

Appendix A
FY 2010 Washington (DOSH) Enhanced FAME Follow-up Report
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-1	The state responded to a total of 273 complaints, 237 with on-site inspections and 36 by the phone/fax procedure. The average time to respond with an on-site inspection in FY 2010 was 8.5 days, which is an improvement over last year's average of 8.9 days and within the state's requirement of 15 days. The average time for initiating phone/fax complaints was 7.72 days which is an increase over last year's average of 4.0 days and is 2.72 days over the state's requirement of five working days.	Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual.	New
10-2	Two settlement agreements contained language about making "disparaging remarks," but neither specified that workplace safety and health issues were exempt. When DOSH signs and approves settlement agreements forbidding employees from making "disparaging remarks," which is subjective in nature, open to interpretation; and can be used to intimidate an employee from raising workplace safety and health concerns. DOSH is not consistent with how it is entering "settled" and "settled other" cases into the IMIS program. Three cases were entered as "settled other" in the IMIS when the settlement agreements that were signed by DOSH. DOSH entered two cases in the IMIS as "settled," although the settlement agreements were not signed by DOSH. DOSH has established an impressive track record of settling complaints before making a determination about the merits of the complaints. DOSH has noted that settlements reached before a merit finding is a "make whole" settlement. However, these settlements are not "make whole" unless the agreements include reinstatement for the complainant (if the complainant was fired). Most likely, the majority of DOSH's settlement agreements provide a "fair and equitable" remedy rather than a "make whole" remedy. This is an important distinction because the WISH Act requires	Ensure that settlement agreements are completed in accordance with current policy and accurately recorded in IMIS. The following are the issues to be addressed: a. The agreement must be approved and signed by a DOSH official who has authority to approve settlement agreements especially if the agreement has to be enforced by the state Attorney General's Office. b. The agreement should only refer to "damages" when DOSH has evidence that a Complainant incurred damages such as compensatory, pain and suffering and/or punitive damages. The case files should clearly document these damages. c. Interest computed on back wages is required and should be referenced in the settlement agreement and the Final Investigative Report or Memo to File. d. A copy of the complainant's pay stub should be included in the case file in order to justify settling a case for back wages. e. DOSH should seek legal guidance to see if the agency can enter into and approve a "severance" as part of its settlement agreements. f. DOSH should train its investigators and discrimination program	New

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	reinstatement as a make whole remedy (also known as “all appropriate relief”). Therefore, if DOSH is informing the parties that they have obtained a “make whole remedy,” then the agreements should include reinstatement – if the complainant was fired.	staff on the technicalities of settling discrimination complaints.	
10-3	In five of the [18] fatality cases, critical decisional information was not maintained in the case file. Although the case files were closed, documentation to explain why the files were closed without citations was not present. When brought to DOSH’s attention, emails that were not copied to the case files were provided...[that] supported DOSH’s case closure decisions. Two of these five case files did not have a narrative of the fatal event and the email information was the only explanation of what happened and why a citation was not issued. One case file stated that the employee died of a heart attack, but no supporting documentation, such as [a] death certificate or medical examiner’s report, was included in the file to document the cause of death.	Develop a clear policy identifying what documents must be maintained with the case file. When discussions regarding the case file are held, key information should be reduced to a memorandum and maintained in the case file, especially if it involves decisions on the disposition of the case.	09-02 continued.
10-4	The state rated probability lower than would be expected for a violation that resulted in a fatality. Of the 36 violations issued, the probability assigned to 25 of them was classified as either a 1 or 2, or as a low on the state’s probability system. Further, eleven violations were classified as either 3 or 4, or as a medium... Finally, none of the case files reviewed had any citations that were classified with a probability of 5 or 6, or high. ..The data suggest that DOSH was reluctant to use the high probability classification when developing fatality-related violations and penalties.	Closely monitor the use of probability when calculating penalties for violations directly related to a fatality, and use higher values where appropriate.	09-03 continued.
10-5	The Related Event Code was properly marked on the documentation for 11 of the 13 case files reviewed [with citations]. Two case files did not have the REC code marked even though citations were issued and sustained for violations directly related to the fatality.	Ensure that REC codes are properly applied to violations related to fatalities.	09-04 continued.
10-6	The state did not collect injury and illness data in every case file reviewed where it was required. 12 employers from the study files were required to maintain logs [but none of their case files included] a copy of the injury and illness logs.	Ensure that injury and illness logs are reviewed and copied for the case files on all inspections where logs are required. Document findings in the case file.	09-05 continued.

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	Only one of the 12 case files showed that the employer's logs were checked.		
10-7	The DOSH compliance manual...states "As appropriate, CSHOs must review injury and illness records to the extent necessary to determine compliance and identify trends." There is no mention of a requirement to obtain a copy of the injury and illness logs.	Revise the DOSH compliance manual to require that injury and illness logs be obtained from the employer where appropriate, and that a copy be maintained in the case file.	09-06 continued.
10-8	DOSH penalties were significantly lower than federal comparison penalties. DOSH penalties were significantly lower than federal comparison penalties.	Increase penalty amounts significantly in order to encourage voluntary compliance and to serve as a strong deterrent. Policy adjustments should be made to impose higher penalties for serious violations.	09-07 continued.
10-9	DOSH consultants did not always advise the employer on recordkeeping deficiencies nor capture the 300 logs for the visit file.	If a company is not keeping the 300 logs and is required to, an item should be included in the list of hazards for recordkeeping or training on recordkeeping noted in the case file. Copies of 300 logs should be collected from businesses and put into the case file for the previous three years.	09-09 continued.