

STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

**Division of Occupational Safety and Health
(DOSH)**

**Federal Annual Monitoring and Evaluation (FAME) Report
on the Washington Safety and Health Program**

FY 2010 Report Period
October 1, 2009, through September 30, 2010

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Executive Summary

The state of Washington, under an agreement with OSHA, operates an occupational safety and health program in accordance with Section 18 of the Occupational Safety and Health Act of 1970. OSHA monitors state plans to ensure that they are at least as effective as the federal program, and reports annually on state performance. The Department of Labor and Industries, Division of Occupational Safety and Health (DOSH), administers the state's program.

This report is a follow-up to OSHA's FY 2009 Enhanced Federal Annual Monitoring and Evaluation (EFAME) report which contained a total of 18 recommendations – seven of which pertained to DOSH's enforcement program; eight to its consultation program; and three to its discrimination program. During FY 2010, corrective actions were completed for only one of the seven enforcement-related recommendations, seven of the eight consultation-related recommendations and all of the discrimination recommendations. The list of recommendations below includes seven enforcement-related items and one consultation item that were continued from the FY 2009 EFAME report. Appendix B describes the status of each FY 2009 recommendation in detail.

This report assesses DOSH's performance during FY 2010 in activities mandated by OSHA, as well as the state's achievement of its annual performance plan goals and five-year strategic goals. Although DOSH is operating an effective program overall, OSHA identified the need for the state to take remedial actions in several areas, including timeliness of initiating its phone/fax procedure and certain aspects of its whistleblower program. The first two items listed below are new recommendations for FY 2010.

Recommendation 10-1: Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual.

Recommendation 10-2: Ensure that 11(c) settlement agreements are completed in accordance with current policy and accurately recorded in IMIS. The following are the issues to be addressed:

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.

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. Interest computed on back wages is required and should be referenced in the settlement agreement and the Final Investigative Report or Memo to File.

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.

DOSH should seek legal guidance to see if the agency can enter into and approve a "severance" as part of its settlement agreements.

DOSH should train its investigators and discrimination program staff on the technicalities of settling discrimination complaints.

DOSH did not implement the following recommendations from the FY 2009 enhanced FAME, which are continued in this report:

Recommendation 10-3 (continued 09-2): 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.

Recommendation 10-4 (continued 09-3): Closely monitor the use of probability when calculating penalties for violations directly related to a fatality, and use higher values where appropriate.

Recommendation 10-5 (continued 09-4): Ensure that REC codes are properly applied to violations related to fatalities.

Recommendation 10-6 (continued 09-5): 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.

Recommendation 10-7 (continued 09-6): 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.

Recommendation 10-8 (continued 09-7): 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.

Note: DOSH has indicated that it is prepared to act on this recommendation pending formal direction from OSHA on revised federal penalty policy implementation.

Recommendation 10-9 (continued 09-9): 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.

At the beginning of federal fiscal year 2006, DOSH implemented a five-year strategic plan which included short and long-range objectives aimed at improving safety and health for Washington workers. By the end of FY 2010, the fifth and final year of the strategic plan, DOSH achieved its strategic plan goals. The following lists the state's three strategic goals.

1. *Improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities.*

DOSH met its first strategic goal to improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities. Almost every annual performance goal for FY 2010 was met or exceeded this year. With respect to DOSH's 2010 Annual Performance Goal 1-2, we agree with DOSH's observation that "The data for the study conducted during FY 2010 was not sufficient to statistically demonstrate that WISHA enforcement or consultation visits resulted in a decrease in workplace injuries and illnesses."

2. *Promote values which foster workplace safety through education, consultation, and employer assistance.*

DOSH met its second strategic goal to "Promote values which foster workplace safety through education, consultation, and employer assistance." DOSH's numbers of inspections and consultations, along with its mixture of outreach and training, have indeed promoted key safety and health values.

3. *Maximize DOSH's effectiveness and efficiency by strengthening our capabilities and infrastructure.*

DOSH met its third strategic goal to "Maximize DOSH's effectiveness and efficiency by strengthening its capabilities and infrastructure." DOSH was very successful in meeting each of its FY 2010 performance goals in such key areas as verification of timely abatement of serious hazards and improving the average lapse times for issuing both safety and health violations.

Introduction

The state of Washington, under an agreement with OSHA, operates an occupational safety and health program in accordance with Section 18 of the *Occupational Safety and Health Act of 1970*. The state's enabling legislation, the *Washington Industrial Safety and Health Act*, took effect in 1973, and the Secretary of Labor certified in 1982 that the state had completed all of the required developmental steps in the plan.

OSHA monitors state plans to ensure they operate programs that are at least as effective as the federal program, and prepares annual reports on state performance. Beginning in 1997, OSHA used strategic plans to establish five-year goals and objectives, and required state plan states to do likewise. As part of the process, states were asked to develop performance plans that would ultimately lead to the achievement of five-year goals, and to include such performance plans in annual 23(g) grant applications.

Evaluation Methodology. This Federal Annual Monitoring and Evaluation (FAME) report evaluates state performance of required (mandated) performance areas and related enforcement activities. It also evaluates state performance at achieving its own performance goals as outlined in its grant application. The report represents the combined efforts of OSHA's Seattle Regional and Bellevue Area Offices, and covers federal fiscal year 2010, which is the period from October 1, 2009, through September 30, 2010.

The opinions, analyses, and conclusions described herein are based on information obtained from a variety of sources, including:

- State Activity Mandated Measures (SAMM) report data (Appendix D).
- State Information Report (SIR) data (Appendix E).
- Other statistical reports comparing state performance to federal performance.
- Quarterly monitoring meetings between OSHA and the state.
- OSHA's analysis and monitoring of the FY 2009 DOSH Corrective Action Plan (Appendix B).
- The state OSHA Annual report (SOAR) prepared by Washington DOSH (Appendix F).
- 22 case file reviews and other records reviewed for discrimination program audit.

The SOAR (Appendix F) contains the details of the state's achievements with respect to its annual goals.

Background. The Washington State plan is administered by the Department of Labor and Industries, Division of Occupational Safety and Health, or DOSH. A director, appointed by the Governor, heads the department and serves as the state plan designee. The assistant director of DOSH, selected by the director, is in charge of

industrial safety and health policy, and directs central office and regional operations. DOSH establishes policy and technical guidance, writes standards, develops internal and external training, monitors and evaluates programs, conducts inspections, and provides consultation services. With regard to inspections and consultations, DOSH conducts interventions at state and local government workplaces and private sector employers not covered by OSHA. OSHA's jurisdiction is limited to establishments on Indian lands that are tribally-owned as well as employers who are enrolled tribal members working on reservations or on trust lands. OSHA also covers private employers at national parks, military installations, maritime activities on the water and federal government employers.

Two DOSH-related programs are housed in other departmental divisions. The Legal Services Program in the Administrative Services Division administers the public disclosure of DOSH's records, while the Information Services Division (ISD) is responsible for technical development and maintenance of the computer systems and databases used by DOSH, including the local node of federal IMIS (Integrated Management Information System), and the state's Web-based Consultation and Enforcement data systems in the WISHA Information Network (WIN). The IMIS/WIN core team is responsible for all functions necessary to keep the computerized information system running smoothly.

The state plan was staffed with 370 positions, which included 117 compliance officers and 47 consultants. The program covers approximately 2.96 million workers employed in over 219,184 establishments statewide. In FY 2010, Washington's federally-approved state OSHA program was funded at about \$40.4 million, \$7.8 million of which were federal funds.

Major New Issues

Due to the recession and state budget shortfalls, the Washington legislature enacted a bill in March of 2010 establishing a freeze on hiring, personal services contracts, equipment purchases and out-of-state travel/training. In addition, the legislature ordered temporary layoffs which resulted in DOSH closing its offices on July 12, 2010, and August 6, 2010, with only essential personnel on hand to respond to major incidents.

In November of 2010, the Governor issued an executive order suspending non-critical rulemaking, except for those necessary to receive or maintain federal funding. This had the effect of halting state-initiated rulemaking related to cranes, fall protection and penalties.

ASSESSMENT OF DOSH PERFORMANCE IN FISCAL YEAR 2010

A. ASSESSMENT OF DOSH PERFORMANCE IN MANDATED AND OTHER RELATED ACTIVITIES

As part of an approved state plan, each state must administer a program that meets its mandated responsibilities. The Occupational Safety and Health Act and regulations in 29 CFR 1902, 1953, 1954 and 1956 identify these core elements and responsibilities for an effective state occupational safety and health program. The DOSH program has the necessary authority and procedures in place to carry out those mandates and has adopted required federal program changes that were due during this monitoring period. The following is an assessment of Washington's performance under the mandated program areas. Monitoring data have come from grant assurances, statistical reports, case file reviews and interviews.

1. Enforcement

Complaints. Ensure that safety and health complaint processing is timely and effective, including notification of complainants and appropriateness of the state's responses.

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.

Recommendation 10-1: Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual.

Fatalities and Catastrophes. Ensure fatalities and catastrophes are investigated properly, including responding timely to incidents and making contact with the families of victims.

The state conducted timely investigation in 55 out of 56 (98.2%) fatality/catastrophe inspections. This is an improvement over last year's performance of 91%, when 52 out of 57 were inspected timely.

In the one instance, when the state did not initiate an investigation timely, the delay was due to the medical examiner (ME) initially reporting the cause of death as natural causes. Later the ME changed the cause of death to pending. When DOSH received this updated information, it immediately conducted an inspection.

Compliance Inspections. Ensure an effective program is in place allowing the conduct of unannounced enforcement inspections (both programmed and unprogrammed).

DOSH conducted 7,145 inspections during FY 2010. That exceeded DOSH's inspection goal by 145 inspections (2%).

The state established and met reasonable inspection goals for FY 2010. This is the second year in a row that the state has exceeded its inspection goals. The number of DOSH inspections in FY 2010 was the second highest number of inspections conducted by DOSH in the last five fiscal years. See table below.

Inspections	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
Goal	7,000	6,600	7,230	7,230	8,880	7,400
Conducted	7,145	7,654	5,674	6,139	6,990	7,529
Difference	145	1,054	(1,556)	(1,091)	(1,809)	129

Employee and Union Involvement. Ensure employees are allowed to participate in inspection activities.

During DOSH inspections, employees are given the opportunity to participate either through interviews or by having employee representatives accompany inspectors. Employees are also afforded the opportunity to privately express their views about the workplace away from the employer. In addition, inspection results are provided to employee representatives and complainants. Monitoring did not identify any cases where employees were not afforded the right to participate in the inspection process. The state met this requirement.

Lapse Time/Abatement of Serious Hazards. Ensure an effective program exists for timely issuance of citations and assurance of hazard abatement.

Citation Lapse Times – DOSH achieved this goal for both industrial hygiene and safety lapse times.

The following tables present DOSH's five-year performance history for both industrial hygiene and safety citation lapse times.

IH Lapse Times (Days)	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
Goal	58.7	59.9	60.2	60.0	60.6	65
Actual	55.5	55.3	70.6	74.6	78.6	66
Difference	-3.2	-4.6	+10.4	+14.6	+18.0	+1.0

Safety Lapse Times (Days)	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
Goal	45.5	45.6	47.3	45.7	46.3	48
Actual	32.2	30.5	42.3	52.4	57.4	41
Difference	-13.3	-15.1	-5.0	+6.7	+11.1	-7.0

Abatement of Serious Hazards – For FY 2010, the timely abatement of serious, willful and repeat violations was 95.2%, which exceeded DOSH's goal of 95%.

First-Instance Sanctions. Ensure serious violations cited are assessed penalties.

The state has written procedures for imposing first-instance sanctions for violations of standards. The average penalty assessed per serious violation in FY 2010 was \$642. That average is \$112 or 21% more than the corresponding average in FY 2009 and is the second highest average penalty in four out of the previous five years. The state's average penalty of \$642 is below the national average of \$1,360 by \$718 or 47%.

Average penalty assessed per serious violation	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
	\$642	\$530	\$673	\$498	\$429	\$421

DOSH submitted its concerns about and response to this issue in its FY 2009 Corrective Action Plan. Nationally, OSHA has established a working group to determine guidance to OSHA and state plans on the issue of penalties and meeting the requirement of "At Least As Effective."

Recordkeeping and Reporting. Ensure rules are in place requiring employer recordkeeping of workplace injuries and illness, and timely reporting of workplace fatalities and catastrophes.

DOSH's regulations for maintaining records of workplace injuries and illnesses are comparable to OSHA's. DOSH requires employers to report work-related hospitalizations of one or more employees, whereas OSHA requires the reporting of hospitalizations of three or more. The state has the same fatality reporting requirement as OSHA.

Denials of Entry. Ensure an effective mechanism is in place to obtain inspection warrants when denials of entry occur.

OSHA's Integrated Management Information System (IMIS) data for FY 2010 showed two instances of denial of entry where a warrant was not obtained by DOSH. In each of the two cases, the state's decision not to seek a warrant was appropriate.

In the first case, the employer refused entry because he felt that a recently fired employee was harassing him. Before seeking a warrant, the state reevaluated the complaint and decided that it would be more appropriate to handle it through its phone and fax complaint procedure.

The second case alleged that automobile painting was accomplished without the use of a spray booth or proper ventilation. It also alleged that there was no safety program, no medical exams and there were extreme health, safety and fire hazards. When the state attempted to inspect, the owner refused entry and the state did not pursue a warrant because the establishment did not have any employees.

Review Procedures. Ensure effective mechanisms are in place to provide employers the right of review of alleged violations, abatement periods, and proposed penalties, that employees or their representatives have an opportunity to participate in the review proceedings and provide for contest of abatement dates.

Washington's Administrative Rules and DOSH's Administrative Manual contain procedures that afford employers the right to administrative and judicial review of alleged violations, initial penalties and abatement periods. Those procedures also provide employees and their representatives the opportunity to participate in review proceedings and to contest citation abatement dates.

DOSH's reassumption process is similar to OSHA's informal conference process. In Washington state, post-contest data reflect the outcomes of the second level appeals at the Board of Industrial Insurance Appeals (BIIA). A lower percentage of DOSH's violations (13.6%) were vacated in FY 2010 in comparison to the federal percentage (21.9%). DOSH's post-contest penalty retention for FY 2010 was 66.3%, compared to 58.1% retention federally. In the area of post-contest violation reclassification, DOSH reclassified 2.0%, compared to OSHA's reclassification rate of 11.7%.

Public Employee Program. Ensure a representative share of safety and health enforcement inspections is conducted in the public sector.

DOSH conducted 3.5% of its inspections in the public sector. That is consistent with previous years and is satisfactory.

Inspections conducted in the public sector	FY 2010	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
	3.5%	3.3%	4.4%	3.8%	3.7%	4.8%

Information Management. Use of IMIS reports for program management; accuracy and integrity of data; timeliness of data entry and updates.

Although OSHA, Region X, does not routinely audit DOSH's performance with regard to information management, other methods are used to ensure the integrity of the data. For example, OSHA meets quarterly with representatives of DOSH to review program performance. Prior to such meetings, IMIS reports are run by the Bellevue Area Office for purposes of gauging the state's performance with respect to mandated activities. Likewise, the state updates its report on performance against the goals in its annual plan. In order for such reports to be accurate, the data need to be properly entered in a timely fashion; if any issues or concerns about data integrity arise, they are discussed at quarterly meetings in order to achieve resolution.

In addition to the above, the Seattle Regional Office monitors the IMIS monthly to ensure that the state plans in Region X enter OSHA-170 information for fatalities they investigate. Also, responses are prepared for ad hoc requests for clarification or correction of state data in the IMIS.

DOSH enters data into its WIN system. That data is then electronically transferred to the OSHA IMIS system. Reports run from that system are used by DOSH for much of its management information needs.

Imminent Danger. Ensure imminent danger situations are responded to promptly and appropriately.

DOSH received 36 imminent danger complaints/referrals in FY 2010. All were responded to within one day.

Bureau of Labor Statistics (BLS) Rates. Review state-specific rates to determine trends; compare to targeting and emphasis programs for correlation.

An overview of Washington’s private industry TCIR¹ and DART² rates for calendar years 2005 through 2009 (the most recent calendar year for which data were available), as well as for select industries, is provided in the table that follows. [Data source: www.bls.gov]

	CY 2005	CY 2006	CY 2007	CY 2008	CY 2009	% Change, 05-09	% Change, 07-09
Private Industry							
TCIR	6.1	6.6	6.1	5.6	5.1	-16%	-16%
DART	2.9	3.2	2.9	2.7	2.5	-14%	-14%
Construction, NAICS³ 23							
TCIR	11.4	12.0	9.6	9.0	8.2	-28%	-15%
DART	4.8	6.0	4.7	4.3	3.9	-19%	-17%
Manufacturing, NAICS 31-33							
TCIR	8.4	8.2	8.3	7.0	6.4	-24%	-23%
DART	4.4	4.4	4.5	3.8	3.6	-18%	-2%
State and local government							
TCIR	7.8	6.3	6.7	6.4	6.7	-14%	-0-%
DART	3.1	2.5	2.9	2.7	2.9	-6%	-0-%

2. Standards, Variances, and Plan Changes

Standards Adoption and Variance Actions. Ensure new and revised standards are adopted within required time frames, and variance applications are processed properly and decisions justified.

Standards – DOSH has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA. During this evaluation period, there were three final rules issued by OSHA. The state adopted the *Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards* and the *Safety Standards for Steel Erection – Technical Amendment*, within or close to the required time period.

¹ TCIR is the total case incident rate, which represents the number of recordable injuries and illnesses per 100 full-time workers, calculated as: (N/EH) x 200,000 where N = number of injuries and illnesses; EH = total hours worked by all employees during the calendar year; and 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year).

² DART is the days away from work, job transfer, or restriction rate, which represents the number of such cases per 100 full-time workers. Calculation of the DART rate is similar to that of TCIR.

³ NAICS is the North American Industry Classification System.

DOSH adopted construction crane rules in November 2008 that require certification of cranes and crane operators. These rules went into effect in January 2010. The state then began work on a second phase of rulemaking to address general crane use in construction, personnel lifting, and rigging. This second phase of rulemaking includes state changes that differ from the Federal rules and will require additional time to promulgate to allow stakeholder discussions and economic analysis. DOSH has requested and OSHA has granted an additional eight months for this process. The state plans to adopt their crane rules for construction by October 2011.

Variations – DOSH granted six permanent variances during this evaluation period, a decrease of eleven from the number of variances granted during the previous period. During the previous three years of reporting, DOSH granted an average of fourteen permanent variances a year. Fifteen interim variances were granted during this period which is six more than the number granted during the last period. During the previous three years of reporting, DOSH granted an average of eleven interim variances a year. Other variance actions included twenty one existing variances being revoked or withdrawn, nine variances were amended, two applications were denied and one temporary variance was granted.

The variance applications were handled properly and the decisions to grant the variances were justified.

Federal Program Changes (FPCs) and State-Initiated Changes (SICs). Ensure timely adoption of program changes.

Federal – DOSH timely acknowledged all four federal program changes that were issued by OSHA in FY 2010. DOSH was timely in providing final responses to all FY 2010 federal program changes for which a final response was due in the fiscal year.

State-initiated – DOSH timely submitted the only state-initiated change developed this period. The quality of this DOSH state-initiated change submission was satisfactory. This change was approved by the region and forwarded to the OSHA national office.

3. Voluntary Compliance

Voluntary Compliance. Ensure the existence and implementation of an appropriate program to encourage voluntary compliance by employers through consultation and intervention.

DOSH conducted a total of 2,733 consultation visits (both private and public sector visits) in FY 2010, which exceeded DOSH's goal of 2,600 visits.

OSHA, in conjunction with its stakeholders, developed a set of mandated activity measures or standards of acceptable performance for consultation programs. Quarterly

data relating to each of those standards are reported in the Mandated Activities Report for Consultation (MARC). The MARC and supplemental monitoring data are typically used to assess states' performance.

Private Sector – In FY 2010, 92% (2,197 of 2,445) of Washington's private sector initial consultation visits occurred at high-hazard establishments. This exceeds the MARC reference standard of 90%. All of Washington's initial consultation visits were to smaller businesses which OSHA defines as having 250 or fewer employees. This performance also exceeds the MARC reference standard of 90%. In all 2,197 initial visits, as well as in all but 13 of the 99 follow-up visits, DOSH's consultants conferred with employees. The reference standard for those two measures is 100%.

For the year, 98.7% (6,013 of 6,095) of the serious hazards identified by consultants were verified as corrected in a timely manner. For the purposes of this measure, timely verification is verification in 14 days or fewer from the latest correction due date for each visit. The MARC reference standard is 100%. DOSH's FY 2010 annual performance plan goal was 95% or better, so this performance exceeded the state's performance plan goal. One employer was referred to enforcement for failing to verify correction.

Public Sector – According to the MARC, there were 197 initial consultation visits in the public sector in FY 2010. Last year a recommendation was made to correct an error in the WIN reporting system that did not include public sector data in the IMIS. DOSH corrected the error. Evaluation of the public sector MARC data showed all the measures within or exceeding the MARC reference/standard with the exception of percent of initial visits in high-hazard establishments. There were 70% of the visits classified as high-hazard establishments, and the MARC standard is 90%. Public employers typically do not have high-hazard establishments, but DOSH still wanted to provide consultation services to the public sector; therefore, a 20% gap in this measure is acceptable.

4. Complaints About State Program Administration

Complaints About State Program Administration (CASPA's). *Ensure timely and thorough responses to CASPA allegations, investigative findings and recommendations for program improvement are provided by the state.*

Four CASPA's were filed in FY 2010. One CASPA complainant alleged that DOSH had failed to correctly investigate and evaluate his safety complaints. DOSH's compliance inspection had in fact thoroughly addressed the complaint issues. That CASPA was not valid. The second CASPA alleged that DOSH had notified the employer in advance of the DOSH inspection. DOSH's initial response detailed its actions in addressing that safety and health complaint. That CASPA was not valid. The third and fourth CASPA's both objected to DOSH's inspection findings. Neither CASPA was valid.

5. Discrimination Program

Discrimination Program. Ensure the state provides necessary and appropriate protection against employee discharge or discrimination.

Section 49.17.160 of the Washington Industrial Safety and Health Act provides for discrimination protection equivalent to that provided by federal OSHA.

The following table is a summary of discrimination activity during FY 2010:

Disposition	Totals
Total cases from FY 2010	117
Cases completed FY 2010	96
Cases completed timely	116
Overage cases	3
~ Withdrawn	25
~ Dismissed	36
~ Merit	45
~Settled	29
~Settled Other	0
~ Reinstatement (if any)	1
~ Litigated	3
Investigators on staff	5

DOSH received 26 more complaints than in FY 2009 and completed 19 more investigations. DOSH's timeliness of completed cases was 99%, considerably higher than the state plan rate of 72%. DOSH's merit rate was almost 39%, which is considerably higher than the overall state plan rate of 17%.

In August of 2010, OSHA conducted an on-site audit of DOSH's discrimination program. Twenty-two case files and seven complaints that were screened out were reviewed by OSHA. The audit also examined one of the eight complaints that OSHA referred to DOSH for jurisdictional reasons. Additionally, other records were reviewed to determine whether the state abided by the policies and procedures established in its Whistleblower Investigations Manual. OSHA's complete audit report was transmitted to the state in December 2010. The audit report is summarized below with all recommendations and suggestions for improvement.

DOSH's discrimination case files are well organized and maintained, and with few exceptions, its investigators exhibit a written knowledge of properly analyzing discrimination complaints.

Tracking Screened Complaints on IMIS – Recently, OSHA added a function on the IMIS that allows screened whistleblower complaints to be tracked on IMIS. This feature also provides a written report. The screened complaints feature is useful in that the agency can quickly track how many cases were screened, screened out and why.

Settlement Agreements – 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 should ensure that safety and health issues are excluded.

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 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 are “make whole” settlements. 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 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.

Recommendation 10-2: Ensure that 11(c) 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 staff on the technicalities of settling discrimination complaints.**

6. Other Program Elements

Personnel-Benchmark Positions Authorized and Filled. Track the state’s authorized field safety and health enforcement positions at or above benchmark levels and actual safety and health enforcement positions filled.

As of September 30, on-board staffing was at 90% of the authorized enforcement positions and at 92% of consultation positions. The details are as follows:

Authorized safety compliance program positions are above the prescribed enforcement staffing benchmark. Washington’s safety enforcement benchmark is 55 with 83 positions authorized and 71 of those filled. For health enforcement, the benchmark is 74 with 35 authorized and filled.

The state’s 23(g) consultation program is staffed at 44 consultants – 28 safety and 16 health professionals. These figures are below the number of positions allocated (31 for safety and 17 for health).

Laboratory. Ensure the state’s laboratory is accredited and participates in a quality assurance program.

DOSH operates its own laboratory for analyzing industrial hygiene samples. The laboratory is accredited by the American Industrial Hygiene Association and is a participant in the Proficiency Analytical Testing (PAT) Program. The laboratory was rated as proficient for all contaminant categories of the PAT program and passed all but one field of testing for Rounds 175 through 178 covering the past year. The state has also been rated proficient for the Bulk Asbestos (BAPAT) program and has passed the previous three rounds of the program (Rounds A79-209, A78-109, and A77-408).

Summary Assessment of DOSH’s Performance of Mandated and Related Activities

DOSH’s performance with respect to activities that are mandated by the Occupational Safety and Health Act or its implementing policies and regulations continues to be acceptable. With respect to DOSH’s whistleblower program, a number of recommendations for improvement are in this report. Additionally, the region recommends that DOSH follow its timeliness criterion for phone/fax complaint processing.

B. FISCAL YEAR 2010 ASSESSMENT OF DOSH PERFORMANCE IN ACHIEVING ANNUAL GOALS AND STRATEGIC GOALS

Introduction. DOSH's five-year strategic plan covers the period of FY 2006 through FY 2010. Each year DOSH develops annual performance plans which support the achievement of its strategic goals, and submits the plans to OSHA for review and approval. DOSH developed and submitted its FY 2010 annual performance plan in support of its strategic plan as part of its application for federal funds.

The following is OSHA's assessment of DOSH's performance against its FY 2010 annual goals, and the state's progress in achieving the three broad goals in its 2006-2010 Strategic Plan. Washington's more detailed report on its accomplishments with respect to its 2010 Annual Performance Plan goals is attached as Appendix F, the State OSHA Annual Report (SOAR).

Strategic Goal 1. Improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities.

Five-Year Performance Goal 1-A. By 2010, reduce deaths from work-related injuries to no more than 3.0 per 100,000 full-time workers.

2010 Annual Performance Goal 1-1. Reduce deaths from work-related injuries in support of the 2010 goal of no more than 3.0 deaths per 100,000 full-time workers.

Result – In FY 2010, the average number of fatalities in Washington state was 2.6 deaths per 100,000 full-time workers. Thus DOSH exceeded its 2010 goal of no more than 3.0 deaths per 100,000 full-time workers. This calculation is based on OSHA 170 and other data because BLS fatality data for calendar year 2010 is not yet available.

OSHA Assessment – This goal was exceeded.

Five-Year Performance Goal 1-B. By 2010, reduce the rate of workplace injuries and illnesses in Washington workplaces by 20%.

2010 Annual Performance Goal 1-2. Reduce workplace injuries and illnesses by at least 10% as measured by the average time loss claims rate for employers with WISHA enforcement or consultation visits.

Result – The data for the study conducted during FY 2010 was not sufficient to statistically demonstrate that WISHA enforcement or consultation visits resulted in a decrease in workplace injuries and illnesses.

OSHA Assessment – We agree that the data used to evaluate this goal was not statistically significant for the time period of the annual report. In most of the previous

years since this study has been conducted, DOSH demonstrated statistically significant results for this performance goal. This year's results appear to be an anomaly.

Five-Year Performance Goal 1-B. By 2010, reduce the rate of workplace injuries and illnesses in Washington workplaces by 20%.

2010 Annual Performance Goal 1-3. Conduct at least 2,260 on-site consultations. To help ensure this goal is met, provide weekly tracking reports to consultation supervisors and managers.

Result – DOSH conducted 2,733 on-site consultations during FY 2010.

OSHA Assessment – The goal was exceeded by 473 consultation visits.

Five-Year Performance Goal 1-B. By 2010, reduce the rate of workplace injuries and illnesses in Washington workplaces by 20%.

2010 Annual Performance Goal 1-4. Conduct at least 7,000 compliance inspections. To help ensure this goal is met, provide weekly tracking reports to compliance supervisors and managers.

Result – DOSH conducted 7,145 inspections during FY 2010. The number exceeded the inspection goal by two percent or by 145 inspections.

OSHA Assessment – This goal was exceeded.

Five-Year Performance Goal 1-C. Develop or continue at least two industry and hazard-based initiatives each year to provide additional attention to areas contributing to high fatality or high injury and illness rates, or emerging hazards.

2010 Annual Performance Goal 1-5. Implement construction crane safety rules effective January 1, 2010, and continue to work on updating the general crane safety rules.

Result – Crane safety rules have been adopted. These rules cover certification of crane inspectors and operators and prescribe construction crane safety requirements for employers. There will also be a Phase 2 to follow which will develop and implement examination and certification requirements for mobile, tower, articulating, and overhead crane certifiers.

OSHA Assessment – The goal was met.

Summary of Progress toward Strategic Goal 1 – Improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities.

DOSH met its first strategic goal to improve workplace safety and health for Washington workers by reducing hazards, exposures, injuries, illnesses and fatalities. Almost every annual performance goal for FY 2010 was met or exceeded this year. With respect to goal 1-2, we agree with DOSH's observation that "The data for the study conducted during FY 2010 was not sufficient to statistically demonstrate that WISHA enforcement or consultation visits resulted in a decrease in workplace injuries and illnesses."

Strategic Goal 2. Promote values which foster workplace safety through education, consultation, and employer assistance.

Five-Year Performance Goal 2-A. Greatly expand safety and health assistance tools for employers as evidenced by a 50% increase in on-line or downloadable employer assistance tools.

2010 Annual Performance Goal 2.1. Increase the number of safety outreach activities and materials in Spanish.

Result – DOSH increased the number of safety outreach activities and materials in Spanish from 218 in FY 2009 to 271 in FY 2010.

OSHA Assessment – This goal was exceeded.

Five-Year Performance Goal 2-B. Provide significant incentives and resources to foster workplace safety and health by developing and implementing a program to encourage and fund safety and health investment projects.

2010 Annual Performance Goal 2-2. Explore options for tracking longer term outcomes of outreach activities.

Result – DOSH dropped this goal due to development of new strategies and DOSH's business plan.

OSHA Assessment – This action was discussed in a quarterly meeting. The region accepted the state's rationale.

Summary of Progress toward Strategic Goal 2 – DOSH met its second strategic goal to "Promote values which foster workplace safety through education, consultation, and employer assistance." DOSH's numbers of inspections and consultations along with its mixture of outreach and training have indeed promoted key safety and health values.

Strategic Goal 3. Maximize DOSH's effectiveness and efficiency by strengthening our capabilities and infrastructure.

Five-Year Performance Goal 3-A. Assure timely response in critical program areas defined in annual performance plan targets, including issuing results of on-site interventions, assuring correction of hazards, and investigating complaints of workplace safety and health related discrimination.

2010 Annual Performance Goal 3-1. Ensure that at least 95% of the time, consultants verify the correction of serious hazards within 14 days of the abatement date.

Result – DOSH verified that 6,649 of 6,816 (97.5%) serious hazards identified were corrected within 14 days of the abatement date.

OSHA Assessment – The goal was met.

2010 Annual Performance Goal 3-2. Ensure that at least 95% of the time, inspectors verify the correction of serious violations within 14 days of the abatement date.

Result – DOSH verified that 3,334 of 3,502 (95.2%) serious hazards identified were corrected within 14 days of the abatement date.

OSHA Assessment – This goal was met.

2010 Annual Performance Goal 3-3. Maintain hygiene citation lapse time at or below the current national average of 58.7 calendar days (for citations with violations, from opening conference to issuance date).

Result – Hygiene lapse time for FY 2010 was 55.5 days, which was 3.2 days better than the goal of 58.7.

OSHA Assessment – This goal was exceeded.

2010 Annual Performance Goal 3-4. Maintain safety citation lapse time at or below the current national average of 45.4 calendar days (for citations with violations, from opening conference to issuance date).

Result – Safety lapse time for FY 2010 was 32.2 days, which is 13.3 days better than the goal of 45.5.

OSHA Assessment – This goal was exceeded.

Goal 3-5 Ensure that only work-related fatality and catastrophe investigations are counted as fatality/catastrophe in OSHA and DOSH systems.

Result – The state is ready to implement a change to the WIN system so that these cases will automatically be identified and not transferred to the OSHA database. The state has delayed implementing the automated program until the OSHA Information System (OIS) is fully operational. The state has been reviewing the data manually and screening out any non-occupational fatalities.

OSHA Assessment – This goal was met.

2010 Annual Performance Goal 3-6. Develop a tracking database that will be used to targeting exclusions for VPP and START companies.

Result – Tracking is currently done manually, but will be processed electronically following the implementation of the new database, which will take place during FY 2011. Requirements documentation has been completed, and the database will be implemented once OIS is finalized.

OSHA Assessment – The goal has essentially been met.

Five-Year Performance Goal 3-C. Improve DOSH's ability to analyze and measure delivery and outcome of services as evidenced by improved staff capabilities, data systems, and performance management reports.

2010 Annual Performance Goal 3-7. Complete and return all ATS e-mail notices for federal standards and program changes by the specified due date.

Result – DOSH is now quite responsive to its responsibilities with the ATS system.

OSHA Assessment – This goal was met.

Summary of Progress toward Strategic Goal 3 – Maximize DOSH's effectiveness and efficiency by strengthening our capabilities and infrastructure.

DOSH met its third strategic goal to “Maximize DOSH’s effectiveness and efficiency by strengthening our capabilities and infrastructure.” DOSH was very successful in meeting each of its FY 2010 performance goals in such key areas as verification of timely abatement of serious hazards and improving the average lapse times for issuing both safety and health violations.

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	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.	New

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	settlement agreements provide a “fair and equitable” remedy rather than a “make whole” remedy. This is an important distinction because the WISH Act requires 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.	f. DOSH should train its investigators and discrimination program 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.

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 #
10-5	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. Only one of the 12 case files showed that the employer's logs were checked.	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.
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.	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.

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 #					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.

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
09-3	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 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.	We understand the importance of appropriately using the penalty calculations formula and guidance provided by applicable penalty policies. We will continue to evaluate 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.	WIN system release bulletin with user instructions	Continued.
09-4	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.	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.	Create and use a file documentation checklist. Policy directive or Manual change	Continued.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-5	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.	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.	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 CSHOs 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.	Create and use a file documentation checklist. Policy directive or Manual change	Continued.
09-6	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.	We will prepare and implement the appropriate changes to the DOSH compliance manual.	Manual change documents	Continued.
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.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
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 segment on this issue.	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.
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.	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	Complete form 33s.	Completed.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			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.		
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 OSHAs 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	Written requests are required.	Completed.

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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 "unemployment compensation benefits may never be considered as back pay offset." (Deleted)	DOSH should not deduct unemployment compensation from settlement monies in its settlement agreements. (Deleted)	for withdrawal indicated that Complainants were pursuing a private right of action. 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 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.		Completed.
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	Case files reviewed for coverage.	Completed.

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			adhering to this recommendation.		

Appendix C
Washington State Plan
FY 2010 Enforcement Activity

	WA	State Plan Total	Federal OSHA
Total Inspections	7,216	57,124	40,993
Safety	5,876	45,023	34,337
% Safety	81%	79%	84%
Health	1,340	12,101	6,656
% Health	19%	21%	16%
Construction	2,472	22,993	24,430
% Construction	34%	40%	60%
Public Sector	256	8,031	N/A
% Public Sector	4%	14%	N/A
Programmed	4,705	35,085	24,759
% Programmed	65%	61%	60%
Complaint	228	8,986	8,027
% Complaint	3%	16%	20%
Accident	50	2,967	830
Insp w/ Viols Cited	4,711	34,109	29,136
% Insp w/ Viols Cited (NIC)	65%	60%	71%
% NIC w/ Serious Violations	48.7%	62.3%	88.2%
Total Violations	15,219	120,417	96,742
Serious	4,973	52,593	74,885
% Serious	33%	44%	77%
Willful	8	278	1,519
Repeat	438	2,054	2,758
Serious/Willful/Repeat	5,419	54,925	79,162
% S/W/R	38%	46%	82%
Failure to Abate	51	460	334
Other than Serious	9,749	65,031	17,244
% Other	64%	54%	18%
Avg # Violations/ Initial Inspection	3.1	3.4	3.2
Total Penalties	\$3,891,505	\$ 72,233,480	\$ 183,594,060
Avg Current Penalty / Serious Violation	\$ 612.40	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 590.80	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	45.3%	47.7%	40.9%
% Insp w/ Contested Viols	16.8%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	12.1	16.2	18.6
Avg Case Hrs/Insp- Health	26.2	26.1	33
Lapse Days Insp to Citation Issued- Safety	24.5	33.6	37.9
Lapse Days Insp to Citation Issued- Health	41.5	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	143	1,715	2,510

Appendix D State Activity Mandated Measures (SAMM)

NOV 12, 2010

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U. S. D E P A R T M E N T O F L A B O R
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: WASHINGTON

RID: 1055300

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate for each State	2024	167	Negotiated fixed number
Complaint Inspections	8.54 237	9.27 18	
2. Average number of days to initiate for each State	278	100	Negotiated fixed number
Complaint Investigations	7.72 36	16.66 6	
3. Percent of Complaints where Complainants were notified on time	233 97.49 239	9 100.00 9	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	36 100.00 36	0 0 0	100%
5. Number of Denials where entry not obtained	2	0	0
6. Percent of S/W/R Violations verified			
Private	3241 95.10 3408	93 84.55 110	100%
Public	93 98.94 94	0 0 0	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety Data (1 year)	126625 32.24	14802 37.85	2624646 47.3 National
Health Data (1 year)	3927 54095 55.42	391 5450 62.64	55472 750805 61.9 National
	976	87	12129

*WA 11.12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D State Activity Mandated Measures (SAMM)

NOV 12, 2010

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U. S. D E P A R T M E N T O F L A B O R
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: WASHINGTON

RID: 1055300

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
Safety	1609	168	93201
Data (3 years)	37.65	53.67	58.4 National
Health	4274	313	159705
Data (3 years)	223	10	10916
	45.14	38.46	50.9 National
Other	494	26	21459
9. Average Violations per Inspection with Vioations			
S/W/R	5582	679	428293
Data (3 years)	1.13	1.42	2.1 National
Other	4911	478	201768
Data (3 years)	9768	955	240266
	1.98	1.99	1.2 National
10. Average Initial Penalty per Serious Violation (Private Sector Only)			
Data (3 years)	4911	478	201768
	3173734	450475	509912690
	642.45	808.75	1360.4 National
11. Percent of Total Inspections in Public Sector this State (3 years)	4940	557	374823
	256	16	750
	3.55	2.78	3.7 Data for
12. Average lapse time from receipt of Contest to first level decision			
Data (3 years)	7216	575	20410
	79684	1567	3826802
	113.34	104.46	217.8 National
13. Percent of 11c Investigations Completed within 90 days			
	703	15	17571
	94	15	100%
	97.92	100.00	
	96	15	
14. Percent of 11c Complaints that are Meritorious			
Data (3 years)	36	10	1461
	37.50	66.67	21.2 National
15. Percent of Meritorious 11c	96	15	6902
	32	9	1256

Appendix D State Activity Mandated Measures (SAMM)

Complaints that are Settled Data (3 years)		88.89			90.00		86.0	National
		36			10		1461	
*WA 11.12 ANALYSIS AND REVISION							**PRELIMINARY DATA SUBJECT TO	

Appendix E State Indicator Report (SIR)

Q4 SIR53 101007 093316 PROBLEMS - CALL Yvonne Goodhall 202 693-1734

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U. S. D E P A R T M E N T O F L A B O R

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		INTERIM STATE INDICATOR REPORT (SIR)				STATE = WASHINGTON			
CURRENT MONTH = SEPTEMBER 2010				----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS----	
		FED	STATE	FED	STATE	FED	STATE	FED	STATE
PERFORMANCE MEASURE									
C. ENFORCEMENT (PRIVATE SECTOR)									
PROGRAMMED INSPECTIONS (%)									
1.			920	11403	1938	21912	4110	43788	8795
	SAFETY	62.4	69.2	63.8	71.3	65.1	72.7	65.9	75.1
			1329	17860	2717	33647	5655	66434	11714
A.			109	1094	217	2232	466	4202	1072
	HEALTH	30.6	36.7	33.7	36.0	35.0	37.7	35.1	41.4
			297	3249	602	6378	1236	11960	2587
B. PROGRAMMED INSPECTIONS WITH									
2. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION									
			651	9421	1419	17649	3030	34350	6411
	SAFETY	72.7	72.7	71.2	70.2	69.1	70.1	67.1	70.1
			896	13232	2020	25525	4320	51214	9141
----- 3 MONTHS-----									
A.			82	880	176	1756	397	3238	877
	HEALTH	57.8	83.7	53.9	79.3	55.4	78.6	53.4	77.0
			98	1632	222	3168	505	6066	1139
B. SERIOUS VIOLATIONS (%)									
5298			784	33678	1603	62211	3344	117447	6908
8493	SAFETY	81.6	32.9	81.5	31.7	81.0	31.3	80.1	32.4
			2380	41304	5059	76839	10668	146593	21302
488			309	6183	618	11743	1446	21554	2697
A. 1597	HEALTH	69.6	31.4	70.5	32.2	70.2	35.7	69.6	33.7
			984	8776	1921	16725	4046	30947	8014

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ABATEMENT PERIOD FOR VIOLS									
4.			101	6515	241	12732	523	25040	990
	SAFETY PERCENT >30 DAYS	15.0	11.2	16.3	13.2	17.2	14.0	17.7	12.9
			903	39855	1827	74010	3741	141219	7703
A.	HEALTH PERCENT >60 DAYS	5.6	1.7	7.3	3.7	8.5	6.1	9.6	9.9
			345	8681	684	16580	1601	30862	3048

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U. S. D E P A R T M E N T O F L A B O R

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INTERIM STATE INDICATOR REPORT (SIR)									
STATE = WASHINGTON									
CURRENT MONTH = SEPTEMBER 2010									
----- 6 MONTHS-----									
-----12 MONTHS-----									
-----24 MONTHS---									
--									
		FED	STATE	FED	STATE	FED	STATE	FED	STATE
PERFORMANCE MEASURE									
ENFORCEMENT (PRIVATE SECTOR)									
C.									
AVERAGE PENALTY									
5.	SAFETY								
3054									
20398			5200	1106734	9500	2038916	10800	3500911	16850
		837.5	110.6	803.1	108.0	894.3	106.9	967.6	119.5
A.			47	1378	88	2280	101	3618	141
255									
4548	HEALTH								
			1400	434447	3450	732953	5450	1039303	18200
		817.0	127.3	801.6	138.0	835.8	155.7	842.2	298.4
	OTHER-THAN-SERIOUS		11	542	25	877	35	1234	61
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION									
INSPECTIONS PER 100 HOURS									
6.									
----- 3 MONTHS-----									
	SAFETY	5.8	25.4	5.7	10.6	5.5	8.3	5.5	7.0
	OTHER-THAN-SERIOUS		56	3593	273	7112	730	13925	1785
			326	3844	673	7547	1356	14276	2813
A.	HEALTH	2.1	11.6	2.0	4.9	1.9	3.9	1.8	3.3
			28	1940	136	3898	346	8070	852

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		0	2474	0	5103	0	10425	
	3.7	.0	4.3	.0	4.7	.0	5.0	2
7. VIOLATIONS VACATED %		2956	57441	5891	108213	12256	207527	24686
		0	1978	0	4276	0	9196	
	2.8	.0	3.4	.0	4.0	.0	4.4	0
8. VIOLATIONS RECLASSIFIED %		2956	57441	5891	108213	12256	207527	24686
		443377	30073309	895877	57457651	1615382	111052615	3268184
	64.5	101.0	63.9	103.4	63.0	101.9	62.8	100.9
9. PENALTY RETENTION %		439057	47032897	866607	91194322	1584887	176868726	3237499

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Appendix E State Indicator Report (SIR)

S. D E P A R T M E N T O F L A B O R

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2010	INTERIM STATE INDICATOR REPORT				STATE = WASHINGTON			
CURRENT MONTH = SEPTEMBER			----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
PERFORMANCE MEASURE								
D. ENFORCEMENT (PUBLIC SECTOR)								
PROGRAMMED INSPECTIONS %								
1.		33	1938	52	4110	104	8795	222
SAFETY	69.2	71.7	71.3	61.2	72.7	56.5	75.1	59.8
		46	2717	85	5655	184	11714	371
A.		5	217	7	466	8	1072	22
HEALTH	36.7	25.0	36.0	17.1	37.7	11.4	41.4	16.7
		20	602	41	1236	70	2587	132
B.								
U.	SERIOUS VIOLATIONS (%)							
2.		18	1603	50	3344	86	6908	178
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION SAFETY	32.9	46.2	31.7	50.0	31.3	43.7	32.4	44.7
		39	5059	100	10668	197	21302	398
----- 3 MONTHS-----								
A.		38	618	50	1446	98	2697	161
HEALTH	31.4	62.3	32.2	52.6	35.7	51.6	33.7	54.8
		61	1921	95	4046	190	8014	294
B.								

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U. S. D E P A R T M E N T O F L A B O R

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2010	COMPUTERIZED STATE PLAN ACTIVITY MEASURES				STATE = WASHINGTON			
CURRENT MONTH = SEPTEMBER			----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
PERFORMANCE MEASURE								
E. REVIEW PROCEDURES		119	1134	196	2052	467	3827	887
	22.5	13.0	23.2	11.6	21.9	13.6	23.0	13.2
		917	4888	1695	9366	3445	16668	6701
1. VIOLATIONS VACATED %		15	585	26	1100	69	2217	157
	11.3	1.6	12.0	1.5	11.7	2.0	13.3	2.3
		917	4888	1695	9366	3445	16668	6701
2. VIOLATIONS RECLASSIFIED %		333216	7526155	554902	12856359	1094854	23378285	2357105
	65.3	66.5	62.3	68.1	58.1	66.3	58.4	67.3
		501162	12074308	815172	22143463	1650127	40052611	3504529
3. PENALTY RETENTION %								
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION								

----- 3 MONTHS-----

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Appendix F
State OSHA Annual Report (SOAR)

(Available separately)