

Appendix B
Washington State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region X
Status of FY 2009 Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	As noted in the FY 2008 FAME, the number of untimely FAT/CAT investigations is inflated by the reporting of non-work related fatalities into the WIN [state MIS] system. This issue has been discussed in quarterly meetings but has not been resolved.	Discontinue entering fatalities that are not work-related into the IMIS data system	We are prepared to implement the appropriate changes to the WIN system to eliminate this issue. Due to the need to remain flexible to accommodate OSHA's conversion to the new OSHA Information System (OIS), we cannot implement these changes until that update is complete. In the meantime, DOSH has put into place administrative controls to ensure accurate information is electronically shoveled to IMIS.	Only work-related fatalities are entered into IMIS.	Completed.
09-2	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.	We will develop and implement policies and procedures to ensure case file documentation is accurate and complete. We will work with Region X staff in the creation of this checklist.	Create and use a file documentation checklist. Policy directive or Manual change	Continued.
09-3	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	Closely monitor the use of probability when calculating penalties for violations directly related to a fatality, and use higher values where appropriate.	We understand the importance of appropriately using the penalty calculations formula and guidance provided by applicable penalty policies. We will continue to evaluate	WIN system release bulletin with user instructions	Continued.

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	<p>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.</p>		<p>and monitor our application of probability values when calculating penalties, especially in the development of fatality related penalties. This will include using higher values when appropriate. The Washington Industrial Safety and Health Act dictates the maximum amount of penalties that may be assessed for workplace safety and health violations and our staff calculate the penalties using the guidance of our Compliance Manual. We have placed the requirement for the more robust probability assessment tool at the top of our priority list for the second phase of WIN management reports development.</p>		
09-4	<p>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.</p>	<p>Ensure that REC codes are properly applied to violations related to fatalities.</p>	<p>We will incorporate the application of REC codes as a component of the new case file documentation checklist. Use of the case file documentation checklist will be one component of compliance inspection case file audits.</p>	<p>Create and use a file documentation checklist. Policy directive or Manual change</p>	<p>Continued.</p>
09-5	<p>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. Only one of the 12 case files showed that the employer’s logs were checked.</p>	<p>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.</p>	<p>We will include injury and illness log review and collection on the case file documentation checklist. In our September 25, 2009 update to our Compliance Manual, we added a requirement for CSHO’s to review the OSHA-300 Log and other injury and illness records to determine employer compliance with recordkeeping requirements, and to identify injury and illness trends present in the workplace.</p>	<p>Create and use a file documentation checklist. Policy directive or Manual change</p>	<p>Continued.</p>
09-6	<p>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</p>	<p>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</p>	<p>We will prepare and implement the appropriate changes to the DOSH compliance manual.</p>	<p>Manual change documents</p>	<p>Continued.</p>

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	of a requirement to obtain a copy of the injury and illness logs.	case file.			
09-7	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.	We have taken note of OSHA’s recent revised penalty policy and look forward to receiving the directive that will require state action. At that time, we will initiate rulemaking because DOSH’s penalty structure is written in rule and can only be changed by following the state’s Administrative Procedures Act. We understand OSHA’s concern that DOSH’s average penalties are significantly lower than national averages for both state and federal programs and that this may not have an adequate impact on compliance.	Standards unit is preparing CR101 in anticipation of Federally required rule making	Continued.
09-8	According to the MARC [Mandated Activities Report for Consultation], there were two initial consultation visits in the public sector in FY 2009. Further investigation revealed that the MARC report is not accurately reflecting public sector data for Washington. The actual number of visits was 215, including both state and municipal employers.	Revise WIN system code(s) so that public sector consultation visit information can be entered into the IMIS.	We have implemented the necessary changes in WIN. When the issue of public sector consultation visits was raised, DOSH discovered that a coding error in WIN did not allow public sector visits to be electronically shoveled to IMIS. The code has been corrected and data is being successfully transferred to IMIS.	Public sector visits are properly entered into IMIS.	Completed.
09-09	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.	Consultation policy requires consultants to address lack of 300 logs as a deficiency and list the deficiency in the list of hazards in their report. We have reinforced this policy with regional Consultation Managers and it will be communicated to all consultation staff. Regional consultation managers have been asked to monitor this item and ensure the policy is being appropriately followed by field staff. Additionally, we are completing an update of our DOSH Consultation Manual and when staff training is provided, we will include a	DOSH agrees to instruct its consultants to enter three years of OSHA 300 form data into the WIN and IMIS systems (and upcoming OIS system) subject to any WIN and OIS system requirement changes.	Continued.

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09-10	DOSH consultants did not always complete a form 33 on consultation visits.	Assure that all case files have a completed form 33 or equivalent and the evidence or rationale for the score awarded is evident.	segment on this issue. The requirement for completion of the Form 33 on specific visits was a process change from our prior policy. We will identify if this is a staff awareness issue regarding the policy change or if the Form is not being used due to some unique circumstance during visits to very small employers. If it's an awareness issue, we will clarify the process for all consultants through the Regional Managers as well as reinforce the need to complete the form when we do training on our Consultation Manual. Additionally, we plan to have stand-alone training on the Form 33 to provide better guidance on using and completing it.	Complete form 33s.	Completed.
09-11	DOSH consultants did not refer hazards to enforcement when necessary.	If the employer does not respond to requests for abatement certification and will not ask for an extension, the case should be turned over to enforcement for follow-up.	We agree and will take the necessary steps to ensure all staff are knowledgeable regarding this policy.	Regional managers will coach individual field staff where the problem was specifically identified.	Completed.
09-12	DOSH form 30 did not always contain accurate information on the number of employees.	Enter the correct number of employees interviewed in the OSHA form 30 box requesting the information.	Regional Consultation Managers have already been apprised of the deficiency and will share with staff.	In addition, they will coach individual field staff where this problem was identified.	Completed.
09-13	DOSH abatement verification for consultation visits did not always conform to policy.	Assure that the abatement language provided by the employer abates the hazard. A statement such as "Complied" does not abate the hazard. If the language does not abate the hazard, the consultation project should consider if an extension of time is necessary and the employer should be advised to either abate the hazard or ask for an extension.	Regional Consultation Managers are aware of the problem and will ensure appropriate abatement procedures are followed.	Case files reviewed for abatement verification.	Completed.

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09-14	DOSH did not always use properly determine employee exposure on consultation visits.	Require consultants to use recognized practices to determine employee exposure to air contaminants and noise before making statements or recommendations about employee exposures.	We have shared OSHA's recommendation with our Regional Consultation Managers and they will ensure proper procedures are followed.	Regional management will coach specific IH staff where employee exposure was not documented and where time weighted averages were not calculated.	Completed.
09-15	DOSH consultants did not ensure that correct industrial hygiene techniques were utilized.	Review industrial hygiene requirements with the industrial hygienists as this requirement is designed to assure proper techniques are used.	This recommendation item has been shared with Regional Consultation Managers and they will instruct regional IH staff on the importance of documenting proper sampling instrument calibration.	Sampling forms will also be reviewed for completeness before the case file is forwarded to Central Office. Concerning the suggestion about sharing sampling results with the employee, DOSH will ensure better communication is provided to the employer by field staff. This concern has been shared with Regional Consultation Managers, who will share with IH staff.	Completed.
09-16	Thirty-two percent of DOSH's [discrimination] complaints were withdrawn after they were filed. [This] was discussed with DOSH...and DOSH provided its rationale for them. When a complaint is withdrawn, the case file should include either a written request from the complainant or a withdrawal form signed by the complainant, filed as a separate exhibit.	For complaints that are withdrawn, DOSH's case files should include a written request for withdrawal from the complainant. The request to withdraw the complaint should be filed as a separate exhibit.	We concur with this recommendation. This process became a standard operating procedure in June 2007. A comprehensive review of all withdrawn case files within FFY 2009 confirmed that this policy is strictly adhered to. The inquiry also confirmed that the Request for Withdrawal forms were completed and signed by the Complainants who were required to document their reason/s for withdrawal. Review team determined that approximately ninety-percent of the explanations for withdrawal indicated that Complainants were pursuing a private right of action.	Written requests are required.	Completed.
09-17	DOSH's [discrimination] settlement agreements allow for unemployment compensation benefits to be deducted from settlement monies. This is not correct. The Whistleblower Investigations Manual states that	DOSH should not deduct unemployment compensation from settlement monies in its settlement agreements. (Deleted)	We agree with this recommendation in principle. However, when this recommendation was previously made by OSHA and addressed in FFY 2003, it was determined by the Assistant Commissioner of the Employment		Completed.

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	"unemployment compensation benefits may never be considered as back pay offset." (Deleted)		Security Department that state law requires that the UI benefit amount be withheld and reported to ESD. Since we have confirmed that a state legal requirement exists and we have no discretion in this matter, we will continue to deduct UI benefit amounts from affected settlement agreements.		
09-18	DOSH's [discrimination] investigative reports should include a section which describes how the employer is covered under the Act in order to establish jurisdiction. This will help to clarify why the agency accepted the complaint instead of referring it to federal OSHA or another government agency.	DOSH should include a section in its investigative reports and/or memos for coverage and/or jurisdiction. This section should describe why the state has jurisdiction to investigate the complaint as well as include detail similar to what is written in DOSH safety inspection reports.	We agree and will adhere to this recommendation. When considering that all assigned discrimination investigations are screened by the investigations supervisor, all investigations relate to one discipline (11c) and all are dispatched to the field for investigations, it was assumed that cases assigned comply with the criteria for investigations pursuant to the statute (RCW 49.17.160) which includes jurisdictional authority. Additionally, a review of this recommendation revealed that three of the five dedicated investigative staff are already adhering to this recommendation.	Case files reviewed for coverage.	Completed.