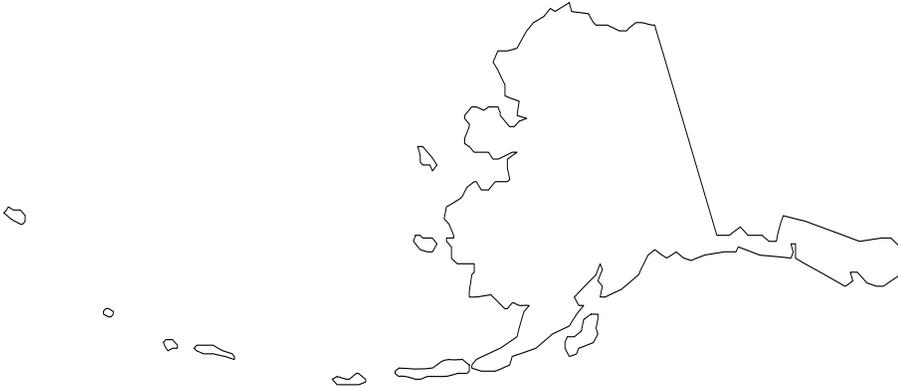


# State of Alaska

## Department of Labor and Workforce Development Labor Standards and Safety Division - Alaska Occupational Safety and Health



### *Enhanced Federal Annual Monitoring and Evaluation (FAME) Report on Alaska's Occupational Safety and Health (AKOSH) Program*

FY 2011 Report Period  
October 1, 2010, through September 30, 2011

*Plan Approval: July 31, 1973*  
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Region 10

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## **I. Executive Summary**

The state of Alaska, under an agreement with OSHA, operates an occupational safety and health program through its Department of Labor and Workforce Development, Labor Standards and Safety Division, Occupational Safety and Health (AKOSH). This report evaluates AKOSH's performance during FY 2011 in activities mandated by OSHA, and assesses the state's achievement of its annual performance plan goals as well as its progress toward the goals in its five-year strategic plan.

Overall, AKOSH met or exceeded the majority of its FY 2011 performance plan goals and fulfilled its obligations with regard to activities mandated by OSHA. Where the need for program improvement was identified, recommendations are made herein for corrective actions. One of the more significant challenges which AKOSH faced in FY 2011 was the achievement of its inspection goal due to the loss of qualified staff. Unlike other parts of the United States where the economy has struggled, favorable economic conditions in Alaska made working for the private sector more attractive than working for the state. During FY 2011, AKOSH lost 14 employees, representing a 60% turnover in enforcement and consultation personnel. These negative impacts are likely to carry over into FY 2012.

### **A. Summary of the Report**

The purpose of this Federal Annual Monitoring and Evaluation (FAME) report is to assess AKOSH's FY 2011 activities and to gauge the state's progress toward resolving recommendations from the FY 2010 FAME. As part of this evaluation, OSHA reviewed AKOSH's fatality investigation files as well as its enforcement files and whistleblower files to determine whether proper procedures were being followed.

The positive findings in this report include AKOSH's performance with regard to certain enforcement-related mandated activities, such as obtaining compulsory process in denials of entry and responding timely to complaints and imminent dangers. Similarly, AKOSH's performance in standards adoptions, federal program changes, formal appeals and voluntary compliance was satisfactory.

OSHA's FY 2010 FAME report on AKOSH contained a total of 17 recommendations, for which corrective actions by the state were partially successful. This FAME report contains a total of 12 findings and recommendations, 8 of which are repeated from the last reporting period. OSHA identified the need for AKOSH to take remedial actions in several areas, including aspects of its whistleblower program. Additionally, OSHA found that AKOSH did not meet its inspection goals for the fifth consecutive year; took longer to issue citations; and did not meet case file documentation requirements for violation classification and severity assessment. Overall, AKOSH is striving to improve program performance and some improvements have been noted. OSHA will continue to monitor the repeated issues throughout FY 2012.

## **B. State Plan Introduction**

AKOSH, 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 Alaska state plan was approved July 31, 1973, and its developmental period under Section 18(e) of the OSH Act ended October 1, 1976. On September 9, 1977, OSHA certified that the state had completed all developmental steps as specified in its plan, and granted AKOSH final state plan approval on September 26, 1984.

During FY 2011, the head of Alaska's Department of Labor and Workforce Development was Mr. Clark Bishop, the Commissioner of Labor, who served as the state plan designee. On March 24, 2012 Mr. Bishop resigned. Deputy Commissioner David Stone has since been appointed Acting Commissioner. The director of the Labor Standards and Safety Division, Mr. Grey Mitchell, is appointed by the Commissioner and manages the Occupational Safety and Health Section. The day-to-day administration of AKOSH's program is delegated to a Chief of Enforcement and a Chief of Consultation and Training. The two AKOSH chiefs share program management and supervisory duties and oversee two main offices located in Anchorage and Juneau, as well as smaller offices in Fairbanks and Ketchikan.

AKOSH exercises jurisdiction over all private sector employers *except* in Denali National Park; on the Metlakatla Indian Reservation; in maritime industries; in federal government-owned, contractor-operated (GOCO) Native Health Care Facilities; and on select military installations. The state also has regulatory authority in state and local government workplaces. OSHA covers all excepted employers noted above, as well as federal agencies.

There are relatively few differences between AKOSH's standards and those of OSHA. AKOSH has its own regulations for Logging and Oil and Gas Operations. The state also has a regulatory requirement that employers report incidents which result in one or more employees being hospitalized; OSHA requires employers to report incidents where three or more employees are hospitalized.

The state plan was staffed with 11.5 compliance officers (7 safety, 4.5 health) and 6 consultants. The program covers approximately 320,265 workers employed in roughly 22,000 establishments statewide. In FY 2011, AKOSH's federally-approved state OSHA program was funded at \$3,517,896, of which \$1,501,924 were federal funds.

Alaska administers a combined on-site consultation program under 21(d) and 23(g) funding. This type of combined program is unique to Alaska. AKOSH's 6 consultants are federally-funded. These consultants provide consultation to public employers.

### **C. Data and Methodology**

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

- OSHA's analysis and monitoring of the FY 2010 AKOSH Corrective Action Plan which provides the state's status and response to the FY 2010 FAME (Appendix B).
- Other statistical reports (INSP & ENFC) comparing state performance to federal performance (Appendix C).
- State Activity Mandated Measures (SAMM) report data (Appendix D).
- State Information Report (SIR) data (Appendix E).
- The FY 2011 State OSHA Annual Report (SOAR) prepared by Alaska, which contains details of the state's achievements with respect to its annual goals (Appendix F).
- Quarterly monitoring meetings between OSHA and the state.
- Case file reviews of 25 inspection files (consisting of 20 complaints/referrals and 5 fatalities) and 10 whistleblower files.
- Interviews with the Chief of Enforcement, Program Analyst, and compliance staff.

OSHA reviewed 25 of AKOSH's enforcement case files and 10 whistleblower case files to assess the quality of documentation, violation classification, penalty calculations, abatement verification and other factors. This assessment resulted in findings and recommendations which are discussed in the body of this report.

In addition, the views and opinions of stakeholders were taken into consideration in preparing this report. Information on the adequacy of state administration was received from employers, OSHA's alliance partners, professional safety organizations, and organized labor groups. Stakeholders included the International Longshore and Warehouse Union, Crowley Petroleum, American Society of Safety Engineers, Chevron Corporation, Arctic Slope Regional Corporation, Peak Oilfield Services, American Marine Corporation, Pile Drivers and Divers Local 2520, and United Steelworkers of America.

### **D. Findings and Recommendations**

This section summarizes OSHA's findings and recommendations for the evaluation period of FY 2011. Details are further discussed in the body of the report. Findings and recommendations denoted as "continued" are those which had been identified in the previous FY 2010 FAME report and were identified as repeat findings in FY 2011.

Finding 11-1(Continued 10-2): The state did not meet its inspection goal for the fifth consecutive year. AKOSH conducted 311 inspections during FY 2011 which was 38% short of its goal of 505 inspections. This also represented a decrease of 17% in comparison to the 375 inspections AKOSH conducted in FY 2010.

**Recommendation 11-1 (Continued 10-2): Ensure appropriate inspection goals are set based on realistic expectations in consideration of current resources, abilities and training status of compliance staff, and properly allocated in order to achieve goals.**

Finding 11-2 (Continued 10-10): During FY 2011, AKOSH's citation lapse times were 102.2 days for safety inspections and 108.6 for health. Compared to FY 2010, this represents significant increases in the safety and health lapse times. These lapse times compare unfavorably to the averages for the state plans as a whole which were 51.9 and 64.8 days for safety and health, respectively.

**Recommendation 11-2 (Continued 10-10): Reduce citation issuance lapse times.**

Finding 11-3 (Continued 10-8): Health sampling was not conducted where there were indications of workplace health hazards and potential employee exposures.

**Recommendation 11-3 (Continued 10-8): Ensure that health violations conform to policy on documentation of violations. Conduct health sampling to confirm violations of health standards.**

Finding 11-4 (Continued 10-3): Documentation of employer knowledge was deficient because AKOSH's compliance officers relied, in most cases, on the term "reasonable diligence" to establish that the employer knew the hazardous condition existed. In every instance examined by OSHA, there was sufficient evidence to develop knowledge through demonstrated actions on the part of the employer.

**Recommendation 11-4 (Continued 10-3): Factually document employer knowledge in case files with as much specificity as feasible.**

Finding 11-5 (Continued 10-4): OSHA determined that in 10 of the 25 reviewed case files, there were violations that were classified as "other than serious," and missed violations where information in the case file indicated the hazard should have been classified as "serious" or "repeat." Examples of hazards identified in the case files were chemical exposures where the hazard was listed as burns or asbestosis, and amputation hazards.

**Recommendation 11-5 (Continued 10-4): Review case files and classify conditions appropriately as "serious," "willful," "repeat," or "other than serious" based on the hazard and in accordance with the FOM.**

Finding 11-6 (Continued 10-5): Severity and probability were consistently not completed for "other-than-serious" violations in a majority of the reviewed cases.

**Recommendation 11-6 (Continued 10-5): Require complete documentation of probability and severity on the OSHA 1-B to include "other than serious" and grouped item violations.**

Finding 11-7 (Continued 10-7): The alleged violation description (AVD) for numerous citations listed the hazards on the AVD as “safety hazards” or “health hazards.” The appropriate terminology should reflect the direct hazard such as “burns,” “fire hazards,” or “amputations” as the case involves. In addition, the AVDs in several case files did not include measurements of fall hazards or voltage of electrical hazards where the information was readily available in the case file.

**Recommendation 11-7 (Continued 10-7): Document measurements if appropriate and accurately describe the safety or health hazard in the alleged violation description.**

Finding 11-8 (Continued 10-6): Although abatement verification is documented as being completed appropriately in case files, AKOSH did not timely enter the data for hazard abatement verification into IMIS.

**Recommendation 11-8 (Continued 10-6): Ensure that citation abatement verification in the IMIS is completed and updated in a timely manner.**

Finding 11-9: The closure dates for several whistleblower cases were noted as the date the Final Investigative Report was signed.

**Recommendation 11-9: Ensure the date of the determination letter is used as the closure date for the whistleblower case, and not the date the FIR is signed.**

Finding 11-10: There was no indication or documentation in whistleblower case files that complainants were notified in writing when the complaint is screened out.

**Recommendation 11-10: Ensure that administrative closure letters are sent to complainants when the complaint is screened out.**

Finding 11-11: When a whistleblower referral to OSHA was considered appropriate, AKOSH verbally advised the complainant to contact OSHA without OSHA’s knowledge of the incoming referral.

**Recommendation 11-11: Ensure that a letter of notification is sent to OSHA when referring complaints to OSHA for jurisdictional reasons.**

Finding 11-12: The state failed to meet its annual goal of reducing the injury and illness rate in seafood processing by 3%. Injury and illnesses in this sector have increased by 14% as compared to the baseline in this evaluation period.

**Recommendation 11-12: AKOSH should increase the focus of their available resources on reducing the rates on injuries in the seafood processing industries.**

## II. Major New Issues

None noted.

## III. State Response to FY 2010 FAME Recommendations

This section describes the status of unresolved recommendations from the FY 2010 FAME report and the progress AKOSH is making toward completing the steps outlined in its Corrective Action Plan. During FY 2011, corrective actions were submitted and partially completed for enforcement-related recommendations. Although AKOSH considered many of the recommendations listed below to be complete, OSHA has determined there are eight repeated enforcement-related items. Appendix B describes the status of these recommendations in detail.

Recommendation 10-2: Ensure an effective presence in private and public sector workplaces by increasing the number of programmed enforcement inspections using targeting tools such as the High Hazard Targeting plan, the Construction List, and Special Emphasis Programs.

Status: Ongoing. This item was not satisfactorily completed as AKOSH did not meet its enforcement inspection goal for the fifth year in a row. In FY 2011, the state completed 311 inspections or 62% of its program goal of 505 inspections or a reduction of 17% from the previous year.

Recommendation 10-3: Factually document employer knowledge in case files with as much specificity as feasible.

Status: Ongoing. The state conducted CSHO training in January 2011 to assist with factual documentation of employer knowledge in case files. The state considered this item completed and progress to improve in this area has been noted in case file reviews during FY 2011. However, adequate supportive documentation to address employer knowledge in case files continues to be a problem. This is a repeat finding for the FY 2011 FAME report.

Recommendation 10-4: Review case files and classify conditions as “serious” based on the hazard and in accordance with the FOM.

Status: Ongoing. AKOSH conducted CSHO training in FY 2011 to improve clarity and understanding of the process of classifying serious hazards. In FY 2011, case file reviews indicated this continued to be a problem in approximately 30% of reviewed case files. The state issues serious violations 23% of the time which is approximately half as much as the average serious violation issuance rate of all state plans. This item has been discussed throughout the year in quarterly meetings. This is a repeat finding for the FY 2011 FAME report.

Recommendation 10-5: Require complete documentation of probability and severity on the OSHA 1-B to include “other than serious” violations.

Status: Ongoing. AKOSH agreed to provide training to CSHOs to improve future case file documentation of probability and severity assessments. OSHA’s case file reviews found that where “other than serious” violations were cited, the trend of not calculating severity and probability continues to be a problem. As a trend, where serious citations were issued, reviews indicated that the severity calculations were not consistent with the expected outcome or injury. This item is not considered to be completed and is a repeat finding for the FY 2011 FAME.

Recommendation 10-6: Ensure that citation abatement verification is completed and updated in a timely manner.

Status: Ongoing. AKOSH contends that the incorrect entry of data into the IMIS system was inadvertent and considers this item completed. OSHA agrees that there may be a data-entry issue which needs to be resolved. However, while progress has been made and problem areas have been identified, this continues to occur. The goal is 100% compliance while AKOSH achieved 68% and 83% abatement assurance for the private and public sectors. Although OSHA’s case file reviews did not identify any cases where violation abatement was not completed, this item is not considered to be completed based on IMIS report information and is a repeat finding for the FY 2011 FAME report.

Recommendation 10-7: Document measurements if appropriate and accurately describe the safety or health hazard in the alleged violation description.

Status: Ongoing. AKOSH provided monitoring and training to CSHOs during inspection activities in order to improve documentation of field measurements and ensure accurate descriptions were documented for hazards on the AVD forms. The state considered this item completed. However, case file reviews found that the compliance staff did not address measurements, locations, or cite the hazard effectively in the alleged violation description. This item is a repeat finding for the FY 2011 FAME report.

Recommendation 10-8: Conduct health sampling to confirm violations of health standards.

Status: Ongoing. AKOSH considered this item to be completed as they believed it was a problem resulting from a single CSHO who performed several inspections at a single work site and failed to conduct health sampling at the time. It is important that health compliance officers be prepared to conduct field sampling when the complaint items or work environment necessitates it be performed. However, during OSHA’s case file review in FY 2011, the same issues were found indicating that health sampling was not being accomplished where noise and chemical hazards were identified during an inspection. This item is a repeat finding for the FY 2011 FAME report.

Recommendation 10-10: Reduce citation issuance lapse times.

Status: Ongoing. AKOSH continues to work on improving citation lapse time and has established a new mid-level management position to assist with supervision of CSHOs for performance improvement. At the time of this evaluation, this item remains unsatisfactory as the state of Alaska lapse times actually increased 200% for safety inspections and 144% in health inspections since the FY 2010 FAME. This item is a repeat finding for the FY 2011 FAME report.

OSHA continues to monitor the Alaska state plan through case file reviews and evaluations. The areas noted above are emphasized in discussions between AKOSH and OSHA during regularly scheduled quarterly monitoring meetings.

#### **IV. Assessment of State Performance**

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. AKOSH 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 Alaska's performance under the specific mandated program areas. Monitoring data have come from grant assurances, statistical reports, case file reviews and interviews.

##### **A. Enforcement**

###### **1. Complaints**

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

During the period covered by this review, AKOSH had a policy of initiating on-site inspections within seven working days for formal complaints alleging serious hazards; this differed slightly from OSHA's policy of responding within five working days to such complaints. As of October 1, 2009, however, the state adopted a new Field Operations Manual which includes a policy identical to OSHA's on responding to formal complaints alleging serious hazards.

The state's policy on responding to complaints that *do not* meet the criteria for on-site inspections is the same as OSHA's. It requires AKOSH to promptly contact the employer by telephone to notify it of the complaint, followed by faxing or mailing a notification letter. This procedure is commonly known as "phone/fax" or an "inquiry."

The state responded to a total of 87 complaints deemed valid during FY 2011. Of the total complaints received, 67 of these complaints resulted in on-site inspections and 20 complaints were handled by the phone/fax procedure. Of all the complaints that met the state's

requirement, 96% were inspected within seven working days. Of the complaints handled by the phone/fax procedure, 94% of complaints were initiated using the phone/fax procedure within one working day which met the state's requirement.

Overall, 95% of complaints filed with the state were handled in a timely manner. Performance in this area was comparable to that of OSHA, and exceeded AKOSH's overall goal of 90% timeliness for both categories of responses.

***Ensure imminent-danger situations are responded to promptly and appropriately.***

AKOSH's policy on responding to imminent danger situations is to conduct inspections as expeditiously as possible, and no later than 24 hours after notification; this is essentially the same as OSHA's policy.

During this evaluation period, 46 imminent danger complaints/referrals were received by AKOSH and 45 were inspected within the required time frame. One imminent danger inspection took two days to inspect because of travel delays. OSHA considers this to be acceptable performance. During the previous evaluation period, 48 imminent danger complaints or referrals were received.

**2. Fatalities and Catastrophes**

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

AKOSH regulations for maintaining records of workplace injuries and illnesses are identical to OSHA's. AKOSH regulations for reporting workplace fatalities and catastrophes differ from OSHA's in that the state requires employers to report a work-related hospitalization of one or more employees compared with the OSHA requirement of three or more. No problems were noted with regard to AKOSH being timely notified of fatalities and catastrophes.

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

AKOSH's policy on responding to fatalities and catastrophes (hospitalization of three or more employees) is the same as OSHA's in that it requires that inspections be initiated within one working day of notification. In addition, the state has a policy under which it investigates, within seven working days, accidents involving the overnight hospitalization of two or fewer employees due to a work-related incident.

In FY 2011, AKOSH inspected 20 accidents where one or more employees were hospitalized overnight. With one noted exception, all of the accident inspections were completed timely within seven days for 95% of all accidents inspected.

Within this same period, AKOSH investigated 5 fatal accidents in its jurisdiction. This was a significant decrease from 10 fatalities in the previous year. The majority of fatal accidents occurred in the construction trades. All fatal accidents were inspected timely within one day. As an appropriate response to the fatalities, the state conducted 40% of inspections in the Construction Industry Trades, with almost 100% of these inspections conducted during the five busiest months of construction activities in the state between the months from May through September.

As part of this FY 2011 FAME reporting cycle, the Anchorage Area Office conducted a special study to review fatality cases in the state of Alaska. All fatality investigations were reviewed by federal OSHA staff. The case files were found to be thorough, complete, and administered in an effective manner. Family members were involved in the inspection process from the very beginning throughout the investigation by the Chief of Enforcement and his staff. Photos, drawings and narrative descriptions of the work sites helped illustrate the circumstances and aided in identifying and documenting violations. Compliance officers routinely reviewed employers' OSHA 300 logs and safety programs, and documented appropriate findings when warranted.

In all five fatality case files reviewed, the initial condolence letters were sent out to the next of kin. AKOSH made marked improvements to ensure that in all fatality cases, letters were sent to the family members of victims of industrial accidents. Additionally, follow-up letters and/or phone calls were made to keep family members of accident victims informed of the results of the inspection.

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

An overview of Alaska’s private industry TCIR<sup>1</sup> and DART<sup>2</sup> rates for calendar years 2006 through 2010, as well as for select industries, is provided in the table that follows. At the close of this monitoring period, 2010 was the most recent calendar year for which data were available. (Data source: [www.bls.gov](http://www.bls.gov))

	CY 2006	CY 2007	CY 2008	CY 2009	CY 2010	% Change, 06-10	% Change, 08-10
<b>Private Industry</b>							
TCIR	6.2	5.5	5.1	4.9	4.5	-27%	-12%
DART	3.0	2.7	2.7	2.1	2.2	-27%	-19%
<b>Construction, NAICS<sup>3</sup> 23</b>							
TCIR	9.4	8.0	7.1	5.8	5.0	-45%	-30%
DART	4.4	3.3	3.4	2.7	2.2	-50%	-35%
<b>Transportation/Warehousing, NAICS 48-49</b>							
TCIR	9.1	7.4	7.4	6.0	5.7	-37%	-23%
DART	5.7	4.9	4.7	3.7	3.9	-32%	-17%
<b>Seafood product preparation and packaging, NAICS 3117</b>							
TCIR	8.5	11.3	8.5	7.3	6.6	-22%	-22%
DART	5.7	6.4	5.5	4.1	3.9	-32%	-29%
<b>State and local government</b>							
TCIR	5.4	4.2	5.5	5.1	4.5	-17%	-18%
DART	2.4	1.9	2.4	2.3	2.2	-8%	-8%

As stated previously, AKOSH conducts inspections and delivers training in the construction, transportation/warehousing, and seafood processing industries in an effort to reduce injuries and illnesses. Five-year BLS data presented above show that the state is justified in focusing its resources in these industries because TCIR and DART rates have been consistently higher in the three targeted industries than the rates for private industry as a whole. Between 2006 and 2010, decreases in Alaska’s TCIR and DART rates occurred in all of the above industries. In summary, as of FY 2010, AKOSH’s efforts are contributing to rate reductions in the targeted industries.

<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> NAICS is the North American Industry Classification System.

### **3. Targeting and Programmed Inspections**

*Ensure an effective program is in place allowing the conduct of unannounced enforcement inspections (both programmed<sup>4</sup> and unprogrammed<sup>5</sup>).*

AKOSH has policies and procedures for conducting unannounced enforcement inspections, as required by OSHA. AKOSH's scheduling system targets both enforcement and consultation and training activities to seafood processing, transportation and warehousing, and construction to mitigate injuries and prevent fatalities in these industries.

The state of Alaska is not participating in the Recordkeeping, Primary Metals, or Site Specific Targeting (SST-11) National Emphasis Programs.

In FY 2011, the state conducted programmed inspections using the following:

- a. High-Hazard Targeting (HHT) Plan: The HHT plan identifies employers reporting ten or more Lost Time Injury/Illness (LTII) cases, or those showing a 10% or greater Lost Time Case Rate (LTCR) increase from the previous reporting year, based on state workers' compensation data. The HHT directive prescribes the method for selecting establishments and assigning programmed inspections.
- b. Supplemental Construction List: The supplemental construction list is comprised of employers awarded construction bids as reported in *The Plans Room* – an Alaskan publication that advertises construction projects up for bid.
- c. Special Emphasis Programs (SEPs): The SEPs provide for programmed inspections of establishments in industries with high injury or illness rates that are not covered by other inspection scheduling systems. In FY 2011, AKOSH had several SEPs including, but not limited to, the state public sector, transportation and warehousing, seafood processing, injury and illness recordkeeping, trenching and excavations, and grain handling operations.

Enforcement of safety and health standards plays an important role in OSHA's efforts to reduce workplace injuries, illnesses, and fatalities. Each year, OSHA requires its state partners to establish reasonable goals for enforcement inspections. For the past five years, AKOSH has not met its inspection goals.

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<sup>4</sup> Programmed inspections are scheduled based upon objective or neutral selection criteria. Examples include national and local emphasis programs which target inspections in high-hazard industries.

<sup>5</sup> Unprogrammed inspections are conducted in response to imminent dangers, fatalities, catastrophes, complaints and referrals.

Please see the following table:

Inspections	FY 2011	FY 2010	FY 2009	FY 2008	FY 2007
Goal	505	465	425	425	465
Conducted	311	375	355	259	289
Difference	(194)	(90)	(70)	(166)	(176)

The state conducted a total of 311 inspections in FY 2011, representing a decrease of 17% compared to the 375 inspections it conducted in FY 2010. Of the 311 inspections, 219 (70%) were programmed and 92 (30%) were unprogrammed. These numbers reflect a decrease in enforcement activity in comparison to the previous year, as the state fell short of its FY 2011 goal of 505 inspections.

AKOSH lost 14 employees during FY 2011, representing a 60% loss in enforcement and consultation personnel. This issue has had an effect on the ability of the state to meet enforcement goals during this year and will present future issues as new employees will require time to train prior to being at a full performance level.

This problem is a recurring theme under AKOSH's administration. In FY 2007, AKOSH did not meet its inspection goal mainly because of a high vacancy rate among compliance officers. The state worked diligently to fill vacancies, but did not meet its goal the following year; in fact, AKOSH conducted 10% fewer inspections in FY 2008 than it had the year before. The 2008 shortfall was attributed, in part, to additional turnover and the need to train newly hired compliance officers. Furthermore, in 2009, AKOSH was faced with a hiring freeze which resulted in the need to pursue waivers, which it did in order to fill two compliance officer vacancies. One vacancy was not filled in calendar year 2010, though the hiring freeze had been lifted. However, there were 10 compliance officers assigned with two or more years' experience with AKOSH during the first half of FY 2011. Additionally, during the same period, the state lost 5 experienced enforcement officers mainly due to employment opportunities in the private sector. These vacancies occurred in the third and fourth quarter of the year and all but one position remained vacant by year's end. This factor had a significant impact on AKOSH's ability to achieve inspection goals for FY 2011. The state of Alaska completed an average of 30 inspections per compliance officer in FY 2011. This is in contrast to OSHA's completion of 48 inspections per compliance officer over the same period.

**Recommendation 11-1 (Continued 10-2): Ensure appropriate inspection goals are set based on realistic expectations in consideration of current resources, abilities and training status of compliance staff, and properly allocated in order to achieve goals.** This is a repeat recommendation from the FY 2010 FAME.

The state of Alaska has a program that is designed to target the highest injury producing industries in the state based primarily on their HHT and Construction emphasis programs. The state of Alaska's in-compliance rate is 26% as compared to the state plan average of 40% and

OSHA’s rate of 29%. Additionally, the state has a higher than average number of violations found at workplaces in Alaska with 4.5 violations found per inspection.

**4. Citations and Penalties**

*Ensure an effective program exists for timely issuance of citations.*

During FY 2011, AKOSH’s citation lapse times have increased substantially. The number of calendar days from opening conference to citation issuance was 102.2 days for safety inspections and 108.6 days for health. Compared to FY 2010, this represents a 46-day, or 81% increase in the safety lapse time, and an increase of over 33 days, or 44% increase in the health lapse time. AKOSH’s FY 2011 lapse times compare unfavorably to the averages for state plans as a whole. Those lapse times were 51.9 and 64.8 days for safety and health cases, respectively.

During the FY 2011 FAME evaluation period, it was noted that certain individual compliance staff were working efficiently to complete case files to ensure a timely issuance of citations. However, there were a considerable number of case files awaiting review which were approaching the 180-day statutory issuance date. The position of Program Analyst, or Assistant Chief of Enforcement, was created to help alleviate this problem. OSHA will continue to monitor case file lapse times with AKOSH during quarterly meetings and during the annual review.

The following table compares the state’s performance from the previous FAME period to FY 2011 for both industrial hygiene and safety citation lapse times:

IH Lapse Times (Days)	FY 2011	FY 2010	Safety Lapse Times (Days)	FY 2011	FY 2010
Actual	108.6	75.3	Actual	102.2	56.3
Average	64.8	61.9	Average	51.9	47.3
Difference	+43.8	+13.4	Difference	+50.3	+9

**Recommendation 11-2 (Continued 10-10): Reduce citation issuance lapse times to at or below the national average (SAMM).** This is a repeat recommendation from the FY 2010 FAME.

*Ensure serious violations cited are assessed penalties.*

Case file reviews verified that the state assessed penalties for all serious violations cited. In FY 2011, AKOSH’s average penalty per serious violation was \$810, compared to the state plan average overall of \$963 and OSHA’s average of \$2,132.

## Case File Review

OSHA reviewed 25 of AKOSH's case files in late August and early September 2011 to assess the quality of documentation, violation classification, penalty calculations, abatement verification and other factors. The 25 cases were composed of 5 fatality cases, and 20 complaints or referrals. The following was considered during the case file review:

- a. Quality of documentation to determine if there was adequate evidence to support violations.*
- b. Appropriate classification of violations.*
- c. Appropriate determination and assessment of penalties based on proper application of probability and severity.*
- d. Abatement verification accomplishment and documentation.*
- e. Appropriateness of penalty reductions, violation reclassifications or citation withdrawals resulting from informal conferences on fatality-related cases.*
- f. Notification of next of kin in fatality cases and providing an opportunity for family to communicate with AKOSH about the fatality investigation.*
- g. Whether employer injury/illness data were collected.*

Case files were randomly selected utilizing a random number chart. The Chief of Enforcement and Program Analyst were interviewed relative to any questions pertaining to the case file reviews.

Methods used to identify case files for review included Web IMIS reports, IMIS database access, and accident investigation search. A checklist was used to ensure consistency in evaluating the files.

## Adequate Evidence to Support Violations

In two reviewed health case files, it was noted that the compliance officer did not conduct sampling where it would have been appropriate. One case involved noise citations where the employer was cited for not providing sampling for noise where work conditions created a change in noise, but no sampling was conducted by AKOSH to document an alleged violation. In addition, the CSHO relied on equipment from the employer in his estimation of the noise hazard that was out of calibration and cited for the condition. In another case, the compliance officer did not conduct air or bulk sampling for asbestos on a programmed-related inspection involving asbestos at a construction location. Citations were proposed for not training employees on the hazards of asbestos, but no sampling was conducted to show if there were overexposures or that the material was indeed asbestos. In addition, the citations proposed for training were inappropriately cited under hazard communication and not the 1910 or 1926 asbestos standards.

In another health case involving a construction multi-employer work site, an employer was cited for exposing employees to chemical hazards without ensuring material safety data sheets were available where the employees were not exposed to the hazards at all. In fact, an inspection of the employer who actually had exposure to the chemicals was not opened at all. In addition, the hazards which were documented in the case file indicated the compliance officer sampled for chemicals that were not constituents in the employee complaint items. The complaint consisted of roof tar constituents and the CSHO sampled for carbon monoxide, hydrogen sulfide, and oxygen deficiency. The employer also had serious safety and health hazards such as unprotected flammable containers in traffic areas that were apparent while reviewing photos in the case file. None of these hazards were addressed with any employer at the site.

**Recommendation 11-3 (Continued 10-8): Ensure that health violations conform to policy on documentation of violations. Conduct health sampling to confirm violations of health standards.** This is a repeat recommendation from the FY 2010 FAME.

In non-fatality cases reviewed, documentation of employer knowledge showed improvement from the FY 2010 FAME. However, this item was once again identified in multiple case files where “in plain view” or “reasonable diligence” was used in many cases, to establish and document that the employer knew the hazardous condition existed. In every instance, there was sufficient evidence to develop knowledge through demonstrated actions on the part of the employer.

**Recommendation 11-4 (Continued 10-3): Factually document employer knowledge in case files with as much specificity as feasible.** This is a repeat recommendation from the FY 2010 FAME.

#### Appropriateness of Violation Classification

OSHA determined that in 10 of the 25 reviewed case files, there were violations that were classified as “other than serious,” and missed violations where information in the case file indicated the hazard should have been classified as “serious” or “repeat.” Examples of hazards identified in the case files were chemical exposures where the hazard was listed as burns or asbestosis, and amputation hazards. This may be one reason why the state of Alaska’s percent serious rate is 23% in comparison to the state plan average of 44% and OSHA’s average of 73%.

The trend continues to show a decrease over the past three years for the percent serious rate as shown in the table below:

Percent Serious Rate	FY 2011	FY 2010	FY 2009
	23%	24%	26%

The state's serious, willful, and repeat violation rate was 25% as compared to 46% for all state plans and 77% for OSHA.

**Recommendation 11-5 (Continued 10-4): Review case files and classify conditions appropriately as “serious,” “willful,” “repeat,” or “other than serious” based on the hazard and in accordance with the FOM.** This is a repeat recommendation from the FY 2010 FAME.

It was noted that violations requiring a penalty generally were calculated correctly; however, severity and probability were consistently not completed for “other than serious” or grouped item violations in a majority of the reviewed cases.

**Recommendation 11-6 (Continued 10-5): Require complete documentation of probability and severity on the OSHA 1-B to include “other than serious” and grouped item violations.** This is a repeat recommendation from the FY 2010 FAME.

AKOSH showed improvement in the wording of the Alleged Violation Descriptions (AVDs). However, this item was noted as a repeat item due to the fact that OSHA once again found many cases where the hazards for numerous citations were listed as “safety hazards” or “health hazards. An estimated 40% of the files reviewed had inadequate AVD's where measurements, serial numbers, location of hazard, date, and/or type of hazard were missing. In some cases, the AVD verbiage was a “reiteration” of the standard. The appropriate terminology should reflect the direct hazard such as “burns,” “fire hazards,” or “amputations.” In addition, the AVDs in several case files did not include measurements of fall hazards or voltage of electrical hazards where the information was readily available in the case file.

**Recommendation 11-7 (Continued 10-7): Document measurements if appropriate and accurately describe the safety or health hazard in the alleged violation description.** This is a repeat recommendation from the FY 2010 FAME.

OSHA has seen some improvement in case file documentation with certain compliance officers, but overall, in order to meet the requirements of the field operations manual, more improvement will need to be made. Case file documentation will be monitored by OSHA during FY 2012 for progress.

## **5. Abatement**

*Ensure an effective program exists for timely assurance of hazard abatement.*

The state's procedures for verifying hazard abatement are the same as OSHA's. The results at the end of year (SAMM report, Appendix D), indicate verification of abatement for the state was 68% for private industries and 83% for public industries. However, the IMIS data does not support the results of the case file review, which concluded that abatement verification is not a problem. Thus, the lack of data on abatement verification in the database was identified as solely an IMIS update issue than an actual failure to verify abatement. Although abatement verification was observed, the state did not timely enter the data for hazard abatement verification. The state has made an effort to improve this data entry problem, but IMIS entry continues to be a problem. The progress of the state to update abatement verification data will be monitored and tracked by OSHA in FY 2012.

**Recommendation 11-8 (Continued 10-6): Ensure that citation abatement verification data entry into IMIS is completed and updated in a timely manner.** This is a repeat recommendation from the FY 2010 FAME.

## **6. Employee and Union Involvement**

*Ensure employees are allowed to participate in inspection activities.*

AKOSH's policy on employee participation in the inspection process is the same as OSHA's. During AKOSH 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. OSHA's accompanied monitoring visits and review of AKOSH's inspection files did not identify any cases where employees were not afforded the right to participate in the inspection process. The state met this requirement.

### **B. Review Procedures**

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

#### **1. Informal Conferences**

In post citation settlements, both formal and informal, the state of Alaska's performance is similar to Federal OSHA. AKOSH's procedures require that informal conferences be held prior to the expiration of the 15-day contest period. Data regarding the state's "pre-contest" and

violation withdrawals, penalty reductions, and violation reclassifications are similar to OSHA in those performance areas as reported in the FY 2011 State Indicators Report (Appendix E). Specifically, 6.3% of AKOSH's violations were vacated as a result of informal settlements, compared to 7% of federal violations. The state reclassified violations in 1.4% of cases while federal violations were reclassified 4.8% of the time. AKOSH retained 65% of its average penalties following informal settlements, compared to 63% by OSHA.

***Appropriateness of penalty reductions, violation reclassifications or citation withdrawals resulting from informal conferences on fatality-related cases.***

For cases where informal conferences were held, adequate notes were in the file to document the decision-making process behind violation deletions, abatement date revisions, or penalty reductions. The state utilizes a worksheet for documenting the rationale for settlement actions taken during the informal conference. Overall, AKOSH's post-citation procedures are satisfactory and performed in accordance with the Field Operations Manual and agency policies.

**2. Formal Review of Citations**

Alaska's Administrative Code and AKOSH's Compliance Manual afford employers the right to administrative and judicial review of alleged violations, proposed penalties, and abatement periods. These procedures also give employees or their representatives the opportunity to participate in review proceedings and to contest citation abatement dates.

In Alaska, post-contest data reflect that a lower percentage of AKOSH violations, 20.5%, were vacated in FY 2011 in comparison to the federal percentage of 23.5%. AKOSH's post-contest penalty retention for FY 2011 was 88.9%, compared to an OSHA retention rate of 62.3%. In the area of post-contest violation reclassification, AKOSH reclassified 11.4%, compared to OSHA's reclassification rate of 13.3% (SIR 1,2,3).

Alaska's Office of Administrative Hearings did not report any formal appeal decisions to the region in FY 2011. Some settlements at the Office of Administrative Hearings were awaiting signature from Alaska's Occupational Safety and Health Review Board and some hearings have been scheduled in 2012.

**C. Standards and Federal Program Changes (FPCs) Adoption**

**1. Standards Adoption**

***Ensure new and revised standards are adopted within required time frames.***

AKOSH adopts most federal standards by reference. By using this procedure, standards are automatically adopted within the time frame allowed and they use the same effective date as the federal standards. For standards not adopted by reference, the state has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA.

During this evaluation period, there were two final rules issued by OSHA; General Working Conditions in Shipyard Employment and the Standards Improvement Project - Phase III. Enforcement authorities for 29 CFR 1915 (Shipyard Employment), 29 CFR 1917 (Marine Terminals), 29 CFR 1918 (Longshoring), and 29 CFR 1919 (Gear Certification) were not adopted by AKOSH under the state plan agreement with OSHA. As a result, AKOSH did not adopt the General Working Conditions in Shipyard Employment rule nor the Maritime provisions of the Standards Improvement Project – Phase III rule. The state plans to adopt by reference the applicable provisions of the Standards Improvement Project – Phase III rule.

## **2. Federal Program/State Initiated Changes**

### ***Ensure timely adoption of program changes.***

OSHA policy requires states to acknowledge each Automated Tracking System (ATS) change within the required due date. In those changes requiring state change, acknowledgement by the state must include whether it intends to adopt the change or adopt an alternative approach which is at least as effective as the federal change. The states also must provide a projected date of adoption.

A total of 10 federal program changes (FPCs) were issued by OSHA which required a response in FY 2011. There were 3 remaining FPCs that will carry over into FY 2012. AKOSH's response to those will be evaluated during the next FAME cycle. In all cases, Alaska provided their intent of adoption or to otherwise administer a program change that was at least as effective as the federal program change; however, one adoption and several of their responses of intent were not timely. OSHA will continue to monitor and track AKOSH's acknowledgement to the FPCs and its implementation of those changes on a quarterly basis into FY 2012 to ensure appropriate state program response.

Alaska did not submit any state-initiated program changes in FY 2010.

## **D. Variances**

### ***Ensure variance applications are processed properly and decisions justified.***

AKOSH has acceptable procedures for evaluating and issuing variances. AKOSH did not process a variance action during this evaluation period. The state has not processed any variance actions in the last three report years.

## E. Public Employee Program

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

In FY 2011, AKOSH conducted 14.5% (45/311) inspections in the public sector. Of the total inspections conducted for the period, 6.4% (20/311) were program planned inspections.

Penalties and sanctions are imposed on employers in the public sector for violations of safety and health hazards in an identical fashion as for private industry.

## F. Discrimination Program

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

Title 8, Part 4, Chapter 61, Article 7 of the Alaska Administrative Code provides for discrimination protection equivalent to that provided by federal OSHA.

The following table is a summary of discrimination activity during FY 2011.

Disposition	Totals
Total cases from FY 2011	15
Cases completed in FY 2011	12
Cases completed timely	12
Overage cases	2
~ Withdrawn	0
~ Dismissed	7
~ Merit	5
~ Settled	4
~ Settled other	0
~ Litigated	0
Investigators on staff	2 <sup>6</sup>

AKOSH received four fewer complaints than in FY 2010 and completed five less investigations.

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<sup>6</sup> AKOSH has two part-time collateral duty investigators.

AKOSH's timeliness of completed cases was 83.3%, significantly higher than the overall state plan rate of 63%. AKOSH's merit rate was 42%, significantly higher than the overall state plan rate of 17%. Due to the small number of discrimination cases received by AKOSH, trends could not be established.

During July 2011, OSHA conducted an on-site audit of the state of Alaska's discrimination program. The period covered by OSHA's review was for fiscal year 2011. The audit included reviews of ten (10) case files and screened complaints to determine whether the state abided by the policies and procedures established in OSHA's *Whistleblower Investigations Manual*. On September 6, 2011, AKOSH was provided with a closing conference.

### **Summary of Current Findings**

The 10 files reviewed (7 from this fiscal year and 3 from the last fiscal year that were pending and not reviewed during last year's audit) indicate that AKOSH conducted investigations in a manner that was "as effective" as OSHA. The files were well organized and the investigations were thorough. Specifically, the investigator requested relevant documents such as the complainant personnel files and CSHO files, conducted thoughtful interviews of managers and non-managers, and prepared settlements that contained terms similar to OSHA's. The findings and recommendations below are presented to help AKOSH improve the quality of the investigations and to identify areas where further training and/or federal guidance would be useful.

### Document and Information Requests

Each case should have a "request for information" letter which is sent to each respondent, and stored in the case file. The "request for information" can help AKOSH determine whether the complaint has merit or whether the employer's reason can be corroborated. For example, the "request for information" can ask for comparator information such as the names, job titles and dates other employees were fired for the same reason as the Respondent claims was used to fire the complainant. AKOSH can also request the Respondent submit a list of current employees, their job titles, and last known address and telephone numbers so that the investigator can choose to contact confidential witnesses without going through the company. This letter should caution the Respondent against retaliating against an employee or potential witness because of the employee's participation in AKOSH's investigation.

### Investigative Plans

The development of an investigative plan will help AKOSH strategize and plan the investigation based on the specific allegation(s) and discrimination theory. For example, a complaint claiming blacklisting for safety activity will have a different investigative plan than a complaint alleging constructive discharge or involuntary quit. The plan should also include a list of potential witnesses, documentation requests and appropriate remedy. The "investigative plan" should be

retained in the case file so that the investigator can refer back to it as needed, and so a reviewer/approver can see what kind of plan was implemented for a particular case.

### Settlements

The audit included reviewing one early resolution settlement agreement and two agreements which were settled as “make whole” remedies after finding sufficient evidence to support a violation. The language in the settlements is similar; however, the “make whole” settlements did not include a broad range of remedies such as compensatory, exemplary, and/or punitive damages. AKOSH can seek these additional types of damages if the evidence warrants it. For example, in *Cambridgeport*, the Court awarded exemplary, or double damages, because of the egregious nature of the employer’s conduct towards the whistleblower<sup>7</sup>.

In another settled case with evidence of merit, the employee waived the right to reinstatement, but front pay does not appear to have been considered. AKOSH should be commended for having a training clause in the second make-whole settlement; however, the case file did not include evidence as to whether the complainant could claim compensatory damages such as emotional distress, out-of-pocket expenses, and/or attorney’s fees. These other types of damages would, indeed, make the complainant “whole<sup>8</sup>” meaning that the remedies would be sufficient to return the complainant to the position he or she had held if he or she had not been retaliated against for raising a workplace safety concern.

There was no documentation in the merit case files as to whether punitive damages were considered or warranted<sup>9</sup>. Chapter 6 of *The Whistleblower Investigations Manual* identifies several examples when punitive damages should be sought. AKOSH’s files contain a damage calculation tab that appears to be limited to lost wages and interest.

The case files did not indicate whether AKOSH presented the parties with an option to voluntarily settle early in the investigation per Chapter 6 of *The Whistleblower Investigations Manual*.

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<sup>7</sup> *Robert Reich, Secretary of Labor, etc. v. Cambridgeport Air Systems Inc.*, Docket Number 93-2287, 26 F.3d 1187 (1st Circuit Court 1994), June 20, 1994. In *Cambridgeport*, the Court found the employer’s conduct towards the whistleblower and a co-worker to be “brash;” and that the employer intentionally fired the whistleblower and his coworker “as an example to other employees.” In addition, the Court found that the employer tried to bribe the OSHA Investigator with a case of wine to influence the outcome of the investigation.

<sup>8</sup> The *Whistleblower Investigations Manual* states that the case file must justify why the case was settled less than make whole and that “the Complainant’s concurrence” must be noted as well (see page 6-2).

<sup>9</sup> To comply with OSHA’s *Whistleblower Investigations Manual*, AKOSH should confer with its Attorney General Office when considering ordering an employer to pay punitive damages.

## Closure Dates

The IMIS *Whistleblower User's Guide* requires the date that the determination (closure) letter is signed as the date to use when closing the case. In some cases, AKOSH used the closure date as the date the Final Investigative Report was signed. See *IMIS Whistleblower User's Guide*, page 3-31.

**Recommendation 11- 9: Ensure the date of the determination letter is used as the closure date for the whistleblower case, and not the date the FIR is signed.**

## Screened Complaints

AKOSH uses a *prima facie* screening memorandum which is an excellent way to screen incoming complaints. However, apparently, AKOSH does not send a complainant a letter if the complaint is screened out; or if so, the letter is not placed with the screen-out documentation. The *Whistleblower Investigations Manual* requires that a letter be sent to a complainant if he or she does not allege a prima facie allegation, or the complaint is not filed within 30 days.

**Recommendation 11- 10: Ensure that administrative closure letters are sent to complainants when the complaint is screened out.**

## Referrals to OSHA

In FY 2011 OSHA sent an email to all regional state-plan whistleblower representatives about referring complaints to OSHA. The email requested that the states refer complaints in writing via a letter addressed to the Assistant Regional Administrator/FSO or to the Regional Supervisory Investigator. The purpose of referring a complaint in writing is to document that the referral was made. AKOSH has complied with this request and has subsequently referred new complaints in writing instead of informing the complainant to call OSHA.

**Recommendation 11- 11: Ensure that a letter of notification is sent to OSHA when referring complaints to OSHA for jurisdictional reasons.**

### **G. Complaints About State Plan Administration (CASPA)**

***Ensure timely and thorough responses to CASPA allegations, investigative findings and recommendations for program improvement are provided by the state.***

No new CASPAs were filed in FY 2011. Four CASPAs remained open from the previous fiscal year and were completed in FY 2011. Of those CASPAs, three were found partially valid and one was found valid. Recommendations were made to the state for improvements. The state responded adequately to the CASPAs and the cases were closed. These cases are summarized below.

CASPA A-82 was investigated in FY 2010 and was closed in early FY 2011. The complainant alleged that AKOSH failed to ensure proper abatement of citations; failed to require proper respiratory protection; and failed to respond to additional complaints. The complainant also alleged that the state was no longer responding to complaints after the complainant was terminated from employment at the facility. The state elected to not respond to the initial letter from OSHA, and OSHA then investigated the complaint. The CASPA was found to be partially valid and additional issues were found during the investigation. The state responded with a partially acceptable response and disputed some of the findings. As a result of an additional review, OSHA requested further action by the state which included initiating other on-site inspections at the facility. Recommendations included ensuring that contact is made with a complainant early in the inspection process to clarify and define the complaint allegations; ensuring that proper screening criteria is applied prior to screening out a potential discrimination complaint; and ensuring a discrimination complaint is not administratively closed unless the complainant agrees with that determination. As a result of the recommendations, the items were satisfactorily addressed by the state and the case closed.

CASPAs A-83 and A-85 were identical complaints regarding concerns about the adequacy of AKOSH's inspections and findings at a correctional facility after a chemical spill and related to serious health consequences experienced by employees. Both CASPAs were found to be partially valid during the initial investigation. AKOSH investigated and provided a response to the allegations. OSHA obtained the inspection files and found minor corrections to be made for future health inspections to which AKOSH agreed. The CASPAs underwent further review by OSHA, at the request of the complainant. As a result of the appeals, OSHA addressed new recommendations with AKOSH. These new recommendations included ensuring adequate follow-up and documentation in the case file when a witness recants a statement made during an inspection; adding a provision to the state's discrimination statement form which advises the interviewee of protections against discrimination; adding an item regarding 11(c) discrimination to the closing conference checklist; and ensuring employers are complying with all aspects of the emergency response requirements under 29 CFR 1910.120(q) when investigating releases of hazardous substances in the workplace. The issues found by OSHA as part of the review of the appeals were all responded to satisfactorily by AKOSH.

CASPA A-84 alleged that AKOSH failed to properly investigate an 11(c) discrimination case. AKOSH had issued a determination that the case be dismissed for lack of merit. OSHA investigated the CASPA and determined that the allegation had merit; improper analysis of evidence was conducted and key witnesses were not interviewed before dismissing the case. This resulted in OSHA requesting the case be reopened and investigated further by the state. This case was closed in late 2011.

## **H. Voluntary Compliance Program**

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

The state of Alaska has a VPP program run by a manager funded under 23(g). The state has maintained 16 VPP sites participating in the program. In the third quarter, one site withdrew and one new VPP Star site was gained.

## **I. Public and Private Sector 23(g) On-Site Consultation Program**

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

AKOSH's standard of performance for consultation programs is evaluated in mandated activity measures. 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 each state's performance.

The funding stream for each consultant includes money from 21(d) and 23(g) grants. The work done in the public sector and all Voluntary Protection Program (VPP) is funded by the 23(g) grant. Performance related to 21(d) funding work is reported in a separate report called the Regional Annual Consultation Evaluation Report (RACER).

For FY 2011, AKOSH met or exceeded all of the measures reported in the public sector of the MARC. The FY 2011 MARC data confirm that AKOSH's public sector consultation program is being managed and operated effectively.

## **J. Program Administration**

AKOSH's Training Program Directive 09-02 was developed in response to OSHA's *TED 01-00-018, Initial Training Program for OSHA Compliance Personnel*. PD-09-02 is significantly similar to OSHA's TED, and in the Region's review, AKOSH's program was determined to adequately train personnel for the conduct of effective inspections. AKOSH relies on OSHA's Training Institute for most of the state's formal training of new compliance officers. As the state continues recruitment efforts, slots have been reserved in initial OTI training courses and other training courses to accommodate their needs. AKOSH also maintains a good relationship with the University of Washington Education Center and takes advantage of sessions provided by the Ed Center to supplement OTI training.

Before the loss of several staff members in FY 2011, AKOSH had several compliance officers trained and knowledgeable in crane standards and process safety management (PSM). At the end of the monitoring period, AKOSH had only one compliance officer trained and knowledgeable in crane standards and one compliance officer trained in PSM.

The OSHA Regional Office will be carefully tracking training activities to assure that AKOSH is following through on their commitments.

Alaska's safety enforcement benchmark is four with seven positions identified. At the end of FY 2011, there were four positions filled. For health enforcement, the benchmark is 5 with 4.5 positions identified and 1.5 filled.

Under the 23(g) program, Alaska has six consultation positions (1.5 health and 4.5 safety). As of September 30, one health consultation and three safety positions were filled.

AKOSH lost 14 employees during FY 2011, representing a 60% loss in enforcement and consultation personnel. Five of these positions were enforcement staff representing almost a 50% loss (5 of 11.5 positions) of personnel. All but one enforcement position remained vacant by year's end. This issue has had an effect on the ability of the state to meet enforcement goals during this year and will present future issues as new employees will require time to train prior to being at a full performance level.

AKOSH created a new staff position, titled Occupational Safety and Health Analyst, in FY 2011 to assist with quality control and CSHO monitoring to ensure inspection goals are met. This position modified an existing safety enforcement officer position. The position was filled in the second quarter of FY 2011.

Although OSHA, Region X, does not routinely audit AKOSH'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 AKOSH to review program performance. Prior to such meetings, IMIS reports are run by the Anchorage 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.

In FY 2011, AKOSH continued to use the OSHA Salt Lake City Technical Center to analyze industrial hygiene and other field inspection samples.

AKOSH has an administrative staff consisting of a Chief for Enforcement and a Chief for Consultation; 2 Program Analysts to collect, analyze, and deliver data to the Chiefs of both sections; an IMIS clerk; and administrative assistants to ensure citations and notices are appropriately assembled and delivered to their respective customers. There were 3 repeat

findings related to program administration in this reporting period that should be addressed by the program administrator. These repeat findings include addressing the classification of violations in case files; the lapse time related to timely issuance of case files; and improving the documentation contained within those case files. All of these elements are indicative of problems within the collection and assembly of work by compliance staff and the review process of case files by management prior to issuance. The state's internal evaluation methods will continue to be monitored for effectiveness by OSHA into FY 2012.

## **V. Assessment of State Progress in Achieving Annual Performance Goals**

In fiscal year 2009, AKOSH established a five-year strategic plan which included short and long-range objectives aimed at improving safety and health for Alaska's workers. AKOSH's five-year strategic plan covers the period from FY 2009 through FY 2013. Each year AKOSH develops annual performance plans which support the achievement of its strategic goals, and submits the plans to OSHA for review and approval. AKOSH developed and submitted its FY 2011 annual performance plan in support of its strategic plan as part of its application for federal funds.

The following is OSHA's assessment of AKOSH's performance against its FY 2011 annual goals, and the state's progress in achieving the three broad goals in its 2009-2013 Strategic Plan. Alaska's more detailed report on its accomplishments with respect to its 2011 Annual Performance Plan goals is attached as Appendix F, the State OSHA Annual Report (SOAR).

***Strategic Goal 1: Improve workplace safety and health in both the public and private sectors as evidenced by a reduction in the rate of injuries, illnesses and fatalities.***

**FY 2011 Performance Goal 1.1 – Concentrate on the primary causes of fatalities and the industries where fatalities take place by focusing AKOSH efforts to Goals 1.2, 1.3, and 1.4.**

**Results** – This goal directs the state to concentrate its effort under sub-goals 1.2, 1.3, and 1.4. Please see narrative on those goals.

**OSHA Assessment** – This goal was met. AKOSH has successfully focused on fatality reduction via performance goals 1.2, 1.3, and 1.4.

**FY 2011 Performance Goal 1.2 – Reduce the lost time injury and illness rate in the construction industry, as determined by the number of lost time injuries and illnesses per 100 employees, by 2%.**

**Results** – AKOSH focused its compliance, consultation, and outreach efforts in the construction industry in an effort to reduce lost time injuries, illnesses, and fatalities in that industry sector.

The resulting reduction in the lost time injury and illness rate of 2.62 exceeded AKOSH's performance goal injury and illness rate of 3.77 per 100 employees.

**OSHA Assessment** – This goal was exceeded.

**FY 2011 Performance Goal 1.3 – Reduce the rate of lost time injuries and illnesses in the transportation and warehousing industry sector by 2%.**

**Results** – AKOSH focused on this industry by conducting 30 compliance inspections and 58 consultation interventions in transportation and warehousing establishments. The resulting reduction in the lost time injury and illness rate of 2.06 exceeded AKOSH's performance goal injury and illness rate of 3.149 per 100 employees.

**OSHA Assessment** – This goal was exceeded.

**FY 2011 Performance Goal 1.4 – Reduce the lost time injury and illness rate in the seafood processing industry as determined by the number of lost time injuries and illnesses per hundred employees by 3%.**

**Results** – AKOSH conducted 4 enforcement and 18 consultative site visits to seafood processing plants in FY 2011. The resulting increase in the lost time injury and illness rate of 5.75 did not meet AKOSH's performance goal injury and illness rate of 4.61 per 100 employees. BLS rates do not reflect CY 2011 injury and illness rates for seafood processing in this report. The state of Alaska relies on local workers' compensation data for this report.

**OSHA Assessment** – This goal was not met. The state's Seafood Safety Coordinator position has been vacant throughout FY 2011.

**Recommendation 11-12: AKOSH should increase the focus of their available resources on reducing the rates of injuries in the seafood processing industries.**

**FY 2011 Performance Goal 1.5a – Initiate inspections of fatalities and catastrophes (three or more hospitalizations) within one working day and for two or fewer hospitalizations within seven working days for 90% of occurrences to prevent further injuries or deaths.**

**Results** – AKOSH responded to 100% of the fatalities/catastrophes and hospitalizations within the one working day and seven working day time frames, respectively. Five fatalities/catastrophes and 26 hospitalization cases occurred within AKOSH's jurisdiction during the evaluation period.

**OSHA Assessment** – This goal was met.

**FY 2011 Performance Goal 1.5b – Initiate inspections within seven working days or investigations within one working day of worker complaints for 90% of the cases.**

**Results** – AKOSH responded to 63 of 67 or 94% of all formal complaints by initiating inspections within seven working days of receipt. The state also responded with “investigations” (also known as “phone/fax”) within one working day in 19 of 20 complaint investigations for an overall timeliness average of 95%.

**OSHA Assessment** – This goal was met.

**FY 2010 Performance Goal 1.5c – Resolve 75% of all discrimination cases within 90 days.**

**Results** – AKOSH completed 12 of 15 cases (80%) within 90 days.

**OSHA Assessment** – This goal was met.

***Strategic Goal 2: Promote a safety and health culture in the Alaskan workplace (both public and private sectors) through compliance assistance, cooperative programs, and consultation assistance.***

**FY 2011 Performance Goal 2.1a – Develop and deliver training to workers and employers in the construction industry that target the most likely causes of injuries, illnesses, and fatalities.**

**Results** – AKOSH continued its outreach and training plan for delivering safety and health training to workers and employers in the construction industry. In FY 2011, AKOSH held a total of 123 formal and informal training events where 468 individuals from the construction industry received training.

**OSHA Assessment** – This goal was met.

**FY 2011 Performance Goal 2.1b – Develop and deliver training to workers and employers in the transportation and warehousing industry sector (NAICS codes 48xxxx – 49xxxx) that targets the most likely causes of injuries, illnesses, and fatalities.**

**Results** – AKOSH conducted 39 formal and informal training events affecting 511 employees in the transportation and warehousing industry sector. The total number trained represented more than a 100% increase from the previous year.

**OSHA Assessment** – This goal was met.

**FY 2011 Performance Goal 2.1c – Develop and deliver training to workers and employers in the seafood processing industry that targets the most likely causes of injuries, illnesses, and fatalities.**

**Results** – AKOSH conducted 18 formal and informal training events reaching 172 employees in the seafood processing industry sector.

**OSHA Assessment** – This goal was met.

**FY 2011 Performance Goal 2.2a – Maintain, at a minimum, 15 VPP participants with the intent to increase by two by end of FY 2013.**

**Results** – AKOSH began FY 2011 with 16 VPP participants and did not add any new sites during the evaluation period.

**OSHA Assessment** – This goal was met.

**FY 2011 Performance Goal 2.2b – While maintaining, at a minimum, a level of sixteen SHARP participants, increase the number of SHARP participants by one.**

**Results** – AKOSH lost one SHARP member due to a disqualifying injury and illness rate. No new SHARP companies were added. AKOSH continues to publicize this program.

**OSHA Assessment** – This goal was not met. Although the state did not meet this goal, OSHA does not believe a recommendation is warranted at this time. OSHA plans to have additional discussions with AKOSH about its recognition and exemption programs.

***Strategic Goal 3: Secure public confidence through excellence in the development and delivery of AKOSH's programs and services.***

**FY 2011 Performance Goal 3.1a – Work with OSHA Training Institute (OTI) and Region X to address the issue of establishing regional training to assure that compliance and consultation staff receives basic and specialized training necessary to effectively carry out this strategic plan.**

**Results** – AKOSH enforcement staff attended six OTI training courses during FY 2011; these included one required initial training course. In addition, five consultants participated in courses conducted by the University of Washington OSHA Education Center in the Anchorage area. Several OTI webinars, covering a variety of technical topics, were viewed by both enforcement and consultation staff.

**OSHA Assessment** – This goal was met

**FY 2011 Performance Goal 3.1b – In cooperation with Region X staff, conduct annual reviews of enforcement and consultation case files to evaluate the effectiveness and consistency of services.**

**Results** – OSHA randomly selected and reviewed 25 of AKOSH’s inspection files in September 2011. Findings, which primarily centered on case file documentation, were discussed with AKOSH’s Chief of Enforcement after the review was completed.

**OSHA Assessment** – This goal was met.

**Appendix A**  
**FY 2011 Findings and Recommendations**

Rec #	Findings	Recommendations	Related FY 10 Rec #
11-1	The state did not meet its inspection goal. AKOSH conducted 311 inspections during FY 2011 which was 38% short of its goal of 505 inspections. This also represented a decrease of 17% in comparison to the 375 inspections AKOSH conducted in FY 2010.	Ensure appropriate inspection goals are set based on realistic expectations in consideration of current resources, abilities and training status of compliance staff, and properly allocated in order to achieve goals.	10-2
11-2	During FY 2011, AKOSH's citation lapse times were 102.2 days for safety inspections and 108.6 for health. Compared to FY 2010, this represents significant increases in the safety and health lapse times. These lapse times compare unfavorably to the averages for the state plans as a whole which were 51.9 and 64.8 days for safety and health, respectively.	Reduce citation issuance lapse times to at or below the national average (SAMM).	10-10
11-3	Health sampling was not conducted where there were indications of workplace health hazards and potential employee exposures.	Ensure that health violations conform to policy on documentation of violations. Conduct health sampling to confirm violations of health standards.	10-8
11-4	Documentation of employer knowledge was deficient because AKOSH's compliance officers relied, in most cases, on the term "reasonable diligence" to establish that the employer knew the hazardous condition existed. In every instance examined by OSHA, there was sufficient evidence to develop knowledge through demonstrated actions on the part of the employer.	Factually document employer knowledge in case files with as much specificity as feasible.	10-3

Rec #	Findings	Recommendations	Related FY 10 Rec #
11-5	OSHA determined that in 10 of the 25 reviewed case files, there were violations that were classified as “other than serious,” and missed violations where information in the case file indicated the hazard should have been classified as “serious” or “repeat.” Examples of hazards identified in the case files were chemical exposures where the hazard was listed as burns or asbestosis, and amputation hazards.	Review case files and classify conditions appropriately as “serious,” “willful,” “repeat,” or “other-than-serious” based on the hazard and in accordance with the FOM.	10-4
11-6	Severity and probability were consistently not completed for “Other-than-Serious” violations in a majority of the reviewed cases.	Require complete documentation of probability and severity on the OSHA 1-B to include “other-than-serious” and grouped item violations.	10-5
11-7	The alleged violation description (AVD) for numerous citations listed the hazards on the AVD as “safety hazards” or “health hazards.” The appropriate terminology should reflect the direct hazard such as “burns,” “fire hazards,” or “amputations,” as the case involves. In addition, the AVD’s in several case files did not include measurements of fall hazards or voltage of electrical hazards where the information was readily available in the case file.	Document measurements if appropriate and accurately describe the safety or health hazard in the alleged violation description.	10-7
11-8	Although abatement verification is documented as being completed appropriately in case files, AKOSH did not timely enter the data for hazard abatement verification into IMIS.	Ensure that citation abatement verification in the IMIS is completed and updated in a timely manner.	10-6
11-9	The closure dates for several whistleblower cases were noted as the date the Final Investigative Report was signed.	Ensure the date of the determination letter is used as the closure date for the whistleblower case, and not the date the FIR is signed.	

Rec #	Findings	Recommendations	Related FY 10 Rec #
11-10	There was no indication or documentation in whistleblower case files that complainants were notified in writing when the complaint is screened out.	Ensure that administrative closure letters are sent to complainants when the complaint is screened out.	
11-11	When a whistleblower referral to OSHA was considered appropriate, AKOSH verbally advised the complainant to contact OSHA without OSHA's knowledge of the in-coming referral.	Ensure that a letter of notification is sent to OSHA when referring complaints to OSHA for jurisdictional reasons.	
11-12	The state failed to meet its annual goal of reducing the injury and illness rate in seafood processing by 3%. Injury and illnesses in this sector have increased by 14% as compared to the baseline in this evaluation period.	AKOSH should increase the focus of their available resources on reducing the rates on injuries in the seafood processing industries.	

**Appendix B**  
**Status of State Actions in Response to FY 2010 FAME**

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-1	Case file reviews of two fatal accidents revealed that AKOSH is not sending out the second letter of the investigation results to the families of the deceased victims.	Ensure that at the conclusion of fatality investigations, AKOSH apprises the next of kin, in writing, of investigation outcomes and provide copies of citations. Insert copies of all such correspondence in the case file.	AKOSH enforcement started sending next of kin follow-up appraisal letters for all fatality investigations in FFY 2011.	Ensure that safety and health complaint processing is timely and effective, including notification of complainants and appropriateness of the state's responses.	Completed.
10-2	The state conducted a total of 375 inspections in FY 2010, representing an increase of five percent compared to the 355 inspections it conducted in FY 2009. Of the 375 inspections, 176 (47%) were programmed and 199 (53%) were unprogrammed. Although these numbers reflect an increase in enforcement activity in comparison to the previous year, the state fell short of its FY 2010 goal of 465 inspections.	Ensure an effective presence in private and public sector workplaces by increasing the number of programmed enforcement inspections using targeting tools such as the High Hazard Targeting plan, the Construction List, and Special Emphasis Programs.	AKOSH enforcement met this recommendation from FFY 2009 by conducting more enforcement inspections in FFY2010. The recommendation did not state that the goal of 465 inspections must be met or exceeded. AKOSH has achieved improvements in the number of inspections while maintaining quality.	Ensure an effective program is in place allowing the conduct of unannounced enforcement inspections (both programmed and unprogrammed ).	Ongoing.
10-3	Documentation of employer knowledge was deficient because AKOSH's compliance officers relied, in most cases, on the term "reasonable diligence" to establish that the employer knew the hazardous condition existed. In every instance, there was sufficient evidence to develop knowledge through demonstrated "actual," "imputed," or "constructive" actions on the part of the employer.	Factually document employer knowledge in case files with as much specificity as feasible.	AKOSH provided CSHO training to improve factual documentation of employer knowledge in January 2011. As a result, this issue is not expected to continue for the remainder of in FFY 2011.	Ensure that case file documentation is improved.	Ongoing.

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-4	OSHA determined that in 24 of the 39 reviewed case files, there were violations that were classified as “Other than Serious”, where information in the case file indicated the hazard should have been classified as “Serious”. Examples of hazards identified in the case files were fall hazards in general industry of up to 16 feet, chemical exposures where the hazard was listed as cancer, amputation hazards, and electrical shock where it would have been appropriate to group similar “Other than Serious” conditions into a “Serious” Violation.	Review case files and classify conditions as “serious” based on the hazard and in accordance with the FOM.	AKOSH has taken action in FFY 2011 to train CSHO’s to improve clarity and understanding regarding classification of “serious” hazards, so this issue is not expected to continue in FFY 2011. However AKOSH questions the validity of the percentage of serious violations as a significant measure of effectiveness, as this outcome could be affected by a CSHO’s failure to identify and cite “other than serious” violations. Similar to concerns that employer performance incentive programs for safety and health performance could result in unreported accidents, this type of performance measure could create an incentive for CSHO’s to overlook or fail to cite other than serious hazards.	Ensure that violations are correctly classified.	Ongoing.
10-5	Severity and probability were consistently not completed for “Other than Serious” violations in a majority of the reviewed cases.	Require complete documentation of probability and Severity on the OSHA 1-B to include “Other than Serious” violations.	Although AKOSH contends this is a minor documentation issue, as the severity and probability calculations were found to be generally correct, AKOSH will provide additional training to all CSHO’s in the coming months to improve complete documentation of probability and severity on the OSHA 1B for both “serious” and “other than serious” alleged violations.	Ensure that case file documentation is improved.	Ongoing.
10-6	Timely hazard abatement verification (within 14 days of the abatement date) for the state was 49% for private industries and 27% for Public Industries.	Ensure that citation abatement verification is completed and updated in a timely manner.	All inspection case files with exception of “Contested Cases” have documentation to demonstrate timely hazard abatement. AKOSH contends that this was a data entry error in the IMIS System, rather than a more serious error of failing to ensure hazard abatement. AKOSH has taken steps to ensure that hazard abatement verification is properly documented and entered into the data base.	Ensure that case file documentation is improved.	Ongoing.

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-7	<p>The alleged violation description (AVD) for numerous citations listed the hazards on the AVD as “safety hazards” or “health hazards”. The appropriate terminology should reflect the direct hazard such as “burns”, “fire hazards”, or “amputations”. In addition, the AVD’s in several case files did not include measurements of fall hazards or voltage of electrical hazards where the information was readily available in the case file.</p>	<p>Document measurements if appropriate and accurately describe the safety or health hazard in the alleged violation description.</p>	<p>AKOSH provided training and inspection monitoring to all CSHOS to improve documentation of measurements and description of safety or health hazards in the alleged violation description.</p>	<p>Ensure that case file documentation is improved.</p>	<p>Ongoing.</p>
10-8	<p>In two reviewed health case files it was noted that the Compliance Officer did not conduct sampling where it would have been appropriate. One case involved noise citations where the employer was cited for not providing sampling for noise where work conditions created a change in noise, but no sampling was conducted by AKOSH to document an alleged violation. In another case, the Compliance Officer did not conduct air sampling for formaldehyde on a complaint involving a funeral home. Citations were proposed for exposure to formaldehyde but no sampling was conducted to show if there were overexposures.</p>	<p>Conduct health sampling to confirm violations of health standards.</p>	<p>This recommendation pertains to inspections at a single location by the same CSHO rather than a systemic AKOSH deficiency. AKOSH will make efforts to ensure that adequate sampling is conducted when a complaint item or the circumstance of the work environment dictates that sampling should be performed to establish exposure levels.</p>	<p>Ensure improvement in inspection and investigation documentation.</p>	<p>Ongoing.</p>

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
<b>10-10</b>	During FY 2010, AKOSH's citation lapse times was 56.3 days for safety inspections and 75.3 days for health. Compared to FY 2009, this represents a 12-day increase in the safety lapse time (43.88 days in FY 2009), and an increase of over twenty two (22) days in the health lapse time (53.58 in FY 2009). AKOSH's FY 2010 lapse times compare unfavorably to the averages for state plans as a whole. Those lapse times were 47.3 and 61.9 days for safety and health cases, respectively.	Reduce citation issuance lapse times.	AKOSH continuously works to improve citation lapse times. By establishing a new mid-level management position in FFY 2011, AKOSH hopes to experience improvement in citation lapse times.	Ensure improvement in issuance of timely citations.	Ongoing.
<b>10-11</b>	AKOSH uses an 11c prima facie screening sheet in most cases. In at least five cases, however, no screening form could be located. That makes it difficult to know whether the complaint had been properly screened. AKOSH also does not send screen out letters. In one case, there may have been jurisdiction for the employee to file under the National Transit Systems Security Act (NTSSA).	Ensure that proper documentation is maintained to explain AKOSH's reasons for screening out discrimination complaints especially since screen out letters are not provided to those who inquire about filing complaints.	AKOSH has implemented use of the prima facie screening sheet and letter notifications to complainants regarding a screened out complaint. The screening documentation will be maintained in the case file.	Improvement in justification for screening out discrimination complaints.	Completed.
<b>10-12</b>	During 11c case file reviews, a complaint was identified as not timely filed. Although the case was dismissed, it should have been dismissed for being untimely or the reasons for tolling the statute of limitations should have been discussed in the Final Investigative Report (FIR).	Ensure that discrimination complaints are dismissed if they are not timely filed or that the FIR adequately explains the reason for tolling the statute of limitations, i.e., explains why AKOSH is accepting a late filing.	AKOSH will continue to dismiss complaints that are not filed timely. OSHA focused on a single instance of an error in connection with this recommendation. AKOSH questions whether a singular issue warrants a recommendation.	Improvement in case management documentation	Completed.

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-14	11c complaint FIRs sometimes did not explain the evidence clearly and specifically. In one case, the FIR failed to mention which individual fired the complainant and what incident directly led to the complainant's termination to clearly show why the complaint lacked merit. In three cases, more information about employer knowledge was needed. A CASPA was filed in two of these cases. AKOSH should have discussed inferred employer knowledge, i.e., the Small Workplace Doctrine. Employer knowledge of one protected activity was discussed, but there were other protected activities. Also the case was dismissed even though the employer failed to follow its progressive disciplinary policy.	Ensure the most relevant evidence is documented in the 11c FIR with sufficient specificity (e.g., dates, times, individuals involved, etc.) instead of relying on general statements (e.g., "the complainant's performance was lacking").	AKOSH agrees that Final Investigative Reports (FIR) should document relevant evidence with sufficient specificity. However, in some cases the information or additional detail is simply not available within the time constraints of the investigation process. AKOSH will strive to collect all relevant facts regarding employer knowledge and other aspects of workplace safety and health retaliation investigations and adequately document relevant evidence in the FIR.	Improve discrimination investigation documentation.	Completed.
10-15	In three 11c cases, more information about employer knowledge was needed. A CASPA was filed in two of these cases. AKOSH should have discussed inferred employer knowledge, i.e., the Small Workplace Doctrine. Employer knowledge of one protected activity was discussed, but there were other protected activities. Also the case was dismissed even though the employer failed to follow its progressive disciplinary policy.	Document in the FIR that AKOSH considered evidence of inferred knowledge (i.e., Small Workplace Doctrine) if there is no evidence of actual employer knowledge.	AKOSH agrees to document in the FIR considerations of inferred knowledge evidence (i.e., Small Workplace Doctrine) if there is no evidence of actual employer knowledge of a protected activity.	Improve discrimination investigation documentation.	Completed.

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-17	In one 11c case, the settlement agreement included an employment waiver. This is contrary to OSHA's guidelines for approving settlement agreements.	Ensure that AKOSH follows OSHA's policy for approving settlement agreements that include waivers of future employment.	AKOSH settlements are subject to legal guidance from the Alaska Department of Law in accordance with Alaska statute. To the extent supported by AKOSH's legal counsel, AKOSH agrees to consider OSHA's guidelines for settlements, but does not consider these guidelines to be universally mandatory for AKOSH to achieve settlement.		Completed.

**Appendix C**  
**FY 2011 Enforcement Activity**

	AK	State Plan Total	Federal OSHA
<b>Total Inspections</b>	<b>310</b>	<b>52,056</b>	<b>36,109</b>
<i>Safety</i>	250	40,681	29,671
% Safety	81%	78%	82%
<i>Health</i>	60	11,375	6,438
% Health	19%	22%	18%
<i>Construction</i>	122	20,674	20,111
% Construction	39%	40%	56%
<i>Public Sector</i>	45	7,682	N/A
% Public Sector	15%	15%	N/A
<i>Programmed</i>	113	29,985	20,908
% Programmed	36%	58%	58%
<i>Complaint</i>	69	8,876	7,523
% Complaint	22%	17%	21%
<i>Accident</i>	7	2,932	762
<i>Insp w/ Viols Cited</i>	228	31,181	25,796
% Insp w/ Viols Cited (NIC)	74%	60%	71%
% NIC w/ Serious Violations	57.9%	63.7%	85.9%
<b>Total Violations</b>	<b>1,177</b>	<b>113,579</b>	<b>82,098</b>
<i>Serious</i>	271	50,036	59,856
% Serious	23%	44%	73%
<i>Willful</i>	-	295	585
<i>Repeat</i>	25	2,014	3,061
<i>Serious/Willful/Repeat</i>	296	52,345	63,502
% S/W/R	25%	46%	77%
<i>Failure to Abate</i>	-	333	268
<i>Other than Serious</i>	881	60,896	18,326
% Other	75%	54%	22%
<i>Avg # Violations/ Initial Inspection</i>	4.5	3.4	2.9
<b>Total Penalties</b>	<b>\$285,365</b>	<b>\$ 75,271,600</b>	<b>\$ 181,829,999</b>
<i>Avg Current Penalty / Serious Violation</i>	\$ 810.70	\$ 963.40	\$ 2,132.60
% Penalty Reduced	45.2%	46.6%	43.6%
<b>% Insp w/ Contested Viols</b>	<b>3.9%</b>	<b>14.8%</b>	<b>10.7%</b>
<i>Avg Case Hrs/Insp- Safety</i>	18.4	17.1	19.8
<i>Avg Case Hrs/Insp- Health</i>	39.9	26.8	33.1
<i>Lapse Days Insp to Citation Issued- Safety</i>	73.3	35.6	43.2
<i>Lapse Days Insp to Citation Issued- Health</i>	78.2	43.6	54.8
<i>Open, Non-Contested Cases w/ Incomplete Abatement &gt;60 days</i>	8	1,387	2,436

## Appendix D

### FY 2011 State Activity Mandated Measures (SAMM) Report

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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: ALASKA

NOV 08, 2011

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	526 7.62 69	29 7.25 4	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	15 .71 21	0 0	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	64 96.97 66	4 100.00 4	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	45 97.83 46	4 100.00 4	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	165 68.46 241	0 .00 36	100%
	20	0	

45.	Public	83.33		100%	
46.		24	0		
47.					
48.	7. Average number of calendar days from				
49.	Opening Conference to Citation Issue				
50.		24735	857	2631708	
51.	Safety	102.21	122.42	51.9	National Data (1 year)
52.		242	7	50662	
53.					
54.		6080	252	767959	
55.	Health	108.57	126.00	64.8	National Data (1 year)
56.		56	2	11844	
57.					
58.					

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\*AK FY11

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

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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)

NOV 08, 2011

98.  
 99.  
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State: ALASKA

RID: 1050200

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	62	0	90405
Safety	44.29	.00	58.5 National Data (3 years)
	140	1	154606
	9	0	10916
Health	100.00		51.7 National Data (3 years)
	9	0	21098
9. Average Violations per Inspection with Vioations			
	348	16	419386
S/W/R	1.16	1.77	2.1 National Data (3 years)
	298	9	198933
	909	10	236745
Other	3.05	1.11	1.2 National Data (3 years)
	298	9	198933
10. Average Initial Penalty per Serious Violation (Private Sector Only)	283950	18425	611105829
	975.77	1675.00	1679.6 National Data (3 years)
	291	11	363838
11. Percent of Total Inspections in Public Sector	45	0	118
	14.52	.00	11.3 Data for this State (3 years)
	310	10	1041
12. Average lapse time from receipt of Contest to first level decision	1624	0	3533348
	203.00		199.7 National Data (3 years)
	8	0	17693
13. Percent of 11c Investigations	10	1	100%

141.	Completed within 90 days	83.33	100.00		
142.		12	1		
143.					
144.	14. Percent of 11c Complaints that are	5	0	1517	
145.	Meritorious	41.67	.00	23.0	National Data (3 years)
146.		12	1	6591	
147.					
148.	15. Percent of Meritorious 11c	4	0	1327	
149.	Complaints that are Settled	80.00		87.5	National Data (3 years)
150.		5	0	1517	
151.					
152.					
153.					
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\*AK FY11

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

## Appendix E

### FY 2011 State Indicator Report (SIR)

U. S. D E P A R T M E N T O F L A B O R  
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PAGE 1

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = ALASKA

-- PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	3694 61.3 6026	12 28.6 42	8169 61.4 13312	35 28.9 121	18137 62.5 29042	89 40.6 219	40070 63.7 62876	219 44.2 495
B. HEALTH	480 39.7 1208	0 .0 6	1020 36.4 2806	0 .0 18	2126 34.6 6150	5 11.6 43	4357 34.7 12569	23 22.3 103
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378 73.7 4583	32 84.2 38	7266 72.4 10036	50 84.7 59	14959 70.1 21330	103 76.9 134	32614 69.1 47196	196 80.7 243
B. HEALTH	456 57.0 800	1 100.0 1	890 57.2 1555	3 100.0 3	1723 56.2 3068	7 100.0 7	3487 55.3 6309	34 89.5 38
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703 79.6 14698	58 23.0 252	23768 77.4 30703	88 20.7 426	48704 76.7 63528	168 22.9 735	109064 78.4 139117	351 24.3 1446
B. HEALTH	2634 66.6	17 27.4	5290 64.7	39 25.5	10266 64.4	79 25.2	21598 66.7	167 23.5

	3957	62	8180	153	15930	314	32380	711
4. ABATEMENT PERIOD FOR VIOLS								
	2394	7	4978	9	10776	39	23693	108
A. SAFETY PERCENT >30 DAYS	16.6	8.8	16.8	7.0	17.9	16.1	17.9	18.8
	14465	80	29573	128	60243	242	132414	574
	259	0	711	4	1451	8	3159	38
B. HEALTH PERCENT >60 DAYS	6.5	.0	8.6	2.8	9.4	3.3	10.0	8.4
	4006	70	8234	144	15507	243	31619	452

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = ALASKA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
<b>C. ENFORCEMENT (PRIVATE SECTOR)</b>								
<b>5. AVERAGE PENALTY</b>								
<b>A. SAFETY</b>								
	505479	25800	1258835	26550	2803637	34450	5086228	48600
OTHER-THAN-SERIOUS	1181.0	2150.0	1195.5	2042.3	1126.9	1378.0	1055.2	1278.9
	428	12	1053	13	2488	25	4820	38
<b>B. HEALTH</b>								
	219203	0	441915	600	853346	2400	1667151	19100
OTHER-THAN-SERIOUS	1184.9	.0	1077.8	300.0	980.9	300.0	958.7	868.2
	185	0	410	2	870	8	1739	22
<b>6. INSPECTIONS PER 100 HOURS</b>								
<b>A. SAFETY</b>								
	6874	44	15417	126	33850	248	73070	561
	6.0	14.7	5.6	12.6	5.5	10.3	5.4	8.5
	1138	3	2730	10	6145	24	13476	66
<b>B. HEALTH</b>								
	1458	8	3330	21	7311	60	14958	129
	2.4	.0	2.2	7.0	2.2	3.2	2.0	2.4
	615	0	1501	3	3390	19	7404	54
<b>7. VIOLATIONS VACATED %</b>								
	1270	6	3026	40	6577	87	12352	167
	5.6	1.5	6.6	5.2	7.0	6.3	6.2	5.9
	22608	399	46128	770	93448	1376	200310	2807
<b>8. VIOLATIONS RECLASSIFIED %</b>								
	737	6	1997	9	4456	19	9147	50
	3.3	1.5	4.3	1.2	4.8	1.4	4.6	1.8
	22608	399	46128	770	93448	1376	200310	2807
<b>9. PENALTY RETENTION %</b>								
	19478404	62509	40012395	107629	77322520	304759	134938244	522422
	61.0	69.9	61.6	69.7	62.8	64.6	62.8	61.9
	31918969	89450	65001782	154485	123124542	472055	214845679	844515

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

STATE = ALASKA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	12 28.6 42	1 50.0 2	35 28.9 121	2 40.0 5	89 40.6 219	18 64.3 28	219 44.2 495	40 67.8 59
B. HEALTH	0 .0 6	0 .0 2	0 .0 18	0 .0 3	5 11.6 43	2 11.8 17	23 22.3 103	4 16.0 25
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	58 23.0 252	2 40.0 5	88 20.7 426	4 28.6 14	168 22.9 735	9 19.1 47	351 24.3 1446	17 14.4 118
B. HEALTH	17 27.4 62	0 .0 0	39 25.5 153	7 16.3 43	79 25.2 314	17 20.2 84	167 23.5 711	32 19.2 167

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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

CURRENT MONTH = SEPTEMBER 2011

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = ALASKA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
	579	7	1131	7	2220	9	4270	16
1. VIOLATIONS VACATED %	22.8	20.0	23.4	20.0	23.5	20.5	23.0	24.6
	2542	35	4834	35	9442	44	18586	65
	328	3	620	3	1259	5	2360	7
2. VIOLATIONS RECLASSIFIED %	12.9	8.6	12.8	8.6	13.3	11.4	12.7	10.8
	2542	35	4834	35	9442	44	18586	65
	3616720	4910	9500018	4910	16062961	81210	28079915	86534
3. PENALTY RETENTION %	56.1	46.2	62.4	46.2	62.3	88.9	60.6	86.3
	6443756	10625	15212620	10625	25766759	91350	46371522	100300

**Appendix F**  
FY 2011 State OSHA Annual Report (SOAR)  
(Available Separately)

**Appendix G**  
FY 2011 23(g) Consultation Data

	AK Public Sector	Total State Plan Public Sector
<b>Requests</b>	<b>92</b>	<b>1,328</b>
<i>Safety</i>	56	576
<i>Health</i>	19	560
<i>Both</i>	17	192
<b>Backlog</b>	<b>9</b>	<b>123</b>
<i>Safety</i>	5	51
<i>Health</i>	2	58
<i>Both</i>	2	14
<b>Visits</b>	<b>98</b>	<b>1,632</b>
<i>Initial</i>	83	1,336
<i>Training and Assistance</i>	5	175
<i>Follow-up</i>	10	121
<i>Percent of Program Assistance</i>	100%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
<b>Employees Trained</b>	<b>266</b>	<b>5,030</b>
<i>Initial</i>	222	2,144
<i>Training and Assistance</i>	44	2,886
<b>Hazards</b>	<b>330</b>	<b>6,063</b>
<i>Imminent Danger</i>	1	3
<i>Serious</i>	318	4,804
<i>Other than Serious</i>	5	1,171
<i>Regulatory</i>	6	85
<i>Referrals to Enforcement</i>	-	6
<b>Workers Removed from Risk</b>	<b>9,856</b>	<b>171,075</b>
<i>Imminent Danger</i>	30	55
<i>Serious</i>	9,304	136,884
<i>Other than Serious</i>	82	26,046
<i>Regulatory</i>	440	8,090