

# OSH NC UPDATE

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## Ask the Director

**Question:** I have heard that OSHA has indicated to all State Plans recently that they must increase the penalty maximums and minimums, associated with violations of occupational safety and health standards, to federal OSHA penalty levels or else face potential actions against their program. Is this accurate? If so, is NC planning to raise penalties associated with OSH violations/citations?

**Answer:** 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, the Occupational Safety and Health Administration published a rule on July 1, 2016, raising its maximum and minimum penalties (refer to 81 FR 43429). As required by Federal Law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the Consumer Price Index (CPI). According to Federal OSHA, approved State Plans must have penalty levels that are at least as effective as Federal OSHA per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12).



On September 2, 2021, USDOL Acting Assistant Secretary of Labor, James Frederick, notified NCDOL Commissioner of Labor Josh Dobson that State Plans were required to adopt maximum penalty level increases associated with violations of occupational safety and health standards and all subsequent inflationary annual increases which are based on national consumer price index. The Acting Assistant Secretary also indicated that the NC State Plan was several years past the adoption due date and adopting maximum and minimum penalty increases were required to maintain a State Plan OSH program that is "at least as effective as" Federal OSHA. Finally, Acting Assistant Secretary Frederick indicated that "Failure to adopt these increases will very likely result in future Federal Annual Monitoring Evaluation (FAME) findings requiring correction".

Additionally, USDOL has indicated that failure to increase maximum and minimum penalties to the same levels as Federal OSHA may result in actions to rescind the NC State Plan Final Approval status. If that were to occur, Federal OSHA would likely resume concurrent jurisdiction and would have the legal authority to conduct inspections at any private employer statewide. Any citations issued would contain penalties calculated by

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Federal OSHA and all matters associated with the inspections would be handled by Federal OSHA.

On September 17, 2021, Commissioner Dobson sent a response letter to Acting Assistant Secretary Frederick notifying Federal OSHA that NCDOL intended to initiate a conversation with members of the North Carolina General Assembly about legislation to increase maximum civil penalties associated with OSH violations and minimum penalties for willful violations.

On February 28, 2022, OSH received a draft FY21 Federal Annual Monitoring and Evaluation (FAME) report from OSHA. Overall, the report indicated OSH has an effective State Plan program. However, the report contained the following finding:

**"Finding- FY-2021-01: NC State Plan has failed to adopt OSHA 's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.**

**Recommendation:** NC State Plan should work with their state authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as Federal OSHA penalty levels".

As a result, NCDOL's Director of Governmental Affairs, Legal Affairs and I have been working the Legislature during the current short legislative session to have OSH penalty revision language included in the upcoming SFY23 Budget Bill. If the Budget Bill passes with the language that has been proposed, OSH penalty maximums and minimums would be as follows in the table below:

**Table 1: Maximum and Minimum Amounts for Civil Penalties**

Type of Violation	Penalty Minimum	Penalty Maximum
Serious	XXXX	\$14,502 per violation
Serious	XXXX	\$29,000 per violation for employees under 18 years old
Other-Than-Serious	\$0 per violation	\$14,502 per violation
Willful or Repeated	\$10,360 per violation	\$145,027 per violation
Posting Requirements	\$0 per violation	\$14,502 per violation
Failure to Abate	N/A	\$14,502 per day unabated beyond the abatement date generally limited to 30 days [Maximum]

If the proposed OSH penalty language is included in the SFY23 Budget Bill, and it is signed into law in a timely manner, the new penalties will most likely go into effect October 1, 2022. In each subsequent calendar year, OSH penalties would be revised per the previous year's national CPI within 60 days of OSHA's publication of the revised penalties in the Federal Register. Upon adoption, the new penalties will be issued retroactively for all inspections that have not yet had citations issued.

The OSH Division will need the 60 days to revise the FOM penalty chapter and concurrently work with the OSHA Express (OE) vendor to make changes to the penalty tables and penalty calculations in our system. New Gravity Based Penalties (GBP), per classification, severity and frequency will be assessed. Additionally, new administrative penalties will be set for recordkeeping and posting violations. The allowable penalty reductions based on employer size will be modified from the current reduction levels in the FOM and OE, to ensure that small and midsize employers are not treated inequitably. The maximum employer size penalty reduction will likely increase to 80%.

## Standards Books

The Education, Training and Technical Assistance Bureau has received new standards books for general industry and construction. The new books include all standards adopted through January 2022. Reference our standards information and activity webpage for a quick overview of recently adopted standards.

The books include the state-specific standards adopted in the N.C. Administrative Code in addition to the federal OSHA standards. Construction books also include the Occupational Safety and Health Act of North Carolina. There are both the regular bound books and the spiral bound books. Both kinds of books will be delivered to each office.

# You Look Familiar, Are You New Around Here?



Meet Joe Long. Joe is going on eight cumulative years at NCDOL which began in December of 2011 (see explanation below). He was initially hired on as a safety compliance officer working in District 9.

As a compliance officer in District 9, driving across many counties in the eastern part of the state had its advantages. This driving exposed Joe to quite a few of the picturesque farms that generously dot the land. This farmland energized Joe to take some time away from work as a compliance officer and pursue credentials in sustainable farming. On top of a bachelor's degree from NC State University (Go Wolfpack!), Joe decided to go back to college and earn three academic certifications. His certifications include sustainable farming techniques, livestock management, and organic crop production. These academic pursuits led him to study and work hands-on with many different meat and dairy livestock breeds and also helped him to understand how to sustainably cultivate and harvest from this rich land of ours.

While away from NCDOL, studying at college, Joe completed seven half marathons and the infamous Tar Heel 10 Miler (watch out for that last hill). Two of the half marathons were particularly inspirational to Joe, as one of them was run on the hills of West Point Military Academy. There is no denying the goose bumps that one experiences when on these historic grounds. To top it all off, the half marathon ended with a celebration in the Black Knight's, Michie Stadium. The other half marathon was the All-American, "Mike to Mike" Half Marathon at Fort Bragg in Fayetteville, NC. Joe ran these two half marathons in honor of his uncles who served in the United States Army and all our fallen heroes.

Today, Joe works as a standards officer in OSHNC's standards section which is a part of the Education Training and Technical Assistance Bureau. In 2018 he was promoted to his current position after transferring from District 11. During these almost eight years now at NCDOL, Joe has earned his ASP Certification, OCSS, MESH, C-MESH, IH-MESH, drone operator (UAS) credentials from the FAA and NCDOT, OSHNC's Recognition program OSTM status, and recently earned his OSHA authorized outreach trainer card for construction.

Joe is also a retired veteran of the United States Navy and has received numerous decorations, medals, and awards. With his multiple duty stations, worldly travels, and several deployments behind him now, which included training assignments with the Army and Air Force, he has always considered himself extremely fortunate to serve this great nation of ours. Although service can be challenging at times, it was always incredibly rewarding. (Go Armed Forces!)

Saving the best for last, Joe is the proud dad of a son and daughter. Throughout the years their mom and Joe have had the honor and privilege of supporting them both in their academic and athletic endeavors. These endeavors have garnered many cherished memories with family and friends along with numerous awards, accolades, and honors. They are currently attending college in STEM related fields.

## Mileage Increase

The IRS has adjusted the standard mileage rates to better reflect the recent increase in fuel prices. This new reimbursement rate will effective in NCDOL beginning July 1<sup>st</sup>.

For the final 6 months of 2022, the standard mileage reimbursement rate will be 62.5 cents per mile, up 4 cents from the rate effective at the start of the year. The IRS normally updates the mileage rates once a year in the fall for the next calendar year. Midyear increases in the mileage rates are rare, the last time the IRS made such an increase was in 2011. APN 11K has been upated to reflect the reimbursement rate changes.

## Trench Safety Stand Down



The **Trench Safety Stand Down** was held last month. NCDOL had multiple signs up around the State advertising the event through Lamar Advertising who we have an alliance with. Lamar helps us reach folks around the state in advertising events and training opportunities.



# Library Update By Nick Vincelli, Librarian

The library's subscriptions to the Training Network NOW (TN NOW) streaming safety & health video service ("Streamery") and Reference Solutions Government (fka, ReferenceUSAGov) database access were renewed earlier this year and will not expire until August 2023. Streamery is available to the public (i.e., registered NCDOL library patrons who reside or work in the state) as well as NCDOL staff who request it. Please note, however, that only NCDOL staff can access Reference Solutions Government's database of employers. The library continues to acquire consensus standards (e.g., ANSI, ASME, ASSP, NFPA) and other safety/health-related resources (e.g., books, DVDs) as permitted by NCDOL and state government fiscal policies. The librarian also ordered ASP, CIH, CHMM, OHST, CIT certification seats from Datachem (accounts are assigned to eligible OSH employees with Wanda Lagoe's approval). Please refer to the "What's New @ Your Library" article in the monthly Labor NC newsletter for announcements of new books and other resources. Also, please refer to the [Library Resources](#) webpage on One Stop Shop for information pertaining to consensus standards, certification preparation resources, NC Building Codes, Reference Solutions/USAGov, etc.--and feel free to contact the library ([dol.library@labor.nc.gov](mailto:dol.library@labor.nc.gov) ; 919-707-7880) if you wish to check out (or access) any of these resources.

## Beat the HEAT

We are already moving into the hot months. Please spend time addressing heat illness prevention plans with employers who have employees working outside..

Every year, thousands of employees become ill from occupational heat exposure, and some heat exposure cases resulted in fatalities. Most outdoor fatalities, 50% to 70%, occur in the first few days of employees working in warm or hot environments if they were not properly acclimated. The body needs to adjust and build a tolerance to the heat gradually over time. Lack of acclimatization represents a major risk factor for fatal outcomes. Temporary employees, new employees and employees returning from an extended break in work, are at a higher risk in hot environments from succumbing to heat stress. Illness from exposure to heat is preventable.



Encourage employers to remember these three things:

- **WATER:** Have employees DRINK plenty of fluids throughout the day. A good rule of thumb is to drink 4 cups of water every hour. It is best to drink a small amount of water every 15 minutes.
- **REST:** Provide rest breaks so the body can recover.
- **SHADE:** Provide places for resting in the shade or in air-conditioning.

## Safe and Sound Week

This is the sixth annual Safe and Sound week where many safety organizations promote and provide information on understanding workplace safety and health programs. More than 5,300 employers from 49 states, 5 territories and, 72 countries participated in last year's event, according to OSHA (a **54% percent increase** from last year).



**Safe + Sound Week** is a nationwide event held each August that recognizes the successes of workplace health and safety programs and offers information and ideas on how to keep America's workers safe. The week is meant to raise awareness and understanding of the value of safety and health programs that include management leadership, worker participation, and a systematic approach to finding and fixing hazards in workplaces. Please look at the ETTA calendar for events.

## Status of FY Compliance Inspection Goals

Type of Inspection	Eight Month Goal	Eight Month Actual	FY Goal	% of FY Goal
East Safety Inspections	335	254	502	76%
West Safety Inspections	462	493	693	107%
East Health Inspections	211	77	317	36%
West Health Inspections	292	433	438	148%
Compliance Inspections Total	1300	1257	1950	97%
East Construction Inspections	280	165	420	59%
West Construction Inspections	420	485	630	115%
Construction Inspections Total	700	650	1050	93%
East Logging/Arborist Inspections	8	4	12.5	48%
West Logging/Arborist Inspections	8	11	12.5	132%
Logging/Arborist Inspections Total	17	15	25	90%
East Health Hazards Inspections	20	16	30	80%
West Health Hazards Inspections	20	32	30	160%
Health Hazards Inspections Total	40	48	60	120%
East LTC Inspections	8	3	12	38%
West LTC Inspections	8	20	12	250%
LTC Inspections Total	16	23	24	144%
Public Sector Inspections Targeted Total	67	64	100	96%
East Grocery & Related Product Wholesalers	7	3	10	45%
West Grocery & Related Product Wholesalers	7	12	10	180%
Grocery & Related Product Wholesalers Total	13	15	20	113%
Food Manufacturing Compliance Inspections	17	16	25	96%

## Status of FY Compliance Strategic Goals

Strategic Goal	Eight Month Goal	Eight Month Actual	FY Goal	% of FY Goal
Program Improvements	700	332	1050	47%
Serious Hazards Eliminated	2733	1812	4100	66%
Total Health Lapse Days	33	52.67	33	63%
Total Lapse Days	30	55.77	30	54%
On-Site Hours/Week HEALTH	4379	1956	6569	45%
On-Site Hours/Week SAFETY	5083	2090.4	7625	41%
Logging Fatality Rate Baseline .02623	Goal Rate: .02623 (7 fatalities average during baseline years)	<b>Fatality Rate: .00</b>		On pace for 2 fatalities
Construction Fatality Rate Baseline .00088	Goal Rate:.00088 (32 Fatalities average during baseline years)	<b>Fatality Rate: .0014</b>		On pace for 18 fatalities
		Construction Fatalities: 12	Reduce Rate by .4%	
		In Emphasis Counties: 2		

**Key:** Green = meeting or exceeding goal   Blue= within 10% of goal   Orange= less than 90% of goal met

\*Total lapse days is determined by the total number of working days from the opening conference to citation issuance.

## Status of FY ASH Compliance Strategic Goals

Strategic Goal	Eight Month Goal	Eight Month Actual	FY Goal	% of FY Goal
Pre-Occupancy Camps Inspected	1200	1930	1800	161%
Certificates Issued	1067	1850	1600	173%
Education Material Distributed	1600	5534	2400	346%
Outreach to Hispanic farm workers	133	0	200	0%

## Status of FY Consultation Strategic Goals

Strategic Goal	Eight Month Goal	Eight Month Actual	FY Goal	% of FY Goal
PRIVATE Consultative Visits	743	826	1115	111%
Hazards Eliminated	3200	3646	4800	114%
Construction Visits	167	278	250	167%
LTC Visits	23	27	35	116%
Documentation of Health Hazards Inspections	83	113	125	136%
Program Improvements	500	906	750	181%
Logging Visits	10	13	15	130%
Food Inspections	8	17	12	213%

## Status of FY ETTA Strategic Goals

Strategic Goal	Eight Month Goal	Eight Month Actual	FY Goal	% of FY Goal
Total Persons Trained by ETTA	3567	4679	5350	131%
Total Persons Trained in identified areas	1000	1745	1500	175%
Publications Distributed	23333	29272	35000	125%
Program Improvements	40	59	60	148%
Construction SEP 30 Hour Course	1	2	1	300%
Construction SEP 10 Hour Course	3	3	5	90%
Logging/ Arborist Events	2	7	3	350%
LTC Events	1	0	2	0%
Health Hazards Events	13	11	20	83%
Public Sector Training Events	3	15	5	450%
Total Star Program Interventions	67	102	100	153%
Total Star Sites (new/recertifications)	13	13	20	98%

**Key:** Green = meeting or exceeding goal   Blue= within 10% of goal   Orange= less than 90% of goal met

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Thanks for all you do!

-Scott M.