

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

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



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I. Executive Summary

The purpose of this report is to assess the State Plan's performance for Fiscal Year (FY) 2021. The FY 2021 FAME report is a comprehensive FAME report. This report is focused on the State's overall enforcement program and its compliance assistance activities. This report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2021, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) reports ending September 30, 2021. A review of the SAMM data for FY 2021 indicated NC Department of Labor's (NCDOL) Occupational Safety and Health Division (OSHNC) generally met or exceeded federal activity results. OSHNC continued to meet all criteria for an effective State Plan. These SAMM measures are identified and discussed in detail throughout the FAME report.

The North Carolina Occupational Safety and Health Strategic Management Plan for FY 2019 to FY 2023 established two strategic goals: Goal 1, Reduce the rate of workplace fatalities by 2% and Goal 2, Reduce the rate of workplace injuries and illnesses by 5%. OSHNC establishes the framework in an annual performance plan to accomplish the goals in its Strategic Management Plan. Although OSHNC met a majority of its program outcome goals, fatalities rose in North Carolina from 79 in FY 2020 to 88 in FY 2021, which included 32 work-related COVID fatalities and five (5) criminal activity fatalities investigated by OSHNC. However, both construction and manufacturing fatalities decreased significantly compared to the same time-period last year.

Since the new commissioner came onboard in January 1, 2021, NC DOL OSH is taking a more proactive approach to Occupational Exposure to COVID-19 in the Healthcare Industry (29 CFR 1910 Subpart U). North Carolina adopted verbatim the Occupational Safety and Health Administration's (OSHA's) Emergency Temporary Standard for Healthcare with an effective date of July 21, 2021. While the federal standard expired on December 21, 2021, North Carolina's standard remains in effect. NCDOL adopted the standard as a permanent rule, which means that the standard will remain in place, until the Department takes action to repeal it. Based on current COVID-19 trends in North Carolina, including the percent-positive rate of COVID tests and the high number of COVID-related hospitalizations, North Carolina's rule will remain in effect through at least February 28, 2022. At that point, the Department will evaluate current COVID-19 trends monthly to determine when the rule is no longer necessary.

Appendix A describes the new and continued findings and recommendations. OSHNC had one finding, regarding the failure to adopt the max penalty standard timely, although the State Plan is anticipating adoption and updated their intent in State Plan Application (SPA). Appendix B describes the observations and the related federal monitoring plans, and Appendix C describes the status of previous findings with associated completed corrective actions. Both Appendix B and C have been left blank because the State Plan did not have any new observations or previous findings from FY 2020.

North Carolina's Total Recordable Case (TRC) rate for Calendar Year (CY) 2020 is at historic low levels. The private sector TRC rate was 2.2 and the Days Away, Restricted, or Transferred (DART) rate was 1.3. These rates are 22% lower and 24% lower, respectively, than the national average. When the public sector numbers are included, the overall TRC rate was 2.2 and the DART rate was 1.3. These rates are 24% lower and 28% lower, respectively, than the national rates.

II. State Plan Background

A. Background

The North Carolina Occupational Safety and Health State Plan received final approval, under Section 18(e) of the OSH Act on December 10, 1996. The official designated as responsible for administering the program, under OSHNC, is the Commissioner of Labor. The Commissioner of Labor is a constitutional officer selected through a statewide election. During the evaluation period, the Commissioner of Labor was Josh Dobson. Within the NC Department of Labor, the Occupational Safety and Health Division has responsibility for carrying out the requirements of the State Plan. Kevin Beauregard serves as Deputy Commissioner/Director of the Occupational Safety and Health Division, and Scott Mabry serves as Assistant Deputy Commissioner/Assistant Director of the OSH Division. Commissioner Dobson and his leadership team were all in position during the evaluation period.

The Occupational Safety and Health Division is organized into the following operating units: East and West Compliance Bureaus; Bureau of Education, Training, and Technical Assistance (ETTA); Bureau of Consultative Services; Bureau of Planning, Statistics, and Information Management (PSIM), and the Agricultural Safety and Health (ASH) Bureau. The main office and a district office are located in Raleigh, with four additional offices located throughout the State: Asheville; Charlotte; Winston-Salem; and Wilmington. Currently, there are 196.8 positions funded under the 23(g) grant, including 102 positions, which are 100% state-funded. These positions include 65 safety compliance officers and 45 health compliance officers assigned to district offices throughout the State. Additional safety and health professionals work in ETTA with responsibilities related to training, development of outreach materials, standards, and the Carolina Star Program (Voluntary Protection Program). The worker population in North Carolina consists of approximately 4,436,892 workers, and nearly 282,534 establishments.

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

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

The table below shows OSHNC's funding levels from FY 2017 through FY 2021.

FY 2016-2020 Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	% State Plan Contribution
2021	5,900,200	5,900,200	7,788,501	19,588,901	69.88
2020	5,810,300	5,810,300	7,782,005	19,402,605	70.05
2019	5,431,200	5,431,200	7,716,338	18,578,738	71.33

2018	5,326,000	5,326,000	7,578,359	18,230,359	70.78
2017	5,326,000	5,326,000	7,398,554	18,050,554	70.49

B. New Issues

In response to the COVID-19 pandemic, the OSH Division made a significant investment in resources to source, secure and distribute personal protective equipment and disinfecting supplies to OSH staff to ensure their safety and health, while maintaining critical operations and services throughout the State. Additionally, a box of 40 COVID-19 rapid test kits was supplied to each field office as a precautionary measure, to help manage any potential spread of the virus. The OSH Division also maintained a small inventory of test kits, if needed.

NC adopted the OSHA Healthcare COVID standards (ETS 1) in June as permanent standards (as opposed to an ETS), which gave OSHNC better options than an emergency standard or temporary standard. OSHNC has rulemaking provisions that allowed them to take this action if they adopted OSHA’s standard verbatim. It does not require them to go through the full rulemaking process, and it allows them to enact such standards for longer than OSHA’s 6-month ETS period.

In response to the pandemic, OSH Division also developed a virtual training studio, which includes professional cameras, lighting, large screens, and monitors, as well as specialized tablets. The OSH Division now has the capability to develop quality YouTube video on safety and health issues. This new asset has been promoted through the DOL newsletter and social media.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A five-person OSHA team, which included a whistleblower investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the North Carolina State Plan office during the timeframe of December 6-10, 2021. A total of 127 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2020, through September 30, 2021). The selected population included:

- Twenty (20) fatality case files
- Fifteen (15) COVID-related case files
- Twenty-two (22) complaint and referral investigation files
- Fifty (50) Construction/General Industry safety and health case files
- Fifteen (15) closed whistleblower case files
- Five (5) Public Sector Consultation files

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report

- Mandated Activities Report for Consultation
- State OSHA Annual Report (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL), which can be either a single number, or a range of numbers above and below a three-year national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2021 State Activity Mandated Measures Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

a) Training

The Education, Training and Technical Assistance (ETTA) Bureau is responsible for training the North Carolina Occupational Safety and Health Division personnel, and employees across the State. In FY 2021, ETTA offered 149 hours of formal training, 179 hours of continuing education, 4 hours of other job-related training to internal personnel. ETTA conducts OSHA Training Institute (OTI) equivalent training for OSH Division compliance staff. The North Carolina OSH Division directive, Operating Procedure Notice (OPN) 64F, establishes the policies and procedures for the initial training and development of the State Plan’s compliance staff. NC OSH’s training directive is comparable to OSHA’s training directive, TED-01-00-019. By conducting internal training, ETTA trains its employees at the appointed times and at a lower cost. The State also continues to utilize senior compliance personnel to conduct training and augment the ETTA staff. OSHNC also continues to conduct outreach and training by providing safety and health training employers and employees throughout North Carolina.

Statistical Training Information FY 2021

Private sector employers trained	6,045
State and local government workplace employers trained	1,552
Total number of workers that received training	7,597

b) OSHA Information System

The State Plan has consistently used OSHA Express (OE) Data Management System, and OIS reports to manage the program, and track OSHNC Division activity. This includes both mandated activity and activity goals and outcome goals included in the Strategic Management Plan. In FY 2021, OSH transmitted data from OE Data Management System to OSHA’s Information System (OIS) via an interface. OSH and the OE vendor continue to work together to ensure that the OE and OIS, State Activity Mandated Measures (SAMM) and State Information Report (SIR) reports are providing accurate data.

Four change requests were submitted for the OE Data Management System this past year. The OSH Division transitioned to a paperless system during FY 2020, which became very beneficial during the COVID-19 pandemic. Staff was generally able to work from home and continue to write and process files in a timely manner. OSH continues to provide administrative support for the OSHA Legacy Data (OLD) system. The OLD system was rolled out in late FY 2016, and additional features were subsequently added to allow OSHA and State Plans to access and modify pre-OIS inspection files, as necessary. Progress continues to be made closing NC open legacy case files. At the end of FY 2020, OSH had only 30 cases remaining open in the OLD system.

c) State Internal Evaluation Program Report

The North Carolina State Plan has an effective internal audit procedure, documented in Administrative Procedure Notice 14. As part of the OSHNC quality program, 94 high profile case file reviews were completed by the OSH Director's Office. The purpose of the audits was to ensure that inspection activities were being conducted, in accordance with established policies and procedures. The findings of these audits were posted internally, and feedback was provided to the compliance bureau chiefs, district supervisors, and compliance officers.

An internal audit was conducted to evaluate the Consultative Services Bureau (CSB) OE files against the 'workflow checklist' that was developed to supply directions to the supervisors, as to how they should review and enter information into the OE system to assure files are accurately populated. The intent being that paperless files would have all the needed information for review by an external agency. Items were identified to improve and streamline the process.

Nine action requests were processed by Compliance. This quality program activity provides opportunities for program improvement identified by customers, division employees, or as a result of internal audits and OSHA audits. Ongoing revisions are made to the Field Operations Manual (FOM) and Operational Procedure Notices, as a result of the quality program action items.

d) Staffing

During this period, the OSHNC's staffing levels were below the established benchmarks for the program, but at an acceptable level, based on the benchmark criteria. However, the State Plan remains committed to staffing its program at the appropriate level, within the current budgetary constraints.

The OSH Division has experienced difficulties recruiting and retaining safety and health professionals, primarily due to noncompetitive salaries. NCDOL submitted a State Fiscal Year (SFY) 2022 expansion budget request of \$1,360,437 in recurring funds to support implementing a graduated salary scale, based on tenure, which would be used to raise the salaries of the safety and health compliance officers (CSHOs) to a level more consistent with the market rate. These funds would also be used to increase the hiring rate. Unfortunately, the SFY 2022 Budget did not include any of these funds. In fact, the SFY 2022 Budget eliminated state funding for three safety compliance officer positions that had been vacant for more than 18 months. Those positions were each posted multiple times, but OSH was unable to fill them with qualified applicants.

In April 2021, the OSH Division implemented a sign-on bonus policy as a CSHO recruitment incentive. CSHOs hired after April 12, 2021, are eligible to receive a \$3,000 signing bonus. The new hire receives half of the bonus upon hiring (\$1,500) and the remaining half after successfully completing 18 months in the position.

		FY 2017	FY 2018	FY2019	FY2020	FY2021
Safety	Benchmark	64	64	64	64	64
	Positions Allocated	66	66	66	66	66
	Positions Filled	51	55	49	53	52
	Vacancies	11	7	13	13	14
	Percent of Benchmarks Filled	80	86	77	83	81
Health	Benchmark	50	50	50	50	50
	Positions Allocated	45	45	45	45	45
	Positions Filled	41	38	39	37	32
	Vacancies	4	7	6	8	13
	Percent of Benchmarks Filled	82	76	78	74	64

2. ENFORCEMENT

a) Complaints

Due to COVID-19, the OSH Complaint Desk continued to process almost twice the normal number of complaints and referrals that usually come into the office. Additional assistance was provided by the East and West Compliance Bureaus to ensure the large volume of complaints received could be processed and addressed in a timely manner. The OSH Complaint Desk staff and field office personnel processed 4,321 complaints in FY 2021. Over 3,232 additional contacts were made with the public that did not result in valid complaints along with 196 reports of injuries that were not processed, due to the incidents not being reportable to OSH. According to the SAMM report, OSHNC responds timely to complaints. The average number of days to initiate a complaint inspection in FY 2021 was 3.34, which is well below the FRL-negotiated standard of 10 days. The average number of days to initiate a complaint investigation was 1.87, which is also well below the negotiated standard of four days.

OSHNC has a centralized complaint and referral intake procedure, with complaints transferred to the district supervisor having geographic jurisdiction. The State Plan's emphasis has been on customer service, and assuring that each complaint is given attention, consistent with the severity of the alleged hazards. OSHNC's complaint process for formal complaints is similar to OSHA's process. OSHNC considers electronic complaints obtained through OSHA's complaint system as a formal complaint. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items. The source of the complaint, with those from a current employee having priority, and the

severity of the alleged hazards, are primary considerations for supervisors to decide, whether to handle the complaint by letter, or by inspection.

In FY 2021, 822 referrals were processed by the complaint desk. Referrals are alleged hazards or violations of the Act, which are typically received from other federal, state, or local government agencies, as well as media outlets, compliance officers or employers, reporting an injury or illness. OSHNC follows similar procedures as OSHA for employer-reported referrals.

b) Fatalities

Workplace fatalities increased in FY 2021. A total of 88 fatalities were reported to OSHNC in FY 2021, up from 79 the previous year. One hundred percent (100%) of the fatality inspection cases were responded to within one day, according to SAMM 10.

The Next-of-Kin (NOK) was contacted on all investigations. North Carolina has a procedure for communication with family members of deceased workers. Letters are sent to the NOK at the beginning of the investigation, and when the investigation has concluded. The family is provided with the name and telephone number of the “next-of-kin ombudsman,” who handles telephone contacts with the family. Supervisors indicated that they check to assure that the letters have been sent when they review the file.

Fatality figures for FY 2021 show 18 construction fatalities, which is eight less than the same time period last year. OSHNC continues to increase efforts to conduct consultative blitzes in high fatality and activity counties and high activity counties for special emphasis. Manufacturing also experienced 11 work-related deaths in FY 2021, which was three less from FY 2020. Additionally, in FY 2020 there were two fewer fatalities in agriculture, forestry, and fishing, compared to FY 21. However, the Services industry was significantly impacted by COVID-19 related fatalities. This sector includes long-term care and medical staff and fatalities increased from 16 to 30 in FY 21. In addition, Government employees were also impacted by COVID-19 related fatalities, as well as an increased number of work-related homicides.

The table below details the industries, where fatalities occurred in FY 2020 and FY 2021.

By Industry	FY 2020	FY 2021
Construction	26	18
Manufacturing	14	11
Transportation & Public Utilities	6	5
Wholesale Trade	2	2
Retail Trade	0	3
Services	16	30
Agriculture, Forestry, Fishing	10	8
Government	5	11
Finance: Insurance & Real Est.	0	0
Other	0	0
Total	79	88

OSHNC's procedures for investigation of occupational fatalities are effectively the same OSHA's. OSHNC has taken a proactive approach to help prevent injuries, illnesses, and fatalities in North Carolina's workplaces by establishing partnerships with some of the most hazardous industries. OSHNC continues to place increased emphasis on tracking specific injuries and fatalities monthly. If there is an increase in injuries and fatalities, additional resources are allocated, including inspection and focused training events.

Fatality investigations are required by Administrative Procedure Notice (APN) 16D to go through a review by a Citation Review Committee, made up of senior management and legal staff before issuance of citations, or determination of an in-compliance investigation. The determination must be reviewed and signed by the OSH Director or Assistant Director. Informal settlement agreements related to fatality cases also receive a higher-level review. Most files included statements; however, due to the virtual COVID-19 environment, signed statements were not obtained for several of the fatalities.

c) Targeting and Programmed Inspection

According to inspection statistics reviewed, OSHNC conducted 2,218 inspections in FY 2021, of which 1,252 were programmed. Fifty three percent (53%) were conducted in the construction industry. Construction work is considered high hazard, and inspection sites are targeted using several procedures, based on specified criteria. North Carolina conducts a high number of programmed inspections in the construction sector, particularly under their Special Emphasis Program (SEP) for high emphasis counties. These counties are associated with their strategic goal to reduce construction fatalities. According to the SIR, 58.82% of private sector programmed safety inspections and 51.07% of private sector programmed health inspections had violations. Of those, 87.73% of safety inspections and 91.94% of health inspections, as issued, had serious, repeat, and/or willful violations (SRW) [SIR Measure 2d]. OSHNC's Program Targeting System is identifying industries where serious hazards are more likely to exist. OSHNC is finding Serious/Willful/Repeat (S/W/R) violations during programmed inspections.

The State Plan's strategy for reducing injury, illness, and fatality rates is based on addressing specific areas that have the greatest impact on the overall rates. The areas of emphasis in the current Strategic Plan include, Construction, Logging and Arboriculture, Grocery and Related Product Wholesalers, Long Term Care, Exposures for Health Hazards (asbestos, lead, isocyanates, silica, hexavalent chromium), Food Manufacturing and Amputations.

OSHNC also participated in OSHA's NEPs, such as Process Safety Management, and the FY 2021 Agency Priority Goal for Trenching. OSHNC conducted 46 trenching inspections with 64 citations issued of which 60 are currently abated.

d) Citations and Penalties

In FY 2021, the 2,216 inspections conducted resulted in an average of 1.92 SWRU violations per inspection and 1.0 non-serious violations per inspection. OSHNC exceeds the three-year national average and is within range of the FRL for SWRU, which is 1.42 to 2.14 (SAMM 5a), and is well within the FRL for non-serious, which is 0.73 to 1.09. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes. In FY

21, OSHNC issued 2,495 serious violations. Additionally, 205 repeat violations and 23 willful violations were issued. In addition, OSHNC exceeded the FRL with regard to having a higher enforcement presence in the workplace at 1.16%, and also exceeded the National Average of 0.99% (SAMM 17). OSHNC conducted 1,255 safety and 961 health, a total of 2,216, which was 120% of the planned inspection goal of 1,832 inspections, as compared to 2,111 inspections conducted in FY 2020. In FY 21, safety inspections exceeded the OSHNC goal by 58, and health inspections exceeded the goal by 326.

OSHNC also maintained a lower average lapse time, from opening conference to citation issuance date, than the FRL (SAMM 11) as referenced below:

Average Lapse Time	OSHNC	FRL
Safety	45.67 days	41.94 – 62.90
Health	43.07 days	52.88 – 79.32

The case files that were reviewed were well-documented, with very detailed narratives. The total in-compliance rate (SAMM 9) for all safety inspections in FY 21 was 35.34% and 35.91% for health inspections. The percentage for safety and health was also well within the FRL.

OSHNC’s average current penalty per serious violation in the private sector (SAMM 8: 1 - 250+ workers) was \$1,902.40 in FY 21. The Further Review Level (FRL) is $\pm 25\%$ of the three-year national average (\$3,100.37). The FRL ranges from \$2,325.28 to \$3,875.46. Therefore, OSHNC’s current penalty per serious violation in the private sector (1-250+ workers) is 82% of the lowest acceptable FRL.

OSHNC’s average current penalty for serious violations in the private sector (SAMM 8: greater than 250 workers) was \$4,953.21 in FY 21. The Further Review Level (FRL) is $\pm 25\%$ of the three-year national average (\$6,575.70). The FRL ranges from \$4,931.78 to \$8,219.63. OSHNC’s current penalty per serious violation in the private sector (greater than 250+ workers) exceeds the lowest acceptable FRL.

e) Abatement

Available procedures and inspection data indicate that North Carolina obtains adequate and timely abatement information in most case files and has processes in place to track employers, who are late in providing abatement information. The Bureau Chiefs run a weekly past due abatement report that is shared with supervisors and is sorted by CSHO’s. Confirmation of abatement is also a measure in the work plan for each CSHO.

Follow-up inspections accounted for 3% of the total inspections in North Carolina for FY 21. Follow-up inspections are useful to ensure abatement, if there is a problem with abatement verification. According to the SIR for FY 21, the number of private sector inspections that have unabated violations that are greater than 60 calendar days for safety, and 90 calendar days for health, past the issuance date, was 24 for safety and 27 for health, respectively. In addition, there were two valid unprogrammed activities handled as inspections, which have been open more than 60 days, and there were 49 valid complaints handled as an investigation (phone/fax),

which were open more than 30 days. OSHNC should ensure that the number of complaint investigations open remains low, so that hazards are quickly eliminated.

Most case files reviewed contained written documentation, photos, work orders, or employer's certification of abatement. Petitions for Modification of Abatement (PMA) were appropriately provided when the employer requested an extension for their corrective action timeframe and interim protection information was provided in the case file.

f) Worker and Union Involvement

OSHNC's procedures for employee and union involvement are identical to OSHA's. Case file review disclosed that employees were included in 100% of fatality investigations, and other inspections. This determination was supported by SAMM 13.

3. REVIEW PROCEDURES

a) Informal Conferences

OSHNC has procedures in place for conducting informal conferences and proposing informal settlement agreements. These procedures appear to be followed consistently by District Supervisors. According to the SIR, 0.92% of violations were vacated (pre-contest), and 1.08% of violations were reclassified (pre-contest) as a result of informal settlement agreements. The percent of penalty retained was 87.68%, which exceeds the national average of 69.08%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified, and most cases were resolved with some penalty reduction. Where there were vacated or reclassified violations, or a larger penalty reduction, the files normally included the rationale for the changes. No negative trends or problems with citation documentation have been noted.

b) Formal Review of Citations

In FY 21, 4.3% of inspections with citations were formally contested by employers. The North Carolina OSH Division is represented by attorneys in the North Carolina Attorney General's Office (AG). The attorneys are assigned exclusively to represent the Division, and they receive specific training on legal issues relating to occupational safety and health.

The Attorneys participate in organizations, such as the State OSHA Litigators Organization (SOLO), where State and Federal high-profile cases, and cases with special legal issues, are shared and discussed. The Division also utilizes the Department of Labor's in-house attorneys, who advise on various legal issues. All fatalities and high-profile cases are considered by a citation review committee before citations are issued. This committee is made up of OSH management, staff attorneys, and attorneys in the AG's Office.

The North Carolina Review Commission is an independent body that hears and issues decisions on appeals, relating to the issuance of citations and assessment of penalties by the OSH Division. Commission members are appointed by the Governor for terms that usually run for six years. All commission hearings are open to the public and decisions are available for public review on the Commission's web page.

The OSH Division can request judicial review of decisions made by the Review Commission. The Division is advised on these matters by the Attorney General's Office with input from the Commissioner of Labor's Office.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal program changes, within a 6-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines which are at least as effective ALAE as the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, OSHNC adopted all federal directives and OSHA-initiated standards, which required action in a timely manner, except for the Maximum Penalty Increase. The tables below provide a complete list of the federal directives and standards, which required action during this period:

Table A
Status of FY 2021 Federal Standards Adoption

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
*Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/10/2020	NO	NO	7/15/2020	
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	9/14/2020	YES	YES	1/14/2021	1/8/21
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	10/28/2020	YES	YES	2/27/2021	2/25/2021
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	3/16/2021 New Commissioner Discussions	PLEASE SEE SPA NOTES		7/14/2021	
Occupational Exposure to COVID-19; Healthcare	7/6/2021	7/2/2021	YES	YES	7/21/2021	7/21/21

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Emergency Temporary Standard 29 CFR 1910 (6/21/2021)						
<i>Adoption Encouraged</i>						
Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	10/14/2020	NO	NO	n/a adoption not required	
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (9/15/2020)	11/14/2020	10/28/2020	YES	YES	n/a adoption not required	3/8/2021

Table B
Status of FY 2021 Federal Program Change (FPC) Adoption

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/10/2021	YES	NO	6/10/2020	8/10/21
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	2/27/21	(equivalent)	NO	8/4/2020	
<i>Equivalency Required</i>						
Field Operations Manual CPL 02-00-164	6/14/2020	7/16/21	YES		10/14/2020	

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
(4/14/2020)						
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	8/24/21	YES		12/22/2020	10/23/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	3/13/21	YES	YES	6/12/2021	3/23/2021
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	6/18/21	YES	YES	9/19/2021	7/1/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	7/22/21	YES	YES	7/28/2021	7/13/2021
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/30/21	YES	YES	12/28/2021	
Revised National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	7/22/2021	NO			
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/30/2020	NO		n/a adoption not required	

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	7/16/2020	NO		n/a adoption not required	
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021		NO		n/a adoption not required	
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/10/2021	YES		n/a adoption not required	

***Adoption of Maximum and Minimum Penalty Increases**

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See [81 FR 43429](#). As required by law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osh-civil-penalties>; [87 FR 2328](#) (Jan. 14, 2022).

OSHA-approved State Plans must have penalty levels that are at least as effective as OSHA's per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017.

The NC State Plan is required to adopt maximum and minimum penalty increases that are ALAE as the Agency's most recent increase issued in January 2022, without further delay. OSHA recognizes that the State has needed to implement legislative changes before this adoption can be completed. A letter to the NC State Plan informing that failure to adopt these increases would very likely result in a FAME finding and requesting that the State Plan respond with an action plan for completing the necessary legislative changes, was sent on September 3, 2021. NC State Plan responded on September 17, 2021.

The North Carolina (NC) State FY 23 Budget was approved by the Legislature on 7/1/22 and was signed into law by NC Governor Roy Cooper on 7/11/22. The new language in section 95-138(a)(1) adopts the current federal OSHA penalties, as depicted in 29 CFR 1903.15(d), effective 10/1/22. Penalty adjustments by OSHA that are associated with the Consumer Price Index (CPI) for Urban Areas will be adopted by the NCDOL per the North Carolina Administrative Code (NCAC), within 60 days of OSHA posting notice in the Federal Register. OSHA standards at 29 CFR 1903 are automatically adopted in North Carolina per 13 NCAC 07A.031(1), but NCDOL will be required to process annual CPI changes per state procedures and post the penalties on the NCDOL webpage. The following finding will remain open until the increased maximum penalty amounts take effect.

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

Recommendation: OSHNC State Plan should work with their state authorities to complete the policy and procedure changes necessary to implement the adoption of maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels.

5. VARIANCES

North Carolina currently has nine permanent variances, one of which is a multi-state variance approved by OSHA. No variances were issued by the State Plan in FY 2020-2021. North Carolina does not have any temporary variances, and the State Plan appropriately shares variance requests with federal monitors.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

OSHNC’s Public Employee Program operates identically as the private sector. As with the private sector, state and local government employers can be cited with monetary penalties. The penalty structure for both sectors is the same. OSHNC conducted 127 state and local government agency inspections in FY 2021, which accounted for 5.73% of all inspections. The Planning Statistics and Information Management (PSIM) Bureau mailed 3,108 surveys to state and local government employers (collection of calendar year 2020 injury and illness data). As of the end of FY 2021, 3,044 survey responses were received with a 97.9% response rate, where the data as provided can be used to calculate injury and illness rates, and for targeting purposes.

The following table outlines the total number of violations for programmed activity, as well as the in-compliance rate and the percentage of SWR violations for state and local government agencies:

All State and Local Government Agency Programmed Inspections	OSHNC
Average number of violations	4.3
In-Compliance Rate	35%
% Violations classified as Serious, Repeat, and Willful	25%

7. WHISTLEBLOWER PROGRAM

The Retaliatory Employment Discrimination Bureau (REDB) of the North Carolina Department of Labor is charged with enforcing the North Carolina Retaliatory Employment Discrimination Act (REDA). [N.C. Gen. Stat. § 95-240 *et seq.*]. North Carolina is one of 28 states operating a “State Plan” with OSHA. Complaints filed under Section 11(c) of the Occupational Safety and Health Act of 1970 (OSH Act), [29 U.S.C. § 660(c)] which allege retaliation because the employee exercised a protected safety and health activity occurring in North Carolina are referred to the REDB of NCDOL for investigation.

Organizationally, REDB falls under the Standards and Inspections Division of the Department of Labor. Phil Hooper is the Deputy Commissioner of Standards and Inspections. Kevin Beauregard is the Deputy Commissioner of the NC Occupational Safety and Health Division and is responsible for ensuring federal OSHA grant support for the investigation of safety and health retaliation complaints, and effective coordination between REDB and NC OSH.

REDA prohibits retaliation by employers against employees, who engage in protected activities, under eleven protected activity statutes incorporated into REDA, one of which is the North Carolina Occupational Safety and Health Act. [N.C. Gen. Stat. § 95-126 *et seq.*]. This is comparable to OSHA protection from retaliation, under Section 11(c) noted above. The bureau concurrently investigates REDA OSH complaints and Section 11(c) complaints referred by OSHA.

The REDB currently employs seven Investigators and two administrative staff. All staff currently report to the Old Revenue Building in Raleigh, NC. The program is supervised by an Administrator (formerly “Bureau Chief”). Five current investigators have completed the OSHA 1420 course and two are scheduled to complete it this spring. All other investigators have taken two additional OTI courses and are on track to complete all required trainings, if available, within the next year.

Annual Overview

The work of REDB has undeniably been impacted by the COVID-19 pandemic during FY 2021. Help line calls come from hundreds of frustrated and scared employees and employers. Filed complaints alleging health complaints related to COVID-19 contributed to an increased number of occupational safety and health complaints overall. Any complaint that alleged a good faith belief that a complaint about COVID (inability to work/refusal to work, etc.) was an OSHA protected activity was investigated.

With respect to practices and procedures, the REDB Operations Desk Guide¹ was last comprehensively updated on April 1, 2021. Workflow processes have been revised and improved, since the last FAME review. The NCDOL IT department contracted with an outside vendor to develop, install, and implement a comprehensive data management and storage system that would replace an outdated legacy system and increase the efficiency and accuracy of our work. This process is currently ongoing, and the Guide will be updated to incorporate these system-wide changes. That said, the current Guide establishes practices and procedures that are ALAE as federal practices and procedures set out in the federal Whistleblower Investigations Manual.

¹ This Guide replaced the OSH Whistleblower Discrimination Manual.

Mediation Program.

With the full support of both Cherie Berry, the prior Commissioner of Labor and Josh Dobson, the current Commissioner, the bureau designed and implemented a comprehensive Alternative Dispute Resolution (ADR) Program in 2020. The specific ADR processes offered by NCDOL are informal discussions/conciliation and mediation. The parties are offered either one as an early resolution tool, prior to a determination being made in the case and after a “merit” after a full and complete investigation. The program is voluntary and is offered a no charge to the parties. Approximately thirty mediators certified by the NC Dispute Resolution Commission volunteer their services to the program.

FY 2021 Evaluation

This evaluation included a thorough review of North Carolina’s discrimination program to determine whether REDB is following its own policy and procedures and whether the procedures and processes are at least as effective (ALAE) as those required in the current federal Whistleblower Manual.

As part of this fiscal year’s FAME audit, fifteen Section 11(c) and REDA complaints alleging protected activity under the NC Occupational Safety and Health Act were randomly selected and reviewed by the investigator. Files were selected to obtain a cross section of closed cases by investigator and determination. The determinations were (2) Merit, (5) Dismissals, (1) Withdrawal, (2) administrative closures, (1) Request for 90-Day Right-to-Sue letter, (3) Internal Settlements, and (1) External Settlement.

All case files and Reports of Investigation were well written and documented, in accordance with the investigator’s manual. All investigations were sufficient and reached logical conclusions, based on the available evidence. Actual investigations were conducted in a timely manner by the assigned investigators. However, there were significant delays in investigation, due to the time required to obtain redacted documents from another branch, which is required to conduct the redaction process. The redaction process took several weeks, months in some cases, and frequently caused investigations to take over 90 days.

It was identified that some cases were transferred to NCDOL from OSHA, where the Respondent was not covered under Section 11(c) of the OSH Act.

State Activity Mandated Measures (SAMM)

	OSHNC FY 2021	National Average FY 2021
Completed Within 90 Days (SAMM 14)	19%	33%
Merit Cases (SAMM 15)	22%	16%
Average Number of Calendar Days to Complete Investigation (SAMM 16)	168	298

19% of 11(c) whistleblower cases were completed within 90 days, in FY2021 (SAMM 14). This is below the three-year national average of 33%. The average number of days to complete investigations was 168 days, which is significantly better than the three-year national average of 290 days (SAMM 16). Additionally, North Carolina had a total Merit Rate of 22% which exceeds the three-year national average of 16% (SAMM 15). The over 90 investigative days may have contributed to the higher Merit Rate. Additionally, the over 90-day rate was impacted by new COVID complaints and the redaction review process.

North Carolina allows a complainant to request an over 90 day Right-To-Sue (RTS) letter to file their complaint in State Court. The 90+day RTS IMIS disposition is being coordinated by Region 4 with the OSHA National Office. Currently IMIS does not allow State Plans to enter a “Kick out” determination. The 90+day N.C. RTS letter allows complainants to file in State Court (the equivalent of a federal kick-out to U.S. District Court). Currently, North Carolina records the 90-day RTS (kick-out) as a withdrawal.

During the file review, no observations were identified. However, it is noted as a positive comment that EDB has transitioned to electronic case files for most cases.

FY 2021 Mediation Program Summary

During fiscal year 2021, sixteen (16) cases alleging a protected activity under Section 11(c) and/or REDA were referred to mediation. All were mediated and of those, the parties in nine (9) cases reached a settlement, resulting in a 60% settlement rate, with a gross settlement amount of approximately \$150,000.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

During this evaluation period, the Region received two CASPAs regarding the OSH Division. Both CASPAs were handled in a timely manner, concluded in FY 2021, and neither resulted in recommendations to the State Plan. One was classified as significant, meaning coordination was required with the Directorate of Cooperative and State Programs (DCSP).

9. VOLUNTARY COMPLIANCE PROGRAM

The Education, Training and Technical Assistance (ETTA) and the Consultation Bureaus are responsible for the administration of the cooperative agreements. Administrative Procedure Notice (APN) 18P addresses the cooperative agreements programs and clearly distinguishes the differences between Alliances and Partnerships. APN 18P, Cooperative Agreements, is the document used to establish the procedures to be followed for Alliances and Partnerships agreements and is designed to enhance the ability of the Occupational Safety and Health Division to meet its strategic goals. The primary purpose of Alliances and Partnerships in North Carolina are to serve as an effective means of targeting resources to special emphasis programs (SEPs) areas in a cooperative manner.

Alliance

The Alliance Team Leader is responsible for coordinating the Alliance Program. The State Plans Alliance Program is similar to OSHA’s Alliance Program, with a few exceptions. For example, with a few exceptions, NC OSH’s Alliances are limited to a two-year term with the opportunity

for renewal. The exceptions to this policy are in operation for an indefinite time-period. During this audit, it was once again confirmed that the indefinite expiration period has not adversely impacted the State Plans Alliance Program. Additionally, each Alliance agreement includes a termination clause, which enables OSHNC to terminate an ineffective agreement. OSHNC currently has seven (7) active Alliances focusing on SEPs. A randomly selected number of the Alliance files were reviewed and found to contain the necessary information.

Active Alliances	
Carolinas Associated General Contractors	Lamar Advertising Company
Safety & Health Council of North Carolina	North Carolina State University Industrial Expansion Solutions
Mexican Consulate for the Carolinas	North Carolina Utility Contractors Association of North Carolina (NCUCA)
North Carolina Association of Local Government Employee Safety Officials	

Partnership

During this period, a supervisory member of the Consultation Bureau served as the Partnership Team Leader of NCDOL. The Partnership Team Leader is responsible for coordinating the State’s Partnership Program. Guidelines for the program can be found in APN 18P, which is the same directive that addresses the Alliance Program. OSHNC’s Partnership Program is focused on the construction industry. Currently, the State Plan has three (3) active Partnerships, which were all reviewed during this audit. Participants must submit an application for participation, which must be approved by a panel within OSHNC. Participants are limited to two Partnership worksites, within a ten-year period; however, the OSHNC Director or Commissioner of Labor can waive this restriction. This limit was established to ensure that a diverse group of employers are permitted the opportunity to participate in the program. Also, a variety of construction projects are represented in the program, and the partnership limit ensures that OSHNC can effectively manage the program.

OSHNC’s Partnership Program includes a provision that exempts Partnership worksites from programmed inspections. However, these worksites must provide the State Plan with injury and illness data monthly. Additionally, Partnership worksites receive quarterly verification inspections from OSHNC. Serious violations observed during the verification must be abated immediately. The Partnership worksites are also required to meet quarterly to assess the site’s progress. Additionally, the worksite must maintain a DART rate 20% below the national DART rate for the industry.

The State Plan’s current Partnership policy is continually reviewed, and unprogrammed inspections are still conducted, because of formal complaint, or job site accidents resulting in hospitalizations or death. A review of the Partnership files revealed that they contained the necessary information, including the quarterly technical assistance visits and the monthly reports.

Carolina Star Program – Voluntary Protection Programs (VPP)

Voluntary Protection Program eligibility requirements for the Carolina Star Program are more stringent than OSHA’s. Employers in the North American Industry Classification System (NAICS) with codes 23 and 31-33 may apply. Employers are required to maintain injury and

illness rates at least 50% below the rate for that industry in North Carolina. Initial re-evaluations are conducted at three-years, and the subsequent re-evaluations are conducted every five-years.

The ETTA Recognition Program Section trained four (4) new Special Star Team Members (SSTM) and recertified four (4) SSTM during FY 2021. Additionally, the Carolina Star Program was responsible for ensuring the recertification of 15 Star worksites, in addition to the initial (new) approval of one (1) Star worksite, thereby ending the FY 2021 with a total of 146 Star sites. This total includes 101 Carolina Star sites, 22 Building Star sites, 19 Public Sector Star sites, and 4 Rising Star sites.

In September 15 – 17, 2021, the 25th Annual Carolina Star Safety Conference was conducted with the option for in-person, as well as virtual attendance. Total attendance for this event was 305, with 217 attendees in-person and 88 virtual attendees. North Carolina also hosted the 2nd Annual Building Star Program, Best Practice Workshop, in November 2021. A total of 42 attendees participated in this event, which was primarily conducted virtually.

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

The consultation program continues to provide effective services to the state and local government employers and employees throughout the State. For state and local government agency visits, the State Plan had a goal to reach 200 establishments during FY 2021 and reached that goal with 226 public sector visits. The number of hazards abated during these visits to state and local government agencies are in the table below:

Serious Hazards Confirmed Abated		Non-Serious Hazards Confirmed Abated	
Total State and Local Government	590	Total State and Local Government	77

OSHNC Consultants continue to demonstrate special commitment to the state and local government agency surveys and services, since many of the state and local government sector employers in small towns have very limited safety and health resources. OSHNC consultants can quickly assist state and local government agencies with safety and health program development, expert hazard evaluations and other services. Because of the number of public sites with similar operations, OSHNC consultants are very familiar with program needs in this sector, and they continue to build on their consultative experience base to offer expert service to state and local government agency clients. Additionally, based on the select sample of state and local government sector consultation case file review, the determination was made that the program continues to effectively serve the state and local government sector.

Appendix A – New and Continued Findings and Recommendations

FY 2021 OSHNC Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY-2021-01	OSHNC has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.	OSHNC State Plan should work with their state authorities to complete the policy and procedure changes necessary to implement the adoption of maximum and minimum penalty amounts that are at least as effective as OSHA’s maximum and minimum penalty levels.	

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 OSHNC Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 20XX- OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
NONE				

Appendix C - Status of FY 2021 Findings and Recommendations

FY 2021 OSHNC Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
	NONE				

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

FY 2021 North Carolina Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

State Plan: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
1a	Average number of workdays to initiate complaint inspections (state formula)	3.43	10	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of workdays to initiate complaint inspections (federal formula)	1.73	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of workdays to initiate complaint investigations (state formula)	1.87	4	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of workdays to initiate complaint investigations (federal formula)	0.83	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	1.92	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
6	Percent of total inspections in state and local government workplaces	1	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
7	Planned v. actual inspections – safety/health	5.73%	+/- 5% of 3.44%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application.

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

FY 2021 North Carolina Comprehensive FAME Report

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Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

				The range of acceptable data not requiring further review is from 3.27% to 3.61%.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	1,255	+/- 5% of 1,197	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,137.15 to 1,256.85 for safety.
	a. Average current serious penalty in private sector (1-25 workers)	961	+/- 5% of 635	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 603.25 to 666.75 for health.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,902.40	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	c. Average current serious penalty in private sector (101-250 workers)	\$1,337.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$1,884.64	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
9	Percent in-compliance	\$2,839.62	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from

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

FY 2021 North Carolina Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

				\$3,990.12 to \$6,650.20.
10	Percent of work-related fatalities responded to in one workday	\$4,953.21	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
11	Average lapse time	35.34%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
12	Percent penalty retained	35.91%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	45.67	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
15	Percent of 11(c) complaints that are meritorious	43.07	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
16	Average number of calendar days to complete an 11(c) investigation	87.68%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.

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

FY 2021 North Carolina Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

17	Percent of enforcement presence	100%	100%	The further review level is fixed for all State Plans.
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