandated Measures (SAMM) Report

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 08, 2011
 PAGE 1 OF 2

State: ARIZONA

RID: 0950400

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	1126 4.05 278	92 4.38 21	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	724 1.50 482	58 1.20 48	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	273 98.91 276	21 100.00 21	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	0 0	0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	467 95.50 489	8 61.54 13	100%
Public	10 83.33 12	0 .00 1	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	28245 60.74 465	1889 41.06 46	2631708 51.9 50662
Health	8707 35.68 244	498 33.20 15	767959 64.8 11844

*AZ FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D
FY 2011 State Activity Mandated Measures (SAMM) Report

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

NOV 08, 2011
 PAGE 2 OF 2

State: ARIZONA

RID: 0950400

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	99	14	90405
Safety	28.53 347	22.58 62	58.5 154606
			National Data (3 years)
Health	52 43.33 120	4 44.44 9	10916 51.7 21098
			National Data (3 years)
9. Average Violations per Inspection with Violations			
S/W/R	726 1.01 712	63 1.03 61	419386 2.1 198933
			National Data (3 years)
Other	2161 3.03 712	183 3.00 61	236745 1.2 198933
			National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	902687 1284.04 703	72725 1192.21 61	611105829 1679.6 363838
			National Data (3 years)
11. Percent of Total Inspections in Public Sector	19 2.05 928	0 .00 48	225 6.2 3612
			Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	4986 115.95 43	303 101.00 3	3533348 199.7 17693
			National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	16 35.56 45	1 33.33 3	100%
14. Percent of 11c Complaints that are Meritorious	11 24.44 45	0 .00 3	1517 23.0 6591
			National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	10 90.91 11	0 0 0	1327 87.5 1517
			National Data (3 years)

*AZ FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E
FY 2011 State Indicator Report

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U. S. D E P A R T M E N T O F L A B O R

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = ARIZONA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	3694	108	8169	178	18137	371	40070	796
	61.3	65.9	61.4	60.8	62.5	65.3	63.7	63.9
	6026	164	13312	293	29042	568	62876	1246
B. HEALTH	480	32	1020	60	2126	107	4357	256
	39.7	43.8	36.4	41.4	34.6	36.1	34.7	37.9
	1208	73	2806	145	6150	296	12569	676
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378	54	7266	113	14959	261	32614	482
	73.7	77.1	72.4	72.4	70.1	72.5	69.1	61.6
	4583	70	10036	156	21330	360	47196	782
B. HEALTH	456	31	890	52	1723	104	3487	227
	57.0	86.1	57.2	85.2	56.2	86.0	55.3	80.2
	800	36	1555	61	3068	121	6309	283
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703	134	23768	256	48704	423	109064	804
	79.6	31.8	77.4	30.5	76.7	26.2	78.4	26.6
	14698	421	30703	838	63528	1614	139117	3028
B. HEALTH	2634	69	5290	109	10266	220	21598	396
	66.6	20.7	64.7	20.9	64.4	20.1	66.7	17.6
	3957	334	8180	521	15930	1094	32380	2246
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2394	5	4978	14	10776	27	23693	48
	16.6	3.1	16.8	4.7	17.9	5.6	17.9	5.3
	14465	162	29573	297	60243	486	132414	912
B. HEALTH PERCENT >60 DAYS	259	2	711	9	1451	18	3159	25
	6.5	2.3	8.6	5.8	9.4	6.0	10.0	4.7
	4006	87	8234	155	15507	301	31619	530

Appendix E
FY 2011 State Indicator Report

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U. S. D E P A R T M E N T O F L A B O R

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = ARIZONA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	505479	2350	1258835	4750	2803637	14250	5086228	20650
OTHER-THAN-SERIOUS	1181.0	335.7	1195.5	431.8	1126.9	431.8	1055.2	421.4
	428	7	1053	11	2488	33	4820	49
B. HEALTH								
	219203	4500	441915	6250	853346	11850	1667151	14900
OTHER-THAN-SERIOUS	1184.9	409.1	1077.8	390.6	980.9	438.9	958.7	413.9
	185	11	410	16	870	27	1739	36
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	6874	170	15417	302	33850	604	73070	1293
	6.0	3.7	5.6	3.2	5.5	3.2	5.4	3.7
	1138	46	2730	95	6145	190	13476	349
B. HEALTH								
	1458	77	3330	151	7311	311	14958	717
	2.4	2.7	2.2	2.4	2.2	2.6	2.0	3.1
	615	29	1501	64	3390	119	7404	235
7. VIOLATIONS VACATED %								
	1270	11	3026	27	6577	69	12352	129
	5.6	1.4	6.6	1.9	7.0	2.5	6.2	2.4
	22608	785	46128	1409	93448	2814	200310	5397
8. VIOLATIONS RECLASSIFIED %								
	737	2	1997	6	4456	11	9147	37
	3.3	.3	4.3	.4	4.8	.4	4.6	.7
	22608	785	46128	1409	93448	2814	200310	5397
9. PENALTY RETENTION %								
	19478404	64600	40012395	175089	77322520	430638	134938244	903172
	61.0	72.1	61.6	68.3	62.8	67.8	62.8	69.8
	31918969	89550	65001782	256350	123124542	635475	214845679	1294200

Appendix E
FY 2011 State Indicator Report

U. S. D E P A R T M E N T O F L A B O R

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

STATE = ARIZONA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
	108	1	178	1	371	1	796	4
A. SAFETY	65.9	25.0	60.8	16.7	65.3	12.5	63.9	26.7
	164	4	293	6	568	8	1246	15
	32	0	60	0	107	0	256	1
B. HEALTH	43.8	.0	41.4	.0	36.1	.0	37.9	3.2
	73	2	145	4	296	12	676	31
2. SERIOUS VIOLATIONS (%)								
	134	4	256	4	423	6	804	21
A. SAFETY	31.8	17.4	30.5	17.4	26.2	21.4	26.6	12.4
	421	23	838	23	1614	28	3028	169
	69	0	109	0	220	3	396	15
B. HEALTH	20.7	.0	20.9	.0	20.1	18.8	17.6	13.5
	334	1	521	1	1094	16	2246	111

Appendix E
FY 2011 State Indicator Report

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U. S. D E P A R T M E N T O F L A B O R

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = ARIZONA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	579 22.8 2542	0 .0 2	1131 23.4 4834	7 9.1 77	2220 23.5 9442	47 25.3 186	4270 23.0 18586	91 24.7 369
2. VIOLATIONS RECLASSIFIED %	328 12.9 2542	1 50.0 2	620 12.8 4834	3 3.9 77	1259 13.3 9442	8 4.3 186	2360 12.7 18586	25 6.8 369
3. PENALTY RETENTION %	3616720 56.1 6443756	875 100.0 875	9500018 62.4 15212620	52337 31.5 166325	16062961 62.3 25766759	125903 39.0 322700	28079915 60.6 46371522	313989 27.9 1127200

Appendix F
FY 2011 State OSHA Annual Report (SOAR)
(Available Separately)

Appendix G
FY 2011 23(g) Consultation Data

	AZ Public Sector	Total State Plan Public Sector
Requests	3	1,328
<i>Safety</i>	-	576
<i>Health</i>	2	560
<i>Both</i>	1	192
Backlog	-	123
<i>Safety</i>	-	51
<i>Health</i>	-	58
<i>Both</i>	-	14
Visits	4	1,632
<i>Initial</i>	4	1,336
<i>Training and Assistance</i>	-	175
<i>Follow-up</i>	-	121
<i>Percent of Program Assistance</i>	0%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
Employees Trained	-	5,030
<i>Initial</i>	-	2,144
<i>Training and Assistance</i>	-	2,886
Hazards	21	6,063
<i>Imminent Danger</i>	-	3
<i>Serious</i>	-	4,804
<i>Other than Serious</i>	21	1,171
<i>Regulatory</i>	-	85
<i>Referrals to Enforcement</i>	-	6
Workers Removed from Risk	287	171,075
<i>Imminent Danger</i>	-	55
<i>Serious</i>	-	136,884
<i>Other than Serious</i>	287	26,046
<i>Regulatory</i>	-	8,090

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011.