

**FY 2013 Comprehensive
Federal Annual Monitoring and Evaluation (FAME) Report**

Arizona Division of Occupational Safety and Health (ADOSH)



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I. Executive Summary

A. Summary of the Report

The purpose of this report is to assess the Arizona Division of Occupational Safety and Health (ADOSH) activities for Fiscal Year (FY) 2013 and its progress in resolving outstanding findings and recommendations from previous Federal Annual Monitoring Evaluations (FAMEs). The comprehensive evaluation includes a review of ADOSH's enforcement inspections, complaint case files, discrimination program case files, special study on the targeting program, annual performance plan goals, and progress toward the goals in its five-year strategic plan for FY 2013.

The Arizona State Plan remains in jeopardy due to the fall protection rule implemented following the passage of Senate Bill 1441, which does not provide adequate worker protection. Another finding of note, is the lack of documentation in case files showing that ADOSH communicates with both complainants in complaint files and the next-of-kin following fatality investigations. Additionally, the low rate of violations classified as serious, willful, and repeat continues to be an ongoing concern. Improvements in documenting informal conference agreements are also needed to justify and explain penalty reductions. Finally, while ADOSH maintains an active Whistleblower program, there are six findings requiring improvements.

There are 15 findings identified and three findings from the FY 2012 FAME Report that are unresolved and remain open.

B. State Plan Introduction

The State of Arizona operates an Occupational Safety and Health Plan administered by the Division of Occupational Safety and Health (DOSH) under the Industrial Commission of Arizona (ICA). Ms. Laura L. McGrory is the Director of the ICA and the State Plan Designee. Mr. Darin Perkins was the Director for the ADOSH program until his retirement in January of 2013. Assistant Directors Larry Gast and Jessie Atencio performed as Acting Director until the position was permanently filled by Mr. William Warren on May 20, 2013.

Organizational units under ADOSH include Administration, Safety and Health Compliance, Consultation, Boiler Safety, Elevator Safety and Research and Statistics. The Boiler and Elevator Safety units are not included under the OSHA 23(g) grant. The Research and Statistics Unit operates under a grant from the Bureau of Labor Statistics and is not included in the OSHA 23(g) grant.

ADOSH has generally adopted OSHA's standards and most of its interpretations and compliance policies with the exception of the State mandated changes to the residential fall protection rules. ADOSH covers nearly all private and public sector employers with

the exception of federal workers, mining, and areas of exclusive federal jurisdiction, such as Tribal lands. The base award to fund the program was \$2,406,400. ADOSH has offices located in Phoenix and in Tucson. The grant provided funding for 55 staff positions.

Public sector consultation is provided by seven consultants who spend 15% of their time under the 23(g) grant and the remainder of their time in the private sector consultation program which is funded by the 21(d) cooperative agreement. The private consultation performance results are covered in the FY 2013 Regional Annual Consultation Evaluation Report (RACER).

C. Data and Methodology

The review of the ADOSH state plan includes information from the four quarterly meetings with the state and various on-site meetings conducted during the period of review. Data from the State Activity Mandated Measure Report (SAMM), Mandated Activity Report for Consultation Report (MARC) and the Integrated Management Information System (IMIS) were utilized in the annual evaluation. In addition, ADOSH's Annual Performance Plan and five-year Strategic Plan results were reviewed. OSHA conducted two reviews (one on-site), one of the state's enforcement program and a second of the discrimination program, to assess the quality of documentation, violation classification, penalty calculations, abatement verification, settlements and other factors.

In accordance with the FY 2013 FAME Guidance, the case file sample size was derived out of the total number of state inspections closed during FY 2013. This total number was further divided into programmed and un-programmed inspections and a percentage of the total population for each category was calculated accordingly resulting in the number of programmed and un-programmed inspection case files to be reviewed. A random numbers table was generated and inspections were selected from the list of programmed and un-programmed inspections. All fatality inspection case files opened during FY 2013 were added to the sample for review. A total of 106 enforcement case files were reviewed.

In addition, the discrimination cases closed during FY 2013 were chosen based on the type of cases, the investigator, and the age of the case with respect to variable lapse times.

The views and opinions of stakeholders were also taken into consideration in preparing this report. Information on the adequacy of state administration was received from employers, OSHA's Alliance partners, professional safety organizations, and organized labor.

D. Findings and Recommendations

Of the 15 current findings and recommendations, 10 relate to ADOSH enforcement program, and five to the discrimination program.

Of the 10 enforcement related findings, two reference complaints (response time to investigations and notification to complainants), one relates to a problem with notification to next-of-kin following fatalities and one notes a lack of documentation of informal settlements. Other findings address a low rate of serious violations, a high number of in-compliance inspections, and delayed notification of federal program changes. One finding relates to an annual performance goal where the goal is to remove a significant number of workers from hazards in the nursing home industry. The most notable finding relates to its present enforcement policies for fall protection.

The five discrimination findings relate primarily to documentation of and the complete analysis of cases, and entry of the cases into the data system.

Details of the findings and recommendations are provided in Appendix A, and the status of the FY 2012 findings and recommendations are provided in Appendix C of this report.

Overall, ADOSH met the majority of its FY 2013 performance goals. Where the need for program improvement is identified, recommendations are made for corrective actions.

II. Major New Issues

Yarnell Hill Wildland Fire

ADOSH allocated significant resources and personnel to investigate the Yarnell Hill wild land fire tragedy that resulted in the death of 19 firefighters on June 30, 2013. This inspection/ investigation constituted a significant case, as defined by OSHA, and required the full-time assignment of two compliance industrial hygienists, one compliance supervisor, and a staff attorney. Numerous additional support personnel and senior management also assisted in planning and providing logistical and technical support. Furthermore, significant additional resources were allocated to bring aboard an industry-expert consulting team of wild land firefighters and industry experts to assist ADOSH in their investigation of the tragedy. The resulting complex and lengthy investigation produced significant findings and the issuance of willful-serious and serious citations totaling \$559,000. The decision to commit such intensive resources and efforts exemplifies ADOSH commitment to serve as a catalyst for continued workplace safety and health improvement when possible.

Fall Protection in Residential Construction

OSHA issued STD 03.11.002 on December 16, 2010, which required the use of conventional fall protection in residential construction. The directive became effective on June 16, 2011, and advised State Plans that they must have a compliance directive on fall protection in residential construction that, in combination with applicable State Plan standards, results in an enforcement program that is at least as effective as federal OSHA's program.

Arizona's standards and enforcement policies on fall protection in residential construction raised heightened concerns with the final signature passing Senate Bill 1441 on March 27, 2012. In response to this bill, Arizona implemented a State Plan Change which incorporates a rule change whereby conventional fall protection is not required for workers exposed to falls in residential construction between six and 15 feet. On December 7, 2012, OSHA sent a letter to ADOSH notifying the state this rule was not at least as effective as OSHA's residential fall protection requirements. On February 1, 2013, Arizona's ICA responded that it did not plan to change its enforcement in residential construction. As a result, throughout FY 2013, ADOSH did not cite any violations of 29 CFR 1926.501(b)(13) to employers who fail to protect workers with conventional fall protection at heights greater than six feet. On March 19, 2014, OSHA sent the ICA a "show cause" letter giving Arizona 30 days to submit a revised supplement to correct its residential construction fall protection deficiencies or show cause as to why OSHA should not commence to reject State-Initiated Plan Change 133 and reconsider the Arizona State Plan's Section 18(e) determination. The state requested an additional 45 days to respond and OSHA agreed to wait for a response until one week after the legislature adjourns.

ADOSH's inability to enforce the use of conventional fall protection in residential construction has resulted in a diminished ability to protect residential construction workers exposed to potentially fatal or permanently disabling injuries. This remains a serious concern to OSHA and requires corrective action on the part of the state. The previous finding and recommendation identified in the FY 2012 FAME Report therefore remains open.

III. Assessment of FY 2013 State Plan Performance

1. ENFORCEMENT

a). Complaints

A total of 804 complaints were filed that resulted in an inspection. The average time to initiate the on-site inspection was 6.55 days, which is slightly under the negotiated goal of seven days, but longer than the average response time for the previous two years. A delay in initiating an inspection in response to complaints

means workers continue to be exposed to hazardous condition. Efforts should be made to ensure this upward trend does not continue. In addition, 417 complaints were responded to by the phone/fax procedure with an average response time of 3.82 days, almost one day longer (or 27% higher) than the negotiated goal of three days.

Finding 13-01

The average response time to initiate a complaint investigation was 3.82 days, exceeding the negotiated response time of 3 days.

Recommendation 13-01

Streamline the process for complaint processing and initiation of complaint inspections to reduce the response time to phone/fax complaints to within the negotiated goal of three days.

**Table 1
Complaints (SAMM #1 and #2)**

	FY 2011	FY 2012	FY 2013	Goal
Days to Initiate Inspection (SAMM 1)	3.21 days	5.75 days	6.55 days	7 days
Days to Initiate Investigation (SAMM 2)	1.5 days	3.21 days	3.82 days	3 days

The case file review identified that 16 of 35 (46%) of the complaint case files did not include a letter of acknowledgement to the complainant or a letter communicating the outcome of the investigation results to the complainant. Interviews with staff and management revealed that letters to complainants are often not copied and placed in the case file. The Field Operation’s Manual (FOM) requires the opening and the inspection results letter be sent to the complainant. These letters should be placed in the case file to ensure procedures have been followed. Though the on-site inspection was unable to demonstrate complainants were consistently notified, SAMM #3 indicates that 91% of complainants were notified of inspection results.

Finding 13-02

Complaint case files lacked documentation that complainants were notified in writing of results of the inspection in 46% the case files reviewed in accordance with the FOM, Chapter 9 Complaint and Referral Processing, I. H. 3. a or b or I.H. 4 and 6.

Recommendation 13-02

Where the identity and address of a complainant is known, ensure a letter of acknowledgement of the complaint and a letter communicating the outcome of the investigation results are sent to the complainant and a copy is placed in the case file.

b). Fatalities/Catastrophes

A case file review was conducted to evaluate all fatality and accident investigations. Of the 24 fatal incidents investigated and identified for the review, only 12 fatality and/or accident case files were closed. All 12 closed cases were reviewed.

There were 42 total fatalities reported and entered in the IMIS database. Nineteen deaths were attributed to one incident at the Yarnell, Arizona woodlands fire. A total of 24 inspections were opened by ADOSH during the evaluation period. Twenty of these were inspected within one day of notification, achieving an 83% response time for inspecting fatalities within one working day of notification.

On closer inspection, it appears that two of the four outstanding cases had been responded to within one day. In those two cases the actual date of the fatality was incorrectly entered, which made the case appear to have a delayed inspection. This discrepancy was corrected by amending the date of the fatality/event to the date ADOSH were first notified.

It is standard procedure for compliance officers to contact the families of victims at the onset of an inspection, periodically throughout the inspection, and at the close of each inspection to keep the families apprised of the investigation. However, in six of the 12 case files reviewed (50%); no final next-of-kin letters were sent to victims' families, notifying them of the outcome of the inspection. Interviews with staff and management revealed that emails and phone calls are routinely made to family members, but letters with inspection results to the next-of-kin are often not copied and placed in the case file. The FOM requires an information letter and an inspection results letter be sent to the next-of-kin. These letters should be placed in the case file to ensure procedures have been followed.

Finding 13-03

An information letter to victims' families and an inspection results letter were not located in six of the 12 (50%) case files reviewed.

Recommendation 13-03

Ensure families of victims are kept informed of the investigation and provided both the information and outcome of the inspection letters in accordance with FOM Chapter 11, II. G. 2 and 4.b.

SAMM #4 showed that three out of four (75%) of imminent danger situations were responded to within one day. There was one case which was determined to be a data entry error as the hazards was misclassified. This has since been corrected in the IMIS database.

c). Targeting and Programmed Inspections

A special study was conducted of the targeting program and is addressed in detail under Section 7 Special Studies – State Plan Targeting Programs. A total of 1,158 safety and health inspections were conducted, achieving 85% of the established inspection goal of 1,360. Although the goal was not reached, the number of inspections increased over last year and these inspections were accomplished with a smaller staff.

Table 2
Inspections Conducted FY 2011 – 2013

	FY 2013	FY 2012	FY 2011
Compliance Staff	22	26	26
Inspections Goal	1360	1103	1400
Inspections Conducted	1158	1138	913
Difference	(202)	+35	(487)

Of the 1,158 inspections conducted, 49% were programmed inspections (496 safety inspections and 71 health health). Serious, willful, or repeat violations were cited in 22% of the programmed safety inspections and in 45% of the programmed health inspections. The national three-year average was 57.0% for programmed safety inspections and 53.7% for programmed health inspections (SAMM report FY 2013 - SAMM #8). The low rates for programmed inspections with serious, willful, or repeat violations is an indication that inspections are either not targeted to the most hazardous establishments, serious hazards are not being recognized, or there may be an issue with proper classification of hazards.

Finding 13-04

The rate of serious, willful, or repeat violations cited in programmed inspections was significantly lower than the national average.

Recommendation 13-04

Determine the cause of the low rate of inspections with serious, willful, or repeat violations and implement corrective actions in accordance with FOM Chapter 3. II. Inspection Planning and II. A. 1. and Chapter 2. IV. B. 1. Effective Use of Resources.

d). Citations and Penalties

The lapse time from opening conference to citation issuance for safety inspections was 47.3 days, which fell just short of the national data of 43.4 days. Health inspections were issued within 29.9 days as compared to the national data of 53.1 days. (SAMM report FY 2013 - SAMM #23) Compliance and supervisory staff continued to focus on completing case files and issuing them as quickly as

possible resulting in removing workers from hazards much quicker than in the past.

The average number of violations per inspection classified as serious, willful, or repeat has continued to decrease where less than one (0.98) serious violation is being cited on each inspection as compared to at least two (2.04) violations cited nationwide. A high rate of violations (2.12), were classified as “non-serious,” which is the equivalent to OSHA’s “other-than-serious” classification.

**Table 3
Average Violations per Inspection with Violations (SAMM #9)**

	FY 2011	FY 2012	FY 2013	FY 2013 National Data
S/W/R	1.01	1.09	0.98	2.04
Other	3.03	2.95	2.12	0.88

In response to the previous FAME findings and recommendations, staff was provided additional training regarding serious, willful, and combining/grouping violations (FOM, Chapter 4). Data still does not reflect any significant improvements and has trended down. As with SAMM #8, the low number of violations being cited per inspection is an indication that inspections are either not being targeted to the most hazardous establishments, serious hazards are not being recognized, or there may be an issue with proper classification of hazards. This was a finding from the previous two fiscal year’s FAMEs and remains outstanding.

Finding 13-05 (12-01)

The average number of serious, willful, or repeat violations per inspection (0.98) was less than half the national average of 2.04.

Recommendation 13-05 (12-01)

Determine the cause of the low rate of inspections with serious, willful, or repeat violations and implement corrective actions in accordance with FOM Chapter 3. II. Inspection Planning and II. A. 1. and Chapter 2. IV. B. 1: Effective Use of Resources.

The percent of inspections conducted that were in compliance (SAMM report FY 2013 - SAMM #20) was 38% (316 out of 832) for safety and 34% (93 out of 277) for health. The in-compliance rate for safety was 30% higher than the national data. The high in-compliance rate is an indication that either: inspections are not being targeted to the most hazardous establishments, serious hazards are not being recognized, or there may be an issue with proper classification of hazards.

Finding 13-06

The in-compliance rate for safety inspections exceeded the national data by 30%

Recommendation 13-06

Determine the cause of the high in-compliance rate, as indicated in SAMM #20, and implement corrective actions.

The rules and policies require that serious violations be assessed penalties similar to OSHA. IMIS data showed that ADOSH's average initial penalty per serious violation in the private sector was \$1,164 as compared to the national three-year data of \$2,244. Although 75% of the penalties retained were at 75% as compared to the reference standard of 66% (SAMM report FY 2013 - SAMM #24), the average final penalty (\$1213) was still lower than that of the reference standard (\$1,482). The average current penalty per serious violation in the private sector in FY 2013 for each size category of employers was well below the acceptable range (+/- 25%) of the national State Plan average (SAMM report FY 2013 - SAMM #18).

e). Abatement

Each violation shall be abated with adequate verification of the correction and documentation included in the case file. IMIS data showed that 90.4% of the serious, willful and repeat violations cited in the private sector had been abated, while 100% of the serious, willful and repeat violations cited in the public sector had been abated. Discussions during the on-site review and quarterly meetings noted that a review system has been implemented that ensures all abatements is completed in a timely manner.

f). Worker and Union Involvement

Workers are given the opportunity to participate in inspections through interviews or by having worker representatives accompany inspectors. The on-site review determined that on-site activity and results were consistently communicated to representatives of organized labor. Workers were also afforded the opportunity to privately express their views about conditions in the workplace away from the employer. At sites not represented by a union, the policy is to interview at least 10% of the workforce. Performance on SAMM #25 remains at 100% and is acceptable.

2. REVIEW PROCEDURES

a). Informal Conferences

Informal conferences are required to be held prior to the expiration of a 15-day contest period. Based on the evidence presented at the informal conference, violations may be deleted or reclassified and penalties may be reduced. In 15 of the 17 (88%) case files with informal conferences held, penalties were reduced or

reclassified with no documentation justifying the reason for the reduction in the case file. An informal conference sheet is completed by the supervisor, but it is rare for the supervisor to justify further penalty reduction. ADOSH, like OSHA, generally grants employers penalty reductions based on size, history, and good faith. Many employers have come to expect additional reduction by simply attending informal conferences. ADOSH supervisors should be selective in their granting of additional reductions and to document the justification for the decision.

Finding 13-07

Case files did not contain notations documenting penalty reductions and reclassifications in 88% of the cases reviewed.

Recommendation 13-07

Ensure each case file contains documentation from the informal settlement conference for all citation deletions or reclassifications, and penalty reductions that result from the informal conference in accordance with FOM Chapter 7. II. F.1. 2. and 3.

If the employer’s concerns are not resolved through the informal conference, the employer may request a hearing before an Administrative Law Judge (ALJ) of the ICA. Any party who disagrees with the order may appeal the decision to the Review Board.

Not all ADOSH inspections have informal conference and when informal conferences are held, ADOSH does not give large reductions in their total penalty amounts. Oftentimes, penalties are sometimes reduced, but ADOSH has been maintaining 69.5% of the initial cited amounts which continues the trend from the previous two years. Violations are reclassified in less than 1% of ADOSH cases and are vacated in only 2% of cases (SIR 7, 8). Violations are reduced, reclassified, or vacated only where persuasive contravening evidence is presented. Informal conferences did not document the reasons behind decisions to reduce, reclassify, or vacate a violation. (See Table 4)

**Table 4
Informal Conference Penalty Negotiations**

	% Violations Vacated	% Violations Reclassified	% Violation Penalty Retention
FY 2011	2.5	0.4	67.8
FY 2012	2.0	0.6	70.2
FY 2013	2.0	0.5	69.5

b). Formal Review of Citations

The Review Board, consisting of five members appointed by the governor, may affirm, reverse, modify, or supplement the decision of the ALJ. The Board's decision may be appealed to the Arizona Court of Appeals.

The average lapse time from receipt of contest to first level decision was 170 days (SAMM report FY 2013 - SAMM #12) which is significantly less than the national three-year data of 211 days. Post-contest data reflected the outcomes of hearings with the ICA. Violations in the private sector were vacated 21.3% of the time and in the public sector 32.1% of the time. The retention rate for penalties after contest was 47.3% for the private sector and 65.2% for the public sector. Violations were reclassified in the private sector 10.4% of the time and 7.9% of the time for public sector employers (SIR 1, 2, 3). The defenses were adequate and documentation supported citations and performance is acceptable.

3. STANDARDS and FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

a). Standards Adoption

Most federal standards are adopted by reference. OSHA must be notified of the intent to adopt standards and Federal Program Changes within 60 days of the issuance of the direct final rule or issuance of an Automated Tracking System (ATS) notice. The state then has up to six months to adopt a standard or Federal Program Change with submission to OSHA within 60 days of the adoption.

During this evaluation period, OSHA issued two standard changes. ADOSH's timely response rate for both notification of intent regarding adoption of standards and ensuring timely adoption is 50% - lower than previous years. The decrease in the number of standards adopted timely was due to the retirement of the former Assistant Director and a shift in the responsibility of this task to others. This issue has since been resolved.

Table 5 lists the FY 2013 standards requiring a response and ADOSH's response.

Table 5

Standard:	State Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Adoption Date:
Cranes and Derricks in Construction: Underground Construction and Demolition (4/23/2013)	2/7/2014 Untimely	Yes	Yes	11/23/2013	6/1/2014 Projected
Updating OSHA Standards based on National Consensus Standards; Head Protection (11/16/2012)	12/28/2012	Yes	Yes	7/16/2013	7/16/2013

In addition to the state's actions, the following two State Plan changes became effective this fiscal year. ADOSH updated a reference within the acetylene

standard (1910.102) by adopting the Compressed Gas Association, CGA Pamphlet G-1-2009 effective October 24, 2012. ADOSH also amended 29 CFR 1910.1200, Hazard Communication Standard, to conform to Globally Harmonized System of Classification and Labeling of Chemicals (GHS) effective October 24, 2012.

b). OSHA/State Plan Initiated Changes

A total of five Federal Program Changes (FPCs) required a response in FY 2013. There were two remaining FPCs issued by OSHA in FY 2013 that will carry over into FY 2014. Arizona’s response to those will be evaluated during the next FAME cycle. ADOSH’s timely response rate for notification of intent regarding adoption of FPCs was only 40% (2 of 5).

Finding 13-08

Timely notification of intent to adopt Federal Program Changes was sent only 40% of the time.

Recommendation 13-08

Implement procedures to ensure timely responses are sent to OSHA regarding ADOSH’s intent to adopt Federal Program Changes.

Table 6

FPC Directive/Subject:	State Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Submission Date:
CPL 02-00-154 Longshoring and Marine Terminals “Tool Shed” (issued 7/31/2012) Equivalency Required	9/26/2013	No	No	N/A – adoption not required	Does not apply in AZ
CPL 02-03-004 2012 544 Section 11(c) Appeals (issued 9/12/2012) Equivalency Required	9/13/2012	No	No	N/A – adoption not required	1/1/2013
CPL 02-01-054 Inspection & Citation Guidance for Roadway and Highway Construction Work Zones (issued 10/16/2012) Equivalency Required	12/28/2012 Untimely	Yes	Yes	N/A – adoption not required	6/1/2013
CPL 02-13-01 Site-Specific Targeting 2012 (SST-12) (issued 1/04/2013) Equivalency Required	None Untimely	Pending	Pending	N/A – adoption not required	Pending
CPL 03-00-017 National Emphasis Program Occupational Exposure to Isocyanates (issued 6/20/2013)	9/12/2013	Yes	Yes	12/20/2013	8/20/2013

FPC Directive/Subject:	State Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Submission Date:
NOTICE ISSUED IN FY 2013 WITH STATE RESPONSE DUE IN FY 2014					
CPL 02-00-155 Inspection Scheduling for Construction (issued 9/06/2013)	Due 11/5/2013	Pending	Pending	N/A – adoption not required	Due 3/12/2014
CPL 02-01-055 Maritime Cargo Gear Standards & CFR Part 1919 Certifications (issued 9/30/2013) Equivalency Required	9/30/2013	No	No	N/A – adoption not required	N/A

On June 16, 2011, the directive on Fall Protection in Residential Construction, STD 03-11-002 was adopted. The Commission instituted an immediate stay of enforcement which prevented employers from being cited for failure to use conventional fall protection in residential construction between six and 15 feet. A new law, Senate Bill (SB) 1441, was passed but did not provide workers with protection equivalent to protections provided under 29 CFR 1926.501(b)(13). As a result of SB 1441, ARS 23-492 became final on May 25, 2012. A State-Initiated Plan Change (Number 133) was submitted and OSHA rejected it. OSHA informed the State Plan that this rule was not at least as effective as OSHA’s residential fall protection requirements. The ICA responded that ADOSH did not plan to change residential construction enforcement. As a result, throughout FY 2013 ADOSH did not cite any 29 CFR 1926.501(b)(13) citations where employers failed to protect workers with conventional fall protection. The inability to enforce the use of conventional fall protection in residential construction remains a serious concern and requires corrective action on the part of the state.

On March 19, 2014, OSHA sent the ICA a “show cause” letter giving Arizona thirty days to submit a revised supplement to correct its residential construction fall protection deficiencies or show cause as to why OSHA should not commence to reject State-Initiated Plan Change 133 and reconsider the Arizona State Plan’s Section 18(e) determination. Arizona has until April 18, 2014, to respond.

Finding 13-09

ADOSH enforced SB 1441, which does not protect workers in residential construction between six and 15 feet and does not afford the same level of protection as OSHA.

Recommendation 13-09

ADOSH must require conventional fall protection for all residential construction work performed six feet or more above lower levels and take enforcement action requiring employers to use conventional fall protection.

4. VARIANCES

Arizona's Revised Statutes 23-411 and 23-412 and Arizona's Administrative Codes R20-5-655 and R20-5-656 provide guidelines on the variance process. Employers may be eligible for a temporary or permanent variance from a standard or regulation if they can demonstrate that affected workers are as safe and healthful as those who would have complied with the standard or regulation. Affected workers are also provided notification of the notice of the application and an opportunity to participate in a hearing.

Only one variance was issued in February 27, 2003, to Desert Masonry Company and all similarly situated employers in Arizona. This permanent variance allows all Arizona employers who properly erect scaffolding on top of a level, concrete slab, or foundation to utilize a 6" x 6" piece of 1/2" plywood directly underneath each scaffold leg in lieu of a base plate.

5. PUBLIC EMPLOYEE PROGRAM

The enforcement program for state and local government is identical to that in the private sector. Inspections are scheduled, citations issued, and penalties assessed for both in the same manner, but state agencies are represented by the Attorney General's Office if citations are contested.

Out of 1,158 total inspections conducted 4.66% (54) inspections were in the public sector (SAMM report FY 2013 - SAMM #11). This is consistent with data for the state average of 4.7% over the last three years. Over the last five years the state has consistently conducted an acceptable number of inspections in the public sector.

6. DISCRIMINATION PROGRAM

The discrimination program is equivalent to that provided by OSHA. According to information reported in IMIS, there were a total of 49 discrimination cases filed. Of those 49 discrimination cases, 37% of the cases were completed within 90 days of filing, compared to 61% in FY 2012. The average number of days to complete a discrimination investigation was 154 days, slightly higher than the national State Plan average of 152 days. The merit rate (the rate of litigated cases and settled cases) of 39% was considerably higher than the national State Plan merit rate of 22%. The settlement rate is consistent with FY 2012 and is much higher than in FY 2011.

The following table is a summary of discrimination activity during FY 2013 based on information in IMIS.

**Table 7
11(c) Investigations**

	FY 2013	FY 2012	FY 2011	National State Plan Average (FY 2011- 2013)
Completed Within 90 Days	37%	61%	34%	55%
Merit Cases	39%	31%	25%	20%
Merit Cases Settled	100%	100%	83%	79%

OSHA conducted an off-site monitoring review of the discrimination program to assess if the state had taken corrective action with regard to the previous year’s recommendations, as well as, to gauge current implementation of policies and procedures. Ten discrimination case files were reviewed by OSHA. During the review, OSHA verified that ADOSH had implemented satisfactory corrective action for one of the four findings identified in the FY 2012 FAME Report, but three findings remain uncorrected.

Claims of whistleblower retaliation for reporting occupational safety and health issues were investigated under A.R.S. §23-425. The discrimination program had one supervisor, two full-time investigators, and one investigator who spent 50% of his/her time assigned to whistleblower investigations. All investigators attended the OSHA Training Institute’s (OTI) Basic Whistleblower Investigations course #1420. The OSHA’s Whistleblower Investigations Manual (CPL 02-03-003) (WIM) was adopted identical ADOSH and is referred to as the “Arizona Whistleblowers’ Investigation Manual”. Since the documents are identical, reference will be to the WIM.

In two out of the 10 cases reviewed, the incorrect determination was entered into IMIS. One of the cases was coded “settled,” when it should have been “settled other,” (see WIM Chapter 6(IV)(C & D) while the other case was coded “dismissed/non-merit,” when it should have been “withdrawn.” OSHA’s IMIS User Guide requires that this information be correct. This was a finding in the FY 2012 FAME Report (12-05 and 11-12) and remains open.

Finding 13-10 (12-05 and 11-12)

The correct determination was not recorded in IMIS for whistleblower cases, as required by the OSHA IMIS User Guide and WIM Chapter 6(IV)(C & D).

Recommendation 13-10 (12-05 and 11-12)

ADOSH has no procedure to ensure that the correct determination is recorded in IMIS for whistleblower cases, and should follow the OSHA IMIS User Guide and WIM Chapter 6(IV)(C & D).

In IMIS, 51 cases were reported closed, but did not match the internal data which showed 66 cases closed during the same period. Although an internal database is not a requirement, it indicates that the IMIS data is incorrect.

Of the 10 cases reviewed, five lacked evidence that the complaint had been screened for the presence of a *prima facie* claim of retaliation, timelines, and jurisdiction, as required by the WIM Chapters 2(II)(A), 3(III), 3(VI)(D)(3), and 3(VI)(L)(1). Every case is reportedly screened through the use of a “Complaint Initial Intake Form,” and this information was incorporated into the final report rather than existing as a stand-alone document in the case file.

Finding 13-11

There was no documentation of screening in whistleblower case files, as required by WIM Chapters 2(II)(A), 3(III), 3(VI)(D)(3), and 3(VI)(L)(1).

Recommendation 13-11

ADOSH should follow OSHA’s procedures to ensure that whistleblower case files include documentation of screening. Proper screening may have allowed three of the 10 cases reviewed to be screened out. In two cases, the complainants alleged they had been retaliated against based on their race. In another case, the complainant failed to allege an adverse action. This did not affect the integrity of the investigations, but does affect resources and should be monitored by the program.

The Region found one case where a company witness interview was not properly documented. In that case, there was no documentation in the case file capturing the details from the witness interview other than a cursory entry in the phone log. The WIM Chapters 3(III), 3(VI)(D)(3), 3(VI)(E)(1), 3(VI)(H)(5), and 3(VI)(L)(1) requires that witness interviews be properly documented. This was a finding in the FY 2012 FAME Report (12-03 and 11-08) and has not been corrected

Finding 13-12 (12-03 and 11-08)

A witness interview was not documented in the whistleblower case file, as required by WIM Chapters 3(III), 3(VI)(D)(3), 3(VI)(E)(1), 3(VI)(H)(5), and 3(VI)(L)(1).

Recommendation 13-12 (12-03 and 11-08)

ADOSH should follow OSHA’s procedures to ensure that witness interviews are documented in the whistleblower case file.

There were two cases where the investigation was incomplete. In one case, the investigator did not test the company’s defenses and did not obtain comparative data to determine if other workers were terminated for the same or similar reasons. In the other case, the investigator did not request comparative data to test

the company's stated reason for the worker's termination. The WIM Chapter 3(VI)(E)(6) requires the investigator to obtain evidence about disparate treatment, (e.g., how the company treated other workers who engaged in conduct similar to the conduct of the complainant which the company claims is the legitimate non-discriminatory reason for the adverse action).

Finding 13-13

Whistleblower investigations did not contain evidence of disparate treatment in violation of WIM Chapter 3(VI)(E)(6).

Recommendation 13-13

ADOSH should follow OSHA's procedures to ensure that whistleblower investigations include evidence of disparate treatment.

Closing letters sent to complainants in two dismissed/non-merit cases did not provide any appeal rights as required by the WIM Chapters 3(III), 3(VI)(K)(3), 3(VI)(L)(1). In two additional dismissed/non-merit cases reviewed, complainants could only request reconsideration by submitting facts or evidence in writing within 10 business days. This is different than OSHA's appeal review, which looks at both factual and legal sufficiency, rather than just factual sufficiency. This did not affect the integrity of the investigations, but will be monitored to ensure it does not grow to be a problem.

Two cases reviewed lacked documentation that the complainants were advised that they would be giving up appeal rights prior to accepting their withdrawals. The WIM Chapter 5(IV)(B) requires that complainants be informed that they would be giving up appeal rights if they elect to withdraw their complaints. This did not affect the integrity of the investigations.

There were no instances where third party non-management witnesses were not contacted privately or where such witnesses were not offered conditional confidentiality. This was previously a finding in the 2012 FAME Report (12-02) and has been verified corrected and closed.

There were two cases where nexus was not properly analyzed. In one case, the investigator did not analyze the temporal proximity between the protected activity and adverse action and did not examine management's statements to workers as animus. In the other case, the investigator did not consider the temporal proximity between the ADOSH site inspection and the complainant's termination. Complainant's allegations of animus were also not evaluated or referenced in the final report. The WIM Chapter 3(VI)(A&J) requires that nexus is properly analyzed.

There was also one case where dual motive was not properly analyzed in the final report. The WIM Chapter 3(V)(A) requires a discussion in the final report where there is a possible mixed or dual motive. There was one case where credibility determinations were not discussed in the final report. In that case, although management denied that they knew the complainant made a safety report to ADOSH, management's credibility was not discussed even though evidence suggested that management knew or suspected that the complainant engaged in protected activity. The WIM Chapters 3(VI)(I) requires that credibility determinations be made in the final report. This was a finding in the 2012 FAME Report (12-04 and 11-09) and has not been corrected and will remain open.

Finding 13-14 (12-04 and 11-09)

Nexus and dual motive were not properly analyzed in the Final Investigation Report (FIR), and the FIR does not analyze credibility assessments, as required by The WIM Chapters 3(VI)(A, I, &J), 3(V)(A), 5(IV)(B)(3).

Recommendation 13-14 (12-04 and 11-09)

ADOSH should follow OSHA's procedure by ensuring that nexus and dual motive are properly analyzed in the final report and the final report analyzes credibility assessments.

In two of the cases reviewed, FIR did not cite to exhibits, as required by WIM Chapter 5(IV)(B) for dismissals on the merits. This did not affect the integrity of the investigation and will be monitored.

Although seven of the 10 cases reviewed were not technically organized in the manner prescribed in the WIM Chapter 5(III), the files were generally easy to review and organized in a logical fashion. This also may have been the result of OSHA receiving copies of the case files without exhibit tabs.

Although six of the 10 cases reviewed exceeded the statutory time period to conclude the investigation, 29 CFR 1977.16, the implementing regulation for Section 11(c) allows for situations where this time period can be extended.

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAM

A Special Study was performed to assess how targeting programs were developed and the effectiveness of these programs. This study also examined two of the six Local Emphasis Programs (LEPs). The LEPs selected for this study "Construction Fall Hazards above six Feet," and "High E-MOD Rate" are the two estimated to have the greatest impact on ADOSH resources and employee health and safety.

Development of Targeting Programs

Targeting programs are developed and maintained for both construction and general Industry and implemented by following internal written policy and the requirements adopted in CPL 04-00-001. Presently, the active LEPs are Construction Fall Hazards Above Six Feet, LEP in Agriculture, and High E-Mod Rate.

The LEP for Construction Hazards Above Six Feet is a program implemented by ADOSH to target state resources toward fatalities and injuries in the high hazard industry of construction. ADOSH targets employers in both the construction and residential industry and uses a randomization process to target construction sites in this industry.

The LEP in Agriculture is a program implemented by ADOSH to target state resources toward removing workers from injuries in agriculture with particular concentration on use of the short hoe in field work and labor camps. ADOSH targets employers in and uses a randomization process to target construction sites in this industry.

The LEP for High E-Mod Rate is a program where ADOSH targets its resources to employers who have high rates of injuries and illnesses. ADOSH obtains Employer Experience Modification (E-MOD) data from the National Council on Compensation Insurance. E-Mod data reflects actual reported loss information with average loss information within the state for the same industry. ADOSH sends letters to employers with high rates and randomly selects some of employers for a compliance inspection.

The process to develop, maintain, and track targeting programs are as follows:

- 1) Identify and develop an LEP program based upon documentation and rationale for a desired effect.
- 2) Describe and outline a program via a written directive or memorandum.
- 3) Develop a list of establishments or an objective method for generating a list of worksites from available sources such as federal, state, local agencies, or a local employer industrial classification manual.
- 4) Identify a selection process based on administratively neutral criteria such as a random numbering system or another random selection system.

- 5) Develop a selection and evaluation component for determining the relative success of the LEP.
- 6) Submit the LEP program to OSHA for approval.
- 7) If approved, the LEP is implemented through a directive or memorandum.
- 8) A request is sent to OSHA to update LEP records and add the code to the NCR.
- 9) Staff enters codes on their inspections in the IMIS as appropriate.
- 10) Evaluations are conducted annually for effectiveness, improvements, or deletion.

LEPs are used to enable ADOSH to reach its strategic goals by ensuring a certain number of inspections are achieved and violations are identified and abated and to address any emerging trends which have been identified. ADOSH solicits public input from the ADOSH Advisory Committee (AAC) during quarterly public meetings. The AAC is made up of safety professionals representing the public sector, labor, and private industry. ADOSH also holds large, open public meetings to discuss such issues as needed. The ADOSH quarterly-published “ADOSH Advocate” is used to share information along with other avenues of dissemination such as: press releases, media events, speeches, presentations, and discussions with the American Association of Safety Engineers, Arizona Chapter, and the National Safety Council. Among the data ADOSH uses in the development of their emphasis programs is: National Council on Compensation Insurance’s (NCCI) e-mod data, claims reports, Bureau of Labor Statistics (BLS) data, inspection data, and public input from ADOSH stakeholders such as the AAC. ADOSH primarily uses insurance claims and BLS data to both evaluate trends and identify emerging hazards. Inspections are assigned to compliance officer teams with geographic responsibilities or to individual team using lists containing inspection establishments that have been randomized using an online random numbers table. Guidance is provided to compliance staff about how to perform LEP based inspections through in-house training and policy discussions and e-mails.

On at least a quarterly basis, reports are generated from IMIS to track the progress of the inspections, and the targeting initiative. This data is used on a quarterly and annual basis for internal and external reports. Other records such as program details are maintained digitally as well as by hard copy. The ADOSH Director reviews these reports and measures how the LEP has or has not assisted ADOSH in progress toward pre-determined numerical goals.

In addition to the customized LEPs described above, ADOSH also targets falls in construction, silica, and excavation hazards in construction whenever a compliance safety and health officer (CSHO) has knowledge of workers exposure either through direct observation or by complaint.

Evaluation of Targeting Programs: Fall Hazards in Construction

ADOSH conducts a quarterly and annual evaluation on the effectiveness of this program based on the number of inspections conducted and number of serious hazards corrected. An informal review of BLS data to determine injury rates for construction falls is conducted to identify trends for the different types of falls (from roofs, ladders, trusses, scaffolds, etc.) and to ensure the LEP is capable of adequately addressing the problem trends. The overall success of the program is evaluated using the quarterly and annual assessment reviews and analyzing the number of inspections, the number of inspections in-compliance, the workers covered, the average number and hazard classification of violations, and the percent of serious citations. Ultimately, the ADOSH Director makes the determination of the LEP's effectiveness. ADOSH Directors have maintained this LEP for approximately 15 years following their evaluation of annual and ongoing evaluation of BLS data for Arizona. The majority of inspections conducted under this LEP are complaint-based or through direct observation of a serious hazard by a CSHO. Cycles generated use neutral inspection criteria consisting of random number tables. Inspections conducted under this LEP are monitored by the use of an appropriately assigned IMIS code, which is reviewed quarterly and annually. ADOSH has been meeting its goal of performing a relatively high number of inspections in construction as a result of this LEP, as such, ADOSH plans to maintain the LEP to continue performing inspections in construction. ADOSH retains its records manually and electronically and lists the data in the State Annual OSHA Report (SOAR) and annual reports.

Evaluation of Targeting Programs: High E-MOD Rate

ADOSH evaluates the effectiveness of this program by conducting bi-annual reviews based on the number of inspections, number of inspections in-compliance, average number of workers covered by each inspection, number of violations, and percent of serious citations. Additional ongoing and informal reviews are conducted during leadership and staff meetings. Reviews are conducted as necessary based on anecdotal evidence and other inspection information as well as trend analysis. The determination of effectiveness is performed by the ADOSH Director. This LEP has been effective since March of 2010.

ADOSH meets its goal of conducting inspections under this LEP. Records and other inspection data are collected quarterly and annually and retained physically or in IMIS. Inspections are conducted by use of a list of Arizona employers and their respective E-MODs were obtained from the NCCI. A list of establishments with E-MODs above 2.0 is generated. Establishments with E-MODs above 2.0 are assigned random numbers as generated by an internet-based number generator. The lists are then distributed amongst the compliance sections and each establishment receives a comprehensive inspection based on ADOSH inspection priorities. ADOSH inspects all employers with an E-MOD greater than 2.0 first and within a finite time period. ADOSH randomly selects employers with e-mods rates between 1.25 from previously mentioned lists and distributes the lists for random inspections amongst ADOSH compliance sections. The compliance staff is trained in this LEP and how to conduct inspections through in-house training and compliance staff adheres to the LEP guidelines and requirements.

8. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

There were three CASPAS this fiscal year. Two new CASPAS were opened and one was a continuing CASPA. The continuing CASPA, as well as one of the new CASPAS, were classified as significant.

One of the two significant CASPAS was filed in FY 2012, by multiple complainants and addresses the state's enforcement of fall protection in the residential construction industry as described in Section II: Major New Issues. This CASPA remains open.

The second significant CASPA which addressed the opportunity to appeal ADOSH's findings had not been provided and the complainant was not informed of the findings and the Order Settlement Agreement, did not have merit and was closed.

The CASPA filed at the beginning of FY 2013, alleged that ADOSH did not file a complainant's initial claim of Whistleblower discrimination until after informing the ADOSH representative on at least three occasions. This CASPA was found to be valid and the state was issued a letter requesting corrective action. Corrective action was taken by the state who trained their investigators to take verbal complaints and use the complaint intake form.

9. VOLUNTARY COMPLIANCE PROGRAM

ADOSH maintains a Voluntary Protection Program (VPP) which is consistent with OSHA's policies. In FY 2013, ADOSH added three new VPP Star sites to the program, exceeding its goal of approving two VPP worksites per year.

ADOSH now has 35 VPP worksites. ADOSH's commitment to voluntary protection continues to give employers in Arizona the opportunity to become leaders in safety and health in their respective industries.

10. PUBLIC SECTOR ON-SITE CONSULTATION PROGRAM

In FY 2013, ADOSH projected 16 visits and conducted 23 initial visits, exceeding the goal. There were 47 serious hazards identified and all were corrected in a timely manner. ADOSH has no public sector Safety and Health Achievement Recognition Program (SHART) sites.

11. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAMS (KENTUCKY, PUERTO RICO, AND WASHINGTON)

ADOSH conducts consultation visits to the private sector employers under 21(d) funding.

12. STATE PLAN ADMINISTRATION

In FY 2013, the ADOSH program was funded at \$4,812,800 of which \$2,406,400 were federal funds. Later in the year, ADOSH was asked to de-obligate \$240,000 from its 23(g) base award due to funding challenges on the federal side.

The 23(g) operational program agreement covers enforcement of private and public sector workers and consultation of public sector workers. The state maintains a total of 55 authorized staff positions for its two offices, a central office located in Phoenix, and a field office in Tucson. The two offices currently have 22 compliance officers, which included 14 safety specialists and eight health specialists. This exceeds the Arizona benchmark of nine safety and six health specialists. ADOSH experienced moderate turnover throughout FY 2013; however, the turnover has decreased from previous years and ADOSH has made significant progress in training their new compliance staff in a timely manner through the use of their internal training program and far greater use of the OTI. ADOSH currently has no health or safety specialist vacancies. Arizona maintains two and one half full-time equivalent (FTE) discrimination investigators. Public sector consultation is administered using private sector consultants and 23(g) funds.

ADOSH continues to ensure its safety and health compliance staff and its whistleblower investigators receive and complete the appropriate required and elective courses at OTI or internally. Each new compliance officer must complete the ADOSH CSHO School and complete the requirements of OSHA TED 01-00-018. Following successful completion of these courses, compliance officers are eligible for additional courses where the need is evaluated by supervisory staff.

IV. **Assessment of State Plan Progress in Achieving Annual Performance Goals**

ADOSH established two broad goals in its five-year Strategic Plan, which covers the years 2013-2017. ADOSH's FY 2013 annual performance goals support Goal three of the Strategic Plan of the ICA which charges the ICA to ensure that ADOSH is efficient and effective in reducing workplace injuries and illnesses, with the ultimate outcome goal to Reduce Workplace Injuries, Illnesses, and Fatalities.

Strategic Goal #1

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

Performance Goal #1-1: Nursing Homes and Residential Care Facilities

- a) Identify and ensure correction of 1000 serious hazards
- b) Remove 2000 workers from exposure to serious hazards.

Annual Performance Goal #1-1: Nursing Homes

- a) Identify and ensure correction of 200 serious hazards
- b) Remove 400 workers from exposure to serious hazards.

Results: ADOSH conducted only 26 compliance inspections in the nursing home and residential care facilities industry in FY 2013 and identified three hazards. The number of workers removed from exposure to hazards was 120. ADOSH did not conduct any consultation visits in this industry for this period.

OSHA Assessment: The State Plan did not meet this annual performance goal. ADOSH's identified and ensured correction of 200 serious hazards during this period. This performance does not show sufficient emphasis on hazards in the nursing home and residential care industry by ADOSH enforcement staff. ADOSH only achieved 30% of the goal to remove 400 workers from exposure to serious hazards was met during this period. ADOSH should focus attention on ensuring emphasis is applied in this particular industry to focus both enforcement and consultation resources on meeting this goal and making a notable impact on the serious hazards in this industry in the next four years towards the five-year strategic goal. ADOSH will either need to employ a realistic plan and approach to accomplishing this goal or request OSHA's approval to reduce this goal in the next grant cycle.

Finding 13-15

ADOSH did not achieve their goal of identifying hazards in nursing homes and ensuring workers were removed from the hazards inherent to that industry.

Recommendation 13-15

Identify why this goal was not achieved and make the appropriate corrections.

Performance Goal #1-2: Residential Construction

- a) Identify and ensure correction of 1000 serious hazards
- b) Remove 1500 workers from exposure to serious hazards.

Annual Performance Goal #1-2: Residential Construction

- a) Identify and ensure correction of 200 serious hazards
- b) Remove 300 workers from exposure to serious hazards.

Results: ADOSH conducted 135 compliance inspections in the residential construction industry in FY 2013 and identified 126 hazards. An additional 27 hazards were identified during consultation surveys. The number of workers removed from exposure to hazards was 388.

OSHA Assessment: The State Plan met only one half of this annual performance goal. ADOSH exceeded the portion of the annual goal to remove 300 workers from exposure to serious hazards during the period. ADOSH only achieved 76% of the portion of the annual performance goal to identify serious hazards during the period. ADOSH will need to work on identifying more serious hazards in order to reach the five-year performance goal of 1,000 serious hazards. OSHA will continue to monitor this goal to ensure ADOSH is progressing towards its five-year strategic goal and meeting future annual goals.

Annual Performance #Goal 1-3: Rate Reduction Awareness Program (RRAP)

- a) Number of Employers brought into the Program
- b) Percentage Reduction in the Total Recordable Case Rate (50%)

Results: One new company joined the RRAP in FY 2013; however, three companies graduated from the program during the period. A second company was solicited, but did not get signed in before the end of the fiscal year. The five companies currently in the RRAP were all selected due to their high recordable rate, and their willingness to participate in training and consultation assistance from ADOSH. These companies have signed contracts committing to continuing to work with ADOSH to improve their worksites for two years. A 30% rate reduction was achieved this fiscal year.

OSHA Assessment: While this annual performance goal was not met due to a rate reduction of less than 50% and only one new company joined the program, good progress was made toward achieving this goal.

Strategic Goal #2

Strengthen public confidence through continued excellence in the development and delivery of ADOSH services.

Performance Goal #2-1: In addition to other training classes and outreach services, deliver 10 webinars or other online or broadcast training events.

Annual Performance Goal #2-1: In addition to other training classes and outreach services, deliver two webinars or other online or broadcast training events.

Results: ADOSH conducted three webinars and one broadcasting event in FY 2013. The webinars had at least 20 participants in each class and addressed employer responsibilities, worker rights, and workplace violence among other topics.

OSHA Assessment: The state met this annual performance goal by conducting at least two webinars or other online events. OSHA concurs.

Performance Goal #2-2: Through ADOSH's recognition and exemption programs recognize 10 new workplaces each in both the VPP and the SHARP.

Annual Performance #Goal 2-2: Through ADOSH's recognition and exemption programs, new workplaces joined the VPP and the SHARP.

Results: ADOSH evaluated and approved two new workplaces into VPP and two new workplaces into SHARP.

OSHA Assessment: The State Plan met this annual performance goal by approving at least two new workplaces in the VPP or SHARP program. OSHA concurs.

V. Other Special Measures of Effectiveness and Areas of Note

ADOSH is implementing a new, stand-alone website. It is anticipated this new site will be a valuable tool to help employers and workers further their own safety and health efforts. In the meantime, the current ADOSH page, along with adjoining pages of the Industrial Commission of Arizona, has been augmented with additional, important information for the public. The Division has also

worked extensively with outside public relations experts to augment and improve its ability to inform the public of important safety and health initiatives and results.

Appendix A – New and Continued Findings and Recommendations
FY 2013 ADOSH State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 12
13-01	The average response time to initiate a complaint investigation was 3.82 days, exceeding the negotiated response time of 3 days.	Streamline the process for complaint processing and initiation of complaint inspections to reduce the response time to phone/fax complaints to within the negotiated response time of three days.	N/A
13-02	Complaint case files lacked documentation that complainants were notified in writing of results of the inspection in 46% the case files reviewed in accordance with the Field Operations Manual (FOM), Chapter 9 Complaint and Referral Processing, I. H. 3. a or b or I.H. 4 and 6.	Where the identity and address of a complainant is known, ensure a letter of acknowledgement of the complaint and a letter communicating the outcome of the investigation results are sent to the complainant and a copy be placed in the case file.	N/A
13-03	An information letter to victims' families and an inspection results letter were not located in six of the 12 (50%) case files reviewed.	Ensure families of victims are kept informed of the investigation and provided both the information and outcome of the inspection letters in accordance with FOM Chapter 11, II. G. 2 and 4.b.	N/A
13-04	The rate of serious, willful or repeat violations cited in programmed inspections was significantly lower than the national average.	Determine the cause of the low rate of inspections with serious, willful or repeat violations and implement corrective actions in accordance with FOM Chapter 3. II. Inspection Planning and II. A. 1. and Chapter 2. IV. B. 1. Effective Use of Resources.	N/A
13-05	The average number of serious, willful or repeat violations per inspection (0.98) was less than half the national average of 2.04.	Determine the cause of the low rate of inspections with serious, willful, or repeat violations and implement corrective actions in accordance with	12-01

Appendix A – New and Continued Findings and Recommendations
FY 2013 ADOSH State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 12
		FOM Chapter 3. II. Inspection Planning and II. A. 1. and Chapter 2. IV. B. 1: Effective Use of Resources.”	
13-06	The in-compliance rate for safety inspections exceeded the national data by 30%.	Determine the cause of the high in-compliance rate, as indicated in SAMM #20, and implement corrective actions.	N/A
13-07	Case files did not contain notations documenting penalty reductions and reclassifications in 88% of the cases reviewed.	Ensure each case file contains documentation from the informal settlement conference for all citation deletions or reclassifications, and penalty reductions that result from the informal conference in accordance with FOM Chapter 7. II. F.1. 2. and 3.	N/A
13-08	Timely notification of intent to adopt Federal Program Changes was sent only 40% of the time.	Implement procedures to ensure timely responses are sent to OSHA regarding ADOSH’s intent to adopt Federal Program Changes.	N/A
13-09	ADOSH was enforcing SB 1441 which does not protect workers in residential construction between six and 15 feet and does not afford the same level of protection as OSHA.	ADOSH must require conventional fall protection for all residential construction work performed six feet or more above lower levels and take enforcement action requiring employers to use conventional fall protection.	12-06
13-10	The correct determination was not recorded in IMIS for whistleblower cases, as required by the OSHA IMIS User Guide and WIM Chapter 6(IV)(C & D).	ADOSH has no procedure to ensure that the correct determination is recorded in IMIS for whistleblower cases, and should follow the OSHA IMIS User Guide and WIM Chapter 6(IV)(C & D).	12-05

Appendix A – New and Continued Findings and Recommendations
FY 2013 ADOSH State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 12
13-11	There was no documentation of screening in whistleblower case files, as required by WIM Chapters 2(II)(A), 3(III), 3(VI)(D)(3), and 3(VI)(L)(1).	ADOSH should follow OSHA’s procedures to ensure that whistleblower case files include documentation of screening.	N/A
13-12	A witness interview was not documented in the whistleblower case file, as required by WIM Chapters 3(III), 3(VI)(D)(3), 3(VI)(E)(1), 3(VI)(H)(5), and 3(VI)(L)(1).	ADOSH should follow OSHA’s procedures to ensure that witness interviews are documented in the whistleblower case file.	12-03
13-13	Whistleblower investigations did not contain evidence of disparate treatment in violation of WIM Chapter 3(VI)(E)(6).	ADOSH should follow OSHA’s procedures to ensure that whistleblower investigations include evidence of disparate treatment.	N/A
13-14	Nexus and dual motive were not properly analyzed in the Final Investigation Report (FIR), and the FIR does not analyze credibility assessments, as required by The WIM Chapters 3(VI)(A, I, &J), 3(V)(A), 5(IV)(B)(3).	ADOSH should follow OSHA’s procedure by ensuring that nexus and dual motive are properly analyzed in the final report and the final report analyzes credibility assessments.	12-04
13-15	ADOSH did not achieve their goal of identifying hazards in nursing homes and ensuring workers were removed from the hazards inherent to that industry.	Identify why this goal was not achieved and make the appropriate corrections.	N/A

Appendix B– Observations Subject to Continued Monitoring
FY 2013 ADOSH State Plan Comprehensive FAME Report

Observation# [FY13-OB-X]	Observation# [FY12-OB-X]	Observation	Federal Monitoring Plan	Current Status

No observations were noted in FY 2013.

Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 ADOSH State Plan Comprehensive FAME Report

FY-Rec #	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status
12-01 (11-03)	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”.	Adopt violation classification policies and procedures equivalent to 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).	ADOSH adopted the Federal FOM with minor technical adjustments and clarifications pertaining mostly to the differences between the ADOSH organizational structure and OSHA. Adoption was effective on 6/24/2010. Staff were provided additional training 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). FOM guidelines are followed by ADOSH. The fact that ADOSH reclassifies very few citations at settlement is evident of the appropriateness of the original classification.	SEP 2014	Open

Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 ADOSH State Plan Comprehensive FAME Report

FY-Rec #	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status
12-02 (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.	ADOSH should adopt a consistent policy on the treatment of 3 rd party non-management witnesses for discrimination complaints. ADOSH should revise its Investigations Manual to specify the policy for handling third party non-management witnesses.	ADOSH has adopted OSHA's CPL 02-03-003 Whistleblower Investigations Manual with an effective date of March 14, 2012. This action represents a consistent policy on the treatment of third party non-management witnesses for discrimination complaints. ADOSH policy is based on OSHA's whistleblower investigation manual up to the extent allowed by Arizona law.	AUG 2013	Completed
12-03 (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.	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. Corrective Action Taken - Awaiting Verification	ADOSH whistleblower investigators received additional training in 2012 and are required to consistently document all discrimination complaints and witness interviews. Notes of the interviews are taken and kept in the cases files as matter of routine.	NA	Open

Appendix C – Status of FY 2012 Findings and Recommendations
FY 2013 ADOSH State Plan Comprehensive FAME Report

FY-Rec #	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status
12-04 (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.	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. Corrective Action Taken - Awaiting Verification	ADOSH investigators have been training on the need to discuss and evaluate dual of mixed motives in their final investigative reports and include such information in all cases that appear to have a dual or mixed motive. Additionally, ADOSH Whistleblower investigators utilize a template guide to perform detailed analysis as part of the final investigative report. Such analysis consists of a thorough examination of evidence including animus, dual-motive, protected activity, knowledge, adverse action and nexus or evidence of a causal link.	NA	Open
12-05 (11-12)	The selective review of discrimination cases indicated that some cases were misclassified as to the way they were resolved on IMIS.	ADOSH should ensure that the resolution of discrimination cases is classified correctly and entered into IMIS under the proper categories. Corrective Action Taken - Awaiting Verification	ADOSH tracks and records discrimination complaints within IMIS. Whistleblower investigations staff were provided additional training on how to correctly classify the resolution of discrimination cases including those that were administratively closed with management oversight.	AUG 2013	Open

Appendix C – Status of FY 2012 Findings and Recommendations

FY 2013 ADOSH State Plan Comprehensive FAME Report

FY-Rec #	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status
12-06	ADOSH is enforcing SB 1441 which does not protect workers in residential construction between 6 and 15 feet and does not afford the same level of protection as OSHA.	ADOSH must require conventional fall protection for all residential construction work performed 6 feet or more above lower levels and take enforcement action requiring employers to use conventional fall protection.	Please see written response to OSHA from Director McGrory on Feb. 1, 2013.	NA	Open

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report
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OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to National Averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (Collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Arizona			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	6.55	(Negotiated fixed number for each state) – 7 work days	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	3.82	(Negotiated fixed number for each state) – 3 work days	State data taken directly from SAMM report generated through IMIS.

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4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	75%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type	0.98	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	2.12	Other: .88	
11	Percent of total inspections in the public sector	4.66	(Negotiated fixed number for each state) - 5%	State data taken directly from SAMM report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	38.46	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	40.38	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	54.53	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	865/293	(Negotiated fixed number for each state) - 4004/1196	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.

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18a	Average current serious penalty - 1 -25 Workers	a. 686.87		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Workers	b. 984.85		
18c	Average current serious penalty - 101-250 Workers	c. 1347.70		
18d	Average current serious penalty - 251+ Workers	d. 1723.88		
18e	Average current serious penalty - Total 1 - 250+ Workers	e. 871.89		
19	Percent of enforcement presence	1.08%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety – 37.98	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	Health – 33.57	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	27%	100%	State data is manually pulled directly from IMIS for FY 2013

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22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	47.34	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	29.86	57.05	
24	Percent penalty retained	75.15	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.