



**IOWA WORKFORCE DEVELOPMENT
IOWA DIVISION OF LABOR
IOWA OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ENFORCEMENT AND CONSULTATION**

**Federal Annual Monitoring and Evaluation (FAME) Report of the
Iowa Occupational Safety and Health Administration**

For the Period of: October 1, 2010 through September 30, 2011

Prepared by:
The United States Department of Labor
Occupational Safety and Health Administration
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**U.S. Department of Labor
Occupational Safety and Health Administration**

Iowa FAME Report

I. Executive Summary

The State of Iowa, under an agreement with the U.S. Department of Labor - Occupational Safety and Health Administration (OSHA) operates an occupational safety and health program in accordance with Section 18(e) of the Occupational Safety and Health Act of 1970 (OSH Act). The State of Iowa Occupational Safety and Health Administration (Iowa OSHA) is a department within Iowa Workforce Development (IWD), Iowa Division of Labor Services, and is an integral part of OSHA Region VII. Iowa OSHA is annually funded through Section 23(g) of the OSH Act.

This report assesses the current performance of Iowa OSHA in the achievement of program goals as established in the Iowa OSHA Federal Fiscal Year (FY) 2011 Annual Performance Plan (APP). The evaluation addresses the effectiveness of programmatic areas related to the enforcement of safety and health standards, the administration of cooperative programs, and the administration of an effective whistleblower protection program. The report also assesses Iowa OSHA's progress in completing recommendations that were developed as a result of the FY-2010 Federal Annual Monitoring Evaluation (FAME) Report and Corrective Action Plan (CAP).

A. Summary of the Report

The purpose of the 2011 Federal Annual Monitoring and Evaluation (FAME) Report is to assess the activities of Iowa OSHA during Federal Fiscal Year 2011 and assess the State's progress in resolving outstanding recommendations from the 2010 FAME and CAP.

A five (5) person Federal OSHA team was assembled from personnel assigned to the Kansas City Regional Office and the Des Moines Area Office in order to accomplish the onsite evaluation at Iowa OSHA in Des Moines, Iowa. Three (3) personnel conducted the safety and health evaluation, and two (2) personnel conducted the Whistleblower Protection Program audit.

Iowa's total allocated funding for the FY-2011 23(g) program was \$4,322,779. Iowa's total recipient share of the funding was 62.2 % which equaled \$2,256,279. Iowa's share included the state base award funds of \$2,066,500 and state 100% funding of \$188,779. The federal base award funding was \$2,066,500 which was 37.8% of the total funding.

The position of Labor Commissioner changed when the previous Labor Commissioner retired in April 2011 and the current one was appointed by the Governor. The Deputy Commissioner of Labor / Iowa OSH Administrator remained the same.

The Iowa OSHA program functions similarly to Federal OSHA. Iowa works with Region VII to compare and improve enforcement and inspection activity. In addition, Federal OSHA standards are normally adopted identically, except for maritime standards which are within Federal OSHA jurisdiction.

Region VII received only two (2) Complaints About State Program Administration (CASPA) in FY-2011. CASPA # 2011-16 alleged Iowa OSHA failed to investigate both an alleged safety/health complaint and an alleged whistleblower complaint in October 2009. Only a non-formal complaint investigation finally occurred in September 2010. CASPA #2011-17 also alleged Iowa OSHA failed to address critical evidence in a whistleblower complaint. Both the whistleblower investigator position and the permanent duty officer position have changed personnel since the CASPAs were investigated.

Quarterly monitoring team meetings were held during FY-2011, at which time the State Activity Mandated Measures (SAMM) and State Information Report (SIR) were reviewed and discussed with Iowa OSHA compliance staff.

The State OSHA Annual Report (SOAR), the FAME Report, and other data indicate Iowa OSHA made progress towards annual and strategic performance goals, improvement in both safety and health programs, and improvement in whistleblower protection programs.

B. State Plan Introduction

The State of Iowa, under an agreement with OSHA operates an occupational safety and health program in accordance with Section 18 of the OSH Act. Iowa OSHA received certification on September 14, 1976, after completing all developmental steps as specified in the plan. Iowa OSHA was granted final approval status under Section 18(e) on July 2, 1985 and is annually funded through Section 23(g) of the OSH Act.

Iowa OSHA is administered within Iowa Workforce Development, Labor Services Division. The department is administered by the Commissioner of Labor who was appointed to the position by the Governor following the retirement of the previous commissioner in April 2011. The Deputy Commissioner of Labor serves as the Iowa OSH Administrator.

Additional management of the program includes four Public Service Executive 2 (PSE2) first line supervisors. One of the supervisors serves as the Iowa Consultation and Education Project Manager, and manages the Iowa OSHA 21(d) and 23(g) cooperative programs. The enforcement supervisors also take an active role in fostering outreach and encourage partnerships and alliances. They routinely provide training sessions to enforcement staff and public presentations when called upon by employers and interest groups.

Iowa OSHA is benchmarked for sixteen (16) safety compliance officers and thirteen (13) health compliance officers. The agency filled several inspector positions during FY-2011 due to early retirements and contract transfers. Three safety inspectors were hired. An investigator dedicated to the Whistleblower Protection Program was also filled. All field inspection positions were filled during FY-2011. The Division of Labor Services had three (3) fluent Spanish speaking staff members at the beginning of FY-2011. The individuals continue to provide assistance to the public and their co-workers through their bi-lingual skills.

The FY-2011 budget continued to challenge the Iowa OSHA program. The previous and current Labor Commissioners were strong proponents for parity regarding the 50/50 funded programs. Each one communicated with Iowa's US Senators and Representatives and their staffs to request actual funding at the fifty (50) percent level. Iowa's total allocated funding for the FY-2011 23(g) program was \$4,322,779. Iowa's total recipient share of the funding was sixty-two point two (62.2) percent which equaled \$2,256,279. Iowa's share included the state base award funds of \$2,066,500 and state one hundred (100) percent funding of \$188,779. The federal base award funding was \$2,066,500 which was thirty-seven point eight (37.8) percent of the total funding.

The Iowa Legislature was responsive to the Division of Labor Services' needs in the fiscally tight period. The Revenue Finance Estimating Committee did not ask for any additional state budget cuts before the end of the state fiscal year in June 2011. Unlike previous years, there were no furloughs or mandatory time off without pay for contract, or non-contract staff. Budget issues remain hallmark to the Iowa OSHA program and its ability to weather future cuts. Iowa OSHA management continued to communicate that the agency needs and appreciates the necessary Federal funding for its programs.

Iowa OSHA is in the third year of its strategic plan cycle that began in FY-2009. They maintained their commitment to the strategic performance plan to ensure all Iowa employees a workplace with safe working conditions that are free from recognizable hazards and retaliation.

Iowa OSHA continued to foster a solid working relationship with the Des Moines Area Office and the Region VII Regional Administrator and staff located in Kansas City, Missouri. The Labor Commissioner, Iowa OSHA Administrator, and enforcement and consultation/education supervisors participate in the Region VII conference calls held every Monday morning. Additionally, they continue to meet quarterly with the area and regional office staff to discuss Iowa OSHA's performance and goals.

The Labor Commissioner worked with the National Association of Government Labor Officials (NAGLO), Occupational Safety and Health State Plan Association (OSHSPA), the Area and Regional OSHA offices and Iowa OSHA leadership to evaluate and ensure Iowa OSHA is meeting its long-term goals.

The State of Iowa commemorates Workers Memorial Day with the Governor presenting proclamations to the deceased worker's families. There were twenty-five (25) Iowa OSHA fatality investigations in FY-2011. This exceeded the prior year's total of sixteen (16) fatality investigations. However, as of the date of this report, there have been only seven (7) fatalities during FY-2012.

Iowa OSHA had one significant enforcement inspection in FY-2011. Iowa OSHA conducted an inspection in response to an employee complaint at the Heartland Co-Operative in Elkhart, Iowa. The inspection resulted in three (3) willful citations, three (3) serious citations and one (1) other-than-serious citation for \$231,000 in penalties.

Iowa OSHA used the OSHA site-specific targeting plan (SST) to schedule programmed inspections for general industry. As in previous years, the Iowa specific data that was collected through the OSHA Data Initiative (ODI) program for the previous year identified the facilities to be targeted for inspection. The University of Tennessee reports continued to be utilized for Iowa OSHA programmed construction inspections. Additional local emphasis programs (LEPs) were used for targeting purposes for: construction areas by zip codes, hexavalent chromium, amputations, asbestos, falls, and grain handling. National emphasis programs (NEPs) for combustible dust and silica were also used to conduct programmed inspections.

Construction activities in Iowa once again placed a greater demand on the enforcement staff with drive-by inspections, and referrals from the Contractor Registration Field Investigators.

Voluntary Protection Program (VPP) activities continued to keep staff busy with re-certifications, renewals and new VPP STAR Merit sites. Iowa currently has forty-three (43) active VPP participants.

C. Study Methodology

A five (5) person Federal OSHA team was assembled from personnel assigned to the Kansas City Regional Office and the Des Moines Area Office in order to accomplish the onsite evaluation at Iowa OSHA in Des Moines, Iowa. Three (3) personnel conducted the safety and health evaluation, and two (2) personnel conducted the Whistleblower Protection Program audit.

1. Safety and Health Program Evaluation

Onsite evaluation activity of Iowa OSHA was conducted between February 21, 2012 and March 23, 2012. The primary component of the evaluation included case file reviews from the safety and health enforcement cases and cooperative programs.

Iowa OSHA data contained in the Integrated Management Information System (IMIS) was obtained for the period October 1, 2010 through September 30, 2011. The audit team utilized OSHA Instruction STP 2.22A, Appendix K to determine the sample size for each of the various enforcement, cooperative program, and whistleblower program activities. Each activity case was assigned a numerical identifier. A random sampling table for each category was generated using the website: <http://www.random.org>. The results of each table were applied to the applicable set of cases.

Iowa OSHA conducted nine hundred and sixty-nine (969) safety and health inspections during FY-2011. The categories of inspection case files that were selected for review included fatality investigations, complaint and referral based inspections; and various programmed inspections. The random inspection case file sample was weighted toward the accident investigation case files which were chosen first, followed by the complaint and referral inspection case files, and ultimately the programmed inspection case files that were chosen last. Seventy-five (75) cases were ultimately reviewed out of a chosen population of eighty-eight (88) case files. Each inspection case file was reviewed to address all aspects of the inspection process through informal settlement, contest, abatement and penalty collection. Of the seventy-five (75) total inspection case files that were reviewed, they included the following:

- Sixteen (16) cases were fatality investigation case files and one (1) case was a multi-employee accident inspection.
- Twenty-three (23) cases were complaint-related inspections.
- Eight (8) cases were other un-programmed inspection case files that included four (4) referrals plus four (4) un-programmed related cases.
- Twenty-seven (27) cases were program planned, or program-related inspections.

Other Iowa OSHA program elements were chosen in the same manner as discussed above for the inspection case file reviews. There was a pool of two-hundred and twelve (212) non-formal complaints and referrals whereby an inspection was not conducted. Forty-five (45) cases were reviewed out of sixty (60) cases that were randomly selected.

Thirty (30) out of forty-five (45) voluntary protection program case files were selected and reviewed. All six (6) active partnerships and the single active alliance were also reviewed.

Iowa OSHA was cooperative, shared information and ensured staff members were available to discuss cases, policies, and procedures. In addition, Iowa OSHA staff members were eager to work with the evaluation team. Interviews were conducted with Iowa OSHA personnel including compliance officers, and both current and previous permanent duty officers.

The evaluation team also evaluated Iowa OSHA's achievement of annual performance goals, state performance on mandated measures, Complaints About State Program Administration (CASPA), and overall program administration.

Stakeholders were contacted for feedback on Iowa OSHA performance of their program. Stakeholders included employer associations, minority employer associations, labor organizations, public employee labor organizations, and public employer associations.

2. Whistleblower Protection Program Audit

The Whistleblower Protection Program Audit was conducted from March 5 to March 8, 2012. The OSHA Whistleblower Investigation's Manual (Manual), Directive Number CPL 02-03-003, September 20, 2011, was used as the point of reference. Those interviewed included the Iowa OSHA investigator, the Iowa attorney in charge of appealed and meritorious whistleblower complaints, and the FY-2011 duty officer. Iowa OSHA received sixty-three (63) whistleblower complaints. Out of this pool, thirty whistleblower protection program case files were reviewed. In addition, a follow-up review was conducted regarding all Findings and Recommendations resulting from the comprehensive study of the IOSH whistleblower program conducted in the audit for the FY09 FAME

D. Findings and Recommendations

1. Safety and Health Program Evaluation Findings and Recommendations

Finding #11-1 - Forty-three point five (43.5) percent of the formal complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff. Thirty-five point seven (35.7) percent of the inspection case files that did not contain a response letter were in-compliance and citations were not issued.

Recommendation #11-1 - Recommend compliance officers draft the complainant response letter prior to submitting the case for review. This will ensure the response is applicable to the complaint items and will facilitate the letter being mailed once Iowa OSHA is notified that the employer received the citation, or the case is closed in the case of an in-compliance inspection.

Finding #11-2 - Inspection case files did not routinely utilize a case file diary.

Recommendation #11-2 - Recommend all case files utilize a case file diary in accordance with the Field Operations Manual, Chapter 5, Section X. Ensure the diary is utilized by supervisors, compliance officers, and administrative personnel to note the inspection activities during and after the inspection.

Finding #11-3 - Iowa OSHA Voluntary Protection Program case files were stored in multiple locations, including separate parts of some files that were not stored as a complete case file.

Recommendation #11-3 - Recommend Iowa OSHA store Voluntary Protection Program case files in one location to ensure portions of the case files are not misplaced, become missing, or are lost.

2. Whistleblower Protection Program Audit (Special Study) Findings and Recommendations

Finding #11-4 - Adequate investigation of a whistleblower complaint was not conducted in that both the complainant's allegation(s) and the respondent's proffered non-retaliatory reason(s) for the alleged adverse action were not fully tested before reaching a determination in the case. This deficiency was noted in one of the thirty investigations reviewed.

Recommendation #11-4 - The investigator must ensure that every effort is made to test and weigh all of the evidence before reaching a determination and avoid shutting down an investigation before sufficient documentation has been collected and all relevant witnesses have been interviewed. (Manual, Section 3-1)

Finding #11-5 - Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint. This deficiency was noted in both of the work refusals reviewed. REPEAT Finding - This is Finding #09-9 in the FY-2009 Audit.

Recommendation #11-5 - The investigator must conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed. (Manual, Sections 3-5 to 3-12 & 7-4)

Finding #11-6 - Documentation of the investigator's assessment of the settlement agreement and the withdrawal request were not present in the case file. This deficiency was noted in all four of the settled cases and two of the withdrawal cases reviewed.

Recommendation #11-6 - The investigator must document in the ROI his analysis of the content of the settlement agreement to describe the relief obtained and the

withdrawal request to ensure the withdrawal was submitted voluntarily. (Manual, Section 4-2, 5-6 & Chapter 6)

Finding #11-7 - Documentation of the testing of the respondent's defense to determine if it is believable or a pretext was not present in the case file. This deficiency was noted in all of the thirty cases reviewed.

Recommendation #11-7 - The investigator must add a Respondent Defense discussion to his analysis section of the ROI. (Manual, Section 5-13)

Finding #11-8 - Closing letters to Complainants did not utilize OSHA's Secretary's Findings template and did not fully explain the reason for the dismissal. This deficiency was noted in twenty-one of the twenty-two dismissal cases reviewed.

Recommendation #11-8 - Draft closing letters to Complainants utilizing OSHA's Secretary's Findings template in order to adequately inform the parties of the outcome of the investigation by succinctly documenting the factual findings as well as Iowa OSHA's analysis of the elements of a violation. (Manual, Section 5-6 to 5-11)

Finding #11-9 - Appropriate entry of administratively closed 11(c) complaints in IMIS was not accomplished. This deficiency was noted in one of the four screened out cases reviewed.

Recommendation #11-9 - Select the proper reason for closure when entering codes for administratively-closed complaints in IMIS. (Manual, Section 2-3)

Finding #11-10 – One hundred (100) percent of 11(c) investigations were not completed within the 90 day goal. Iowa OSHA did not meet the Reference / Standard of one hundred (100) percent with only twenty-six (26) percent of the 11(c) investigations completed within ninety (90) days. This was down from fifty-three (53) percent in FY-2009. There were forty-two (42) 11(c) complaints docketed for investigation in FY-2011, compared to nineteen (19) cases in FY-2009. REPEAT Finding - This is #09-2 in the FY-2009 Audit.

Recommendation #11-10 - Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within ninety (90) days. (SAMM 17)

Finding #11-11 - Although the investigator attended the two-week OTI 1420 whistleblower course, adequate whistleblower training has not been provided to other IOSH staff members and stakeholders. REPEAT Finding – This is #09-12 in the FY-2009 Audit.

Recommendation #11-11 - Provide internal whistleblower training to the new duty officer and other key stakeholders within the IOSH facility, such as front-line staff

that are responsible for transferring incoming phone calls. Accomplish training for the IOSH Discrimination Program supervisor by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations – 11(c) in FY-2012 or FY-2013.

II. Major New Issues

The Governor of the State of Iowa vetoed several provisions of Iowa Senate File 517 in July 2011. The bill's provisions included \$8.77 million funding for IWD which includes the Iowa OSHA program. The Governor reportedly vetoed the funding in order to close IWD field offices, which do not include Iowa OSHA. However, the funding issue potentially affected Iowa OSHA. Union leaders filed suit against the Governor's veto and a District Court filed a split decision on the case in December 2011. Some provisions were upheld, while the court ruled against other provisions. The Iowa Supreme Court ruled in March 2012 against the Governor's veto. This resulted in striking down a number of IWD budget items. Although the Iowa OSHA program was not specifically one of the budget items included in the court case, the budget issue had the potential to affect the entire department. The situation was remedied immediately prior to submission of this report when the budgetary issues were reportedly solved.

III. State Response to FY 2010 FAME Recommendations

A. Safety and Health Program Evaluation

Iowa OSHA adopted the TED 01-00-018 on January 1, 2009. The PSE 2 supervisors developed protocols to track individual training for enforcement and consultation personnel. However, compliance officer training was an issue that resulted in findings and recommendations that were included in FY-2009 and FY-2010 FAME reports. Individual development plans were developed for Iowa OSHA personnel and were discussed during the quarterly meetings last year. In addition, Iowa OSHA attempts to optimize their training budget by hosting training whenever it is feasible to do.

B. Whistleblower Protection Program Audit

Iowa OSHA hired a new whistleblower investigator following the retirement of the previous investigator. The new whistleblower attended the new OTI Whistleblower course, and was also assisted with on-the-job training provided by an investigator from the Kansas City Regional Office in Region VII. These steps lead to a notable improvement in the Iowa Whistleblower Protection Program.

IV. Assessment of State Performance

A. Safety and Health Enforcement Program

Seventy-five (75) inspection case files were reviewed to address all aspects of the inspection process from initial assignment and opening conference of the inspection

onsite, through informal or formal settlement, abatement documentation and penalty collection at the end of the inspection cycle. Of the seventy-five (75) inspection case files that were reviewed, fifty-three (53) inspections, or seventy-seven point seven (70.7) percent of them resulted in the issuance of a citation and 29.3 % of the cases were in-compliance.

Data generated via the case file reviews were compared to data such as the State Activity Mandated Measures (SAMM), State Interim Report (SIR), and national and regional inspection data.

1. Fatalities

There were twenty five (25) Iowa OSHA fatality investigations in FY-2011. This was a sixty-two (62.5) percent increase over FY-2010 which had sixteen (16) Iowa OSHA fatalities. Seventeen (17) fatality investigation cases were reviewed. Only one (1) inspection case file was contested and six (6) percent of the fatality investigations were evaluated for criminal referral. The IMMLANG was noted in one hundred (100) percent of the inspection case files. The OSHA-36 fatality notification report was filed in one hundred (100) percent of the cases. This supported the OSHA fatality notification process at the agency level. At the completion of the investigation, the OSHA-170 fatality report was completed in ninety-three (93.8) percent of the cases.

2. Complaints

SAMM #1 - During FY-2011, Iowa OSHA averaged three point thirty six (3.36) days to initiate a complaint inspection. This was a two point six (2.6) percent decrease from FY-2010 and is well within the benchmark of five (5) days. Twenty-three (23) complaint inspections were reviewed and ninety-five point seven (95.7) percent of all complaint items were addressed appropriately during the inspections. Only fifty-six point five (56.5) percent of the complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff.

Finding #11-1 - Forty-three point five (43.5) percent of the formal complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff. Thirty-five point seven (35.7) percent of the inspection case files that did not contain a response letter were in-compliance and citations were not issued.

Recommendation #11-1 - Recommend compliance officers draft the complainant response letter prior to submitting the case for review. This will ensure the response is applicable to the complaint items and will facilitate the letter being mailed once Iowa OSHA is notified that the employer received the citation, or the case is closed in the case of an in-compliance inspection.

SAMM #2 - During FY-2011, Iowa OSHA initiated 100.0% of non-formal complaint investigations within one (1) day. Complainants were contacted via phone to inform them of the results of the phone and fax complaint investigation. The complainants were offered the opportunity to receive a response in writing. However, most of the complainants preferred the phone response. Thus the phone notification was documented and a response in writing was not mailed to the complainant in those cases. Non-Formal complaints were handled exclusively by the permanently assigned duty officer. The permanent duty officer position was vacated recently by the compliance officer who held that position for many years. A new duty officer was recently hired.

SAMM #3 - During FY-2011, Iowa OSHA notified complainants within the required time frame 89.5% of the time. While the standard is 100.0% of the time, the activity measurement equates to ninety-three (93) of the complainants out of one-hundred and four (104) were notified within the time frame. Of the twenty three (23) formal complaint inspection files reviewed, the average number of days for notification was 28 days where the complainants were notified. Only 43.5% of the complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff.

SAMM #4 - During FY-2011, Iowa OSHA responded to two complaints / referrals whereby the employee was exposed to potential imminent danger hazards. Both of the responses were accomplished within one day for 100% response timeliness.

SAMM #5 - During FY-2011, Iowa OSHA did not have any denial of entries where entry was not obtained.

3. Targeting and Programmed Inspections

Iowa OSHA conducted a total of nine-hundred and fifty (950) inspections during FY-2011. Six-hundred and fifty-three (653) of the 950 inspections were programmed inspections. Iowa OSHA used the OSHA site-specific targeting (SST) program for general industry inspections. As in previous years, the Iowa specific data that was collected through the OSHA Data Initiative (ODI) program for the previous year identified the facilities to be targeted for inspection. The University of Tennessee reports were again used for Iowa OSHA programmed construction inspections.

Iowa OSHA implemented one new Local Emphasis Program for grain handling in FY-2011. A health National Emphasis Program (NEP) regarding employee exposure to primary metals was also adopted. Inspections regarding fall hazards in construction, and amputations in general industry continued to be the majority of programmed inspection and citations.

The LEP enforcement inspections that Iowa OSHA completed averaged at more than two violations per inspection. These LEPs were effective in identifying Iowa's more hazardous workplaces. The blood and SW2000 LEPs are currently inactive.

Iowa OSHA LEP	Number of Inspections	Number of citations
Amputations	168	569
Asbestos	80	201
Blood	0	0
Hexavalent Chromium	18	101
Fall	234	543
Grain	1	4
Scaffold	105	295
SW2000	0	0
Zip Code Construction	145	331

Twenty-seven (27) planned and program related inspections were reviewed during the onsite evaluation.

SAMM #8 - The percent of programmed safety inspections with serious, willful, or repeat violations was sixty-four point five (64.5) percent. Sixty-two point five (62.5) percent of programmed health inspections contained violations.

4. Citations and Penalties

Citations were issued to employers in fifty-three (53) of the seventy five (75) inspection case files that were reviewed. Forty-one (41) cases or seventy-seven point four (77.4) percent of the cases with citations contained violations that were classified as serious, willful, or repeat violations. Iowa OSHA had one significant enforcement inspection in FY-2011. The inspection resulted in three (3) willful citations, three (3) serious citations and one (1) other-than-serious citation for \$231,000 in penalties.

SAMM #7 - Iowa OSHA took an average thirty-two point seven (32.7) calendar days for a safety inspection and thirty three point five (33.5) days for a health inspection to conduct the inspection from the opening conference to citation issuance.

SAMM #9 - The average number of violations per inspection with serious / willful / repeat violations was two point fifty-six (2.56). This exceeded the national average of two point one (2.1) violations by twenty-two (22) percent.

SAMM #10 - The average initial penalty per serious violation was \$1,423.80. This was eighty-four point eight (84.8) percent, or \$255.80 less than the national average of \$1,679.60 per penalty per serious violation.

5. Abatement

SAMM #6 - Abatement was verified in (ninety-nine point four (99.4) percent of the one thousand, two hundred and eighty four (1,284) serious / willful / repeat violations that were issued by Iowa OSHA to private employers. One-hundred percent

(100.0%) of the fifteen (15) violations that occurred at the employers of public employees were also verified.

6. Employee and Union Involvement

Employee interviews were noted in the reviewed case files as having been conducted during ninety-three point three (93.3) percent of the inspections. Iowa OSHA used a well-written, standardized, locally produced employee interview form that was meant to ensure employee interviews were documented. However, only seventy-eight point six (78.6) percent of the reviewed case files contained documented interview information.

7. Case File Documentation

Iowa OSHA does not routinely utilize a case file diary in the inspection case files. Compliance officers do not annotate a case file diary if one is included. The case file diaries are only used to annotate items by supervisors and administrative personnel if necessary.

Finding #11-2 - Inspection case files did not routinely utilize a case file diary.

Recommendation #11-2 - Recommend all case files utilize a case file diary in accordance with the Field Operations Manual, Chapter 5, Section X. Ensure the diary is utilized by supervisors, compliance officers, and administrative personnel to note the inspection activities during and after the inspection.

B. Review Procedures

1. Informal Conferences

Of the seventy-five (75) inspection case files that were reviewed, forty-three (43) cases were settled during Informal Settlement Conferences. Alleged violations were either vacated, or reclassified in forty-eight point eight (48.8) percent of the cases where informal settlement conferences were held with the employer. In thirty-seven (37) of the forty-three (43) case files or eight-one point one (86.1) percent the changes were made in accordance with the FOM.

2. Formal Review of Citations

One hundred (100) percent of the contested cases were properly and timely filed.

C. Standards Adoption

1. Standards Adoption

Iowa OSHA usually adopts Standards with minimal or no modifications. The following standards were adopted in FY-2011.

- a. Standards Improvement Project, Phase III standard number 1910, 15, 18, 19, 26, 28 2011 43 – state responded on 06/17/2011 that Iowa OSHA will adopt Part 1910, 1926 and 1928 identically on 10/26/2011;
- b. Cranes and Derricks in Construction standard number 1926 (various) 2010 41 – Final Rule: state adopted on 12/22/2010;

2. Federal / State Initiated Program Changes

Iowa OSHA usually adopts Federal Program Changes with minimal or no modifications. The following changes were adopted in FY-2011:

- a. Enforcement Policies Relating to Floors /Nets and Shear Connectors Directive Number CPL-02-00-048 2010 379 – State responded on 10/12/2010 that Iowa OSHA rescinds their decision to adopt this directive on 10/12/2010. Directive Number CPL 02-01-046 was adopted by Iowa OSHA and will remain in effect.
- b. Severe Violator Enforcement Program (SVEP) Directive Number CPL-00-149 2010 380 – State responded on 08/27/2010 that Iowa OSHA will adopt portions of this directive.
- c. SST-10 - Directive Number CPL-02-(10-06) 2011 400 – State responded on 12/17/2010 that Iowa OSHA will not adopt the provisions of paragraph XI.D2.a, regarding a 90 deferral when an establishment has requested an initial full-services comprehensive consultation visit.
- d. Record Keeping NEP, September 2010 Changes, Directive Number CPL-02-(10-07) 2011 401 – State responded on 11/17/2010 that Iowa OSHA adopted identically on 03/01/2011.
- e. Compliance Guidance for Residential Construction Standard Number STD-03-11-002 2011 403 – State responded on 02/03/2011 that Iowa OSHA adopted identically on 03/01/2011.
- f. PPE in Shipyard Employment Directive Number CPL-02-01-049 2011 402 – State responded on 01/10/2011 that Iowa OSHA does not intend to adopt since there is no public or private sector shipyard employment in Iowa, nor is it under Iowa OSHA jurisdiction.
- g. Popcorn NEP, Microwave Popcorn Processing Plants Directive Number CPL-03(11-01) 2011 423 – State responded on 04/11/2011, that Iowa OSHA adopted identically on 04/15/2011;
- h. PPE in General Industry, Directive Number CPL-02-01-050 2011 422 – State responded on 04/11/2011 that Iowa OSHA adopted identically on 04/15/2011.
- i. Revisions to Field Operations Manual, Directive Number CPL-02-00-150 2011 442 – State responded on 06/23/2011 that Iowa OSHA would not adopt this program because Iowa OSHA has no jurisdiction over any private or public

Maritime activities. Therefore the changes in chapters 10 and 13 are not applicable to Iowa OSHA.

- j. Primary Metals NEP, Directive Number CPL-03-00-013 2011 444 – State responded on 07/14/2011 that Iowa OSHA will adopt identically on 07/15/2011.
- k. Confined Spaces in Shipyards, Directive Number CPL-02-01-051 2011 443 – State responded on 06/01/2011 that Iowa OSHA will not adopt since there are no shipyards within the jurisdiction of Iowa OSHA;
- l. Commercial Diving Operations, Directive Number CPL-02-00-151 2011 445 - State responded on 11/14/2011 and adopted on 11/14/2011;
- m. Enforcement Procedures for Incidents of Workplace Violence, Directive Number CPL-02-01-052 2011 462 – State responded on 10/26/11 that Iowa OSHA will adopt identically on 11/01/2011;
- n. Site-Specific Targeting 2011 (SST-11), Directive Number CPL-02-11-03 2011 463 – State responded on 11/10/2011 that Iowa OSHA will adopt on 12/01/2011; and
- o. Whistleblower Investigations Manual, Directive Number CPL-02-03-003 2011 464 – State responded on 11/21/2011 that Iowa OSHA will adopt identically on 01/01/2012.

D. Variances

SAMM #23 – The number of permanent variances granted during FY-2011 was zero (0).

SAMM #24 – The number of temporary variances granted during FY-2011 was zero (0).

E. Public Employees Program

SAMM #11 – The percent of total inspections conducted in the public sector over the three (3) year moving average was One point seventy-five (1.75) percent. This was less than the two (2) percent national average for three (3) years. However, the Iowa OSHA average of three point five (3.5) percent for public employee inspections for current year FY-2012 is nearly double the previous rate.

attorney, the FY-2011 duty officer, and various team leaders attended the annual update of the whistleblower program presented by federal OSHA in FY-2011.

F. Whistleblower Protection Program – Special Study

1. Methodology

The Regional Supervisory Investigator and Regional Investigator conducted the Whistleblower Protection Program (WPP) FY-2011 Onsite Audit from March 5 to March 8, 2012. Thirty (30) case files were reviewed and stakeholders were interviewed. The OSHA Whistleblower Investigation's Manual (Manual), Directive Number CPL 02-03-003, September 20, 2011, was used as the point of reference. Those personnel interviewed included the

Deputy Labor Commissioner/IOSH Administrator, the IOSH investigator, the Iowa Division of Labor attorney in charge of appealed and meritorious whistleblower complaints, and the FY-2011 duty officer.

2. Complaint Intake Data

Sixty-three (63) complaints were received and forty-two (42) were docketed for investigation.

3. Audit Findings

The opening conference was conducted on March 5, 2011. The Deputy Labor Commissioner / IOSH Administrator among others, was in attendance. We explained the objectives of the audit and the methodology behind it. We conducted our closing conference on March 8, which was attended by the Deputy Labor Commissioner/IOSH Administrator along with the IOSH investigator.

Our findings are based on the above-referenced three components of the special study.

a. Investigative Case Files

The program is in compliance with this component of the special study:

i Screenings

There is an intake system in place to ensure that complaints are captured and forwarded to the relevant parties. Complaints are properly documented in IMIS as are complaint screen-outs. Allegation statements are clearly written. The complainants are notified of their right to dual file with OSHA. Complaints involving statutes within the exclusive jurisdiction of federal OSHA are properly referred to the Kansas City Regional Office for OSHA. There was one instance, for example, where a complaint under Sarbanes Oxley was referred to and investigated by OSHA.

In one instance, the investigator was correct to administratively close a case but selected the wrong reason for closure when entering it in IMIS. The investigator closed it for lack of adverse action even though complainant's employment had been terminated. We explained to the investigator that he should have chosen the code to indicate a lack of nexus, due to the closing of the facility where complainant worked.

ii. Investigations

When possible, with one notable exception that is described below, in-person interviews are conducted with the complainant, the respondent officials, and all other relevant witnesses. These interviews are documented in written statements or by audio recordings. Some of the earlier files show that confidentiality was not being extended to non-management witnesses. In later files, however, confidentiality is being extended and documented in writing. The investigator explained that he consulted with an Iowa Division of Labor attorney, who approved the use of confidentiality for non-management witnesses.

Case files contain supporting documentation, such as personnel files and discipline records for similarly-situated employees.

Subpoenas were issued with the assistance of legal counsel when appropriate.

There was one instance, however, with a FY-2012 case where the investigation was concluded without testing all of the evidence. The investigator interviewed the complainant, but closed the case as non-merit after receiving respondent's position statement. No interviews were conducted with the respondent officials or the complainant's witnesses.

SAMM #18 – Eight (8) cases were deemed merit for a merit rate of nineteen (19) percent. Of those eight (8) merit cases, four (4) were settled and four (4) were submitted for litigation. Of the four (4) cases that were originally submitted for litigation, two (2) cases were withdrawn, one (1) case was settled, and one (1) case was still under review as of this report.

Finding #11-4 - Adequate investigation of a whistleblower complaint was not conducted in that both the complainant's allegation(s) and the respondent's proffered non-retaliatory reason(s) for the alleged adverse action were not fully tested before reaching a determination in the case. This deficiency was noted in one of the thirty investigations reviewed.

Recommendation #11-4 - The investigator must ensure that every effort is made to test and weigh all of the evidence before reaching a determination and avoid shutting down an investigation before sufficient documentation has been collected and all relevant witnesses have been interviewed. (Manual, Section 3-1)

iii. Report Writing

The investigator has incorporated the new Report of Investigation (ROI) format that was implemented in the new manual. The investigator has also retained a narrative section. The investigator cites to exhibits when discussing evidence. In the analysis section, the investigator properly applies the evidence to the prima facie elements, using the correct burdens of proof. His conclusions are based on the evidence and a proper application of the elements. The credibility of witnesses is also weighed.

The investigator needs to create a section for the respondent's defense in the analysis section. The investigator should also consider adding a chronology.

In one instance, the investigator failed to discuss a demotion as an adverse action in the analysis section of the ROI.

The elements of a work refusal need to be analyzed as part of the analysis for protected activity when a work refusal is at issue.

Withdrawal forms need to be signed by the supervisor. The investigator needs to analyze withdrawals in the ROI to ensure that they were submitted voluntarily.

Finding #11-5 - Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint. This deficiency was noted in both of the work refusals reviewed. REPEAT Finding - This is Finding #09-9 in the FY-2009 Audit.

Recommendation #11-5 - The investigator must conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed. (Manual, Sections 3-5 to 3-12 & 7-4)

Finding #11-7 - Documentation of the testing of the respondent's defense to determine if it is believable or a pretext was not present in the case file. This deficiency was noted in all of the thirty cases reviewed.

Recommendation #11-7 - The investigator must add a Respondent Defense discussion to his analysis section of the ROI. (Manual, Section 5-13)

iv. Settlement

Settlement is attempted when appropriate. Settlement agreements are executed in accordance with OSHA's procedures. OSHA's standard settlement agreement is used as a template.

The program supervisor, however, needs to document his approval of settlement agreements by signing the agreement.

The investigator needs to analyze the terms of the agreement in his ROI, noting whether the agreement is fair and equitable and whether it provides a make-whole remedy, and if there is no make-whole remedy, explain why.

SAMM #19 - Five (5) of the eight (8) merit cases were settled for a settlement rate of sixty-two point five (62.5) percent.

Finding #11-6 - Documentation of the investigator's assessment of the settlement agreement and the withdrawal request were not present in the case file. This deficiency was noted in all four of the settled cases and two of the withdrawal cases reviewed.

Recommendation #11-6 - The investigator must document in the ROI his analysis of the content of the settlement agreement to describe the relief obtained and the withdrawal request to ensure the withdrawal was submitted voluntarily. (Manual, Section 4-2, 5-6 & Chapter 6)

v. **Case File Management**

The investigator balances more than one investigation at one time without sacrificing the quality of his work. The respondents and complainants are provided with frequent updates and the investigator responds to requests from the parties in a timely manner.

While case files are well organized and the evidence is clearly marked and easily accessible, they are named using a format different from Federal OSHA. This can be confusing when attempting to identify the parties. The investigator needs to change the format of each case name from Complainant / Respondent / Case Number to Respondent / Complainant / Case Number for consistency and clarity.

It was noted during case file review that all opening letters to the complainants and the respondents were located on the right side of the case file. The investigator needs to place administrative material on the left side of the case file and evidentiary material on the right side of the case file. In addition, the completed case file should contain the Case Activity Worksheet.

vi. Timeliness

SAMM #17 – Eleven (11) of the forty-two (42) cases, or twenty-six (26) percent were completed in ninety (90) days, and twenty-one (21) cases were administratively closed. Thirty-two (32) cases were dismissed.

The ninety (90) day case completion rate was greatly impacted by the whistleblower case backlog inherited by the current investigator upon his arrival. In addition, his attendance at OTI shortly after being hired also impacted the ninety (90) day case rate.

The investigator works to complete his cases within the 90-day timeframe. However, it would benefit the investigator to send the respondent's opening letter shortly after receiving the complaint. In some instances, there was a thirty (30) day gap between the receipt of the complaint and Respondent being notified of the complaint.

Finding #11-10 – One hundred (100) percent of 11(c) investigations were not completed within the 90 day goal. Iowa OSHA did not meet the Reference / Standard of one hundred (100) percent with only twenty-six (26) percent of the 11(c) investigations completed within ninety (90) days. This was down from fifty-three (53) percent in FY-2009. There were forty-two (42) 11(c) complaints docketed for investigation in FY-2011, compared to nineteen (19) cases in FY-2009. REPEAT Finding - This is #09-2 in the FY-2009 Audit.

Recommendation #11-10 - Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within ninety (90) days. (SAMM 17)

b. Program Management

The program is in compliance with this component of the special study:

Complaint data, for the most part, is entered into IMIS in a timely, accurate and complete manner. Some data needs to be updated in order to track all actions taken on each 11(c) case, which was brought to the investigator's attention. The investigator stated that he would update it accordingly.

There is an effective appeals process in place. The complainants are notified of their right to appeal and of the steps involved. The appeal is conducted by the Iowa Division of Labor attorney for the whistleblower program. The result is to either uphold the initial determination or to return the case file to the investigator for further investigation. We pointed out that closing letters issued to both parties must contain more detail

regarding the reason for the dismissal and must be more in line with OSHA's Secretary's Findings.

The program should run data management reports on a periodic basis for internal quality control purposes. This was reviewed with the supervisor and investigator. The investigator was shown how to run these reports in IMIS.

Complaints not involving a federal or state whistleblower statute are properly referred to other agencies if applicable. In addition, complaints involving federal whistleblower statutes are forwarded to OSHA in a timely manner.

Complaints that do not involve prima facie allegations are handled appropriately. Administratively-closed cases are tracked in IMIS.

The investigator incorporated the changes in OSHA's new manual into the IOSH whistleblower manual.

Finding #11-8 - Closing letters to Complainants did not utilize OSHA's Secretary's Findings template and did not fully explain the reason for the dismissal. This deficiency was noted in twenty-one of the twenty-two dismissal cases reviewed.

Recommendation #11-8 - Draft closing letters to Complainants utilizing OSHA's Secretary's Findings template in order to adequately inform the parties of the outcome of the investigation by succinctly documenting the factual findings as well as Iowa OSHA's analysis of the elements of a violation. (Manual, Section 5-6 to 5-11)

Finding #11-9 - Appropriate entry of administratively closed 11(c) complaints in IMIS was not accomplished. This deficiency was noted in one of the four screened out cases reviewed.

Recommendation #11-9 - Select the proper reason for closure when entering codes for administratively-closed complaints in IMIS. (Manual, Section 2-3)

c. Resources

The program is in compliance with this component of the special study: As of the date of this audit, the investigator had completed all investigations for 11(c) complaints filed in FY-2011. The investigator did not make any request for additional equipment. He noted that the equipment he has been provided is sufficient.

The investigator has attended the two-week OTI 1420 whistleblower investigation course that covers the fundamentals of whistleblower law and the procedure for investigating Section 11(c) complaints. Both the investigator and attorney for the program attended the whistleblower conference held in Orlando, FL in September 2011. The investigator, the We would like to see the investigator attend advanced whistleblower courses as they become available at OTI. In addition, the supervisor needs to at least attend the OTI 1420 basic whistleblower course.

Additional basic whistleblower training needs to be provided for the various stakeholders within the IOSH facility, such as the new duty officer and front-line staff responsible for incoming phone calls. The investigator could conduct this training internally.

The state would like to see additional federal funding in order to increase its whistleblower staff.

Finding #11-11 - Although the investigator attended the two-week OTI 1420 whistleblower course, adequate whistleblower training has not been provided to other IOSH staff members and stakeholders. REPEAT Finding – This is #09-12 in the FY-2009 Audit.

Recommendation #11-11 - Provide internal whistleblower training to the new duty officer and other key stakeholders within the IOSH facility, such as front-line staff that are responsible for transferring incoming phone calls. Accomplish training for the IOSH Discrimination Program supervisor by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations – 11(c) in FY-2012 or FY-2013.

d. WPP Status

The Iowa OSHA Whistleblower Program made tremendous improvement under the direction of its current leadership, and with the addition of its new investigator. The program meets the elements of this special study. All elements of the program from case intake to complaint investigation to case file organization to case file review incorporate the elements of a successful whistleblower program. Overall, the program is in compliance with the three major components of the special study.

G. Complaints About State Program Administration (CASPs)

1. FY-2011 CASPs

Region VII received only two CASPs in FY-2011.

A. CASPA # 2011-16

This CASPA alleged Iowa OSHA failed to investigate both an alleged safety and health complaint, and an alleged whistleblower complaint in October 2009. A non-formal complaint investigation finally occurred in September 2010. No whistleblower investigation ever occurred. Both the whistleblower investigator position and the permanent duty officer position have changed personnel since this CASPA was investigated.

B. CASPA #2011-17

This CASPA alleged that Iowa OSHA failed to address critical evidence in its whistleblower complaint. This CASPA was found to be invalid as the changes in the state's whistleblower protection program were already underway.

2. FY-2012 CASPAs

Region VII has already received two noteworthy CASPAs in FY-2012.

1. CASPA #2012-18

This CASPA alleged Iowa OSHA failed to address employee concerns regarding exposure to Methyl Bromide at a facility where the employees unloaded containers that originated overseas. This CASPA was found to be invalid since Iowa OSHA conducted an in depth inspection which included personal and area sampling, and review of import records regarding products exported from China.

2. CASPA #2012-19

This CASPA alleged Iowa OSHA lost critical parts of a fatality case file and provided inappropriate information regarding the next of kin of the deceased employee. This CASPA was found to be valid regarding the loss of information from the fatality investigation case file.

H. Voluntary Compliance Programs

1. Voluntary Protection Program

The Iowa OSHA Voluntary Protection Program (VPP) is a very successful program. Thirty (30) out of forty-five (45) voluntary protection program case files were selected and reviewed. Iowa currently has forty-three (43) active VPP participants. The program is so successful that the case files are stored in multiple storage areas. This includes parts of the same case being stored in different areas. In addition, some of the information has been transferred to electronic storage format.

Finding #11-3 - Iowa OSHA Voluntary Protection Program case files were stored in multiple locations, including some separate parts of some files that were not stored as a complete case file.

Recommendation #11-3 - Recommend Iowa OSHA store Voluntary Protection Program case files in one location to ensure portions of the case files are not misplaced, become missing, or are lost.

2. Partnerships

Iowa's partnerships remained constant throughout the fiscal year with an average of seven (7) active partnerships per quarter. All six (6) active partnerships were reviewed.

The Compliance Assistance staff person was onsite at each partnership jobsite at least once a month in addition to staying in contact through email and cell phone. There were no serious injuries however a fatality occurred on the U.S. Courthouse jobsite in Cedar Rapids, Iowa. A subsequent OSHA inspection found no violation of the occupational safety and health standards and no citations were issued. The jobsite TRC/DART rates were below the state and national average for general contractors. Construction partnerships during FY-2011 covered approximately two thousand, one hundred and forty (2,140) employees.

Two new partnerships for this fiscal year include a new University of Iowa Hospital building in Coralville and the remodeling of Vets Auditorium in Des Moines. It is anticipated that the University of Iowa will request partnerships for projects over the next five years. These projects may include the Children's Hospital and the Practice Arena for the Football program.

3. Alliances

The single active alliance was reviewed. There were two alliances active during FY-2011. The alliance with the Renewable Fuels Association, which was signed in July of 2009, expired in July of 2011. This alliance may still be renewed in FY-2012. Members of this alliance met every other month for training on safety and health topics pertinent to the industry.

The second alliance was signed in the FY-2011, 4th Quarter. This alliance is with the City of Cedar Rapids and involves flood recovery projects. Nine municipal buildings are scheduled to be remodeled, torn down, built new, or renovated in a historical manner with FEMA money. The compliance assistant continues to work with the City of Cedar Rapids and the private construction employers.

I. Public Sector On-site Consultation Program

Public Sector Consultation visits for FF-2011 totaled seventeen (17) with forty-two (42) serious hazards identified and corrected.

J. Administration

1. Budget

The FY-2011 budget continued to challenge the Iowa OSHA program. The previous and current Labor Commissioners were strong proponents for parity regarding the 50/50 funded programs. Each one communicated with Iowa's US Senators and Representatives and their staffs to ensure actual funding at the 50% level. Iowa's total allocated funding for the FY-2011 23(g) program was \$4,322,779. Iowa's total recipient share of the funding was sixty-two point two (62.2) percent which equaled \$2,256,279. Iowa's share included the state base award funds of \$2,066,500 and state one hundred (100) percent funding of \$188,779. The federal base award funding was \$2,066,500 which was thirty-seven point eight (37.8) percent of the total funding.

Budget issues remain hallmark to the Iowa OSHA program and its ability to weather future cuts. Iowa OSHA management continued to communicate that the agency needs and appreciates the necessary Federal funding for its' programs.

2. Benchmark

Iowa OSHA is benchmarked for sixteen (16) safety compliance officers and thirteen (13) health compliance officers. The agency filled several inspector positions during FY-2011 due to early retirements and contract transfers. Three safety inspectors were hired. An investigator dedicated to the Whistleblower Protection Program was also filled. All field inspection positions were filled during FY-2011. The Division of Labor Services had three (3) fluent Spanish speaking staff members at the beginning of FY-2011. The individuals continue to provide assistance to the public and their co-workers through their bi-lingual skills.

The Iowa Legislature was responsive to the Division of Labor Services' needs in the fiscally tight period. The Revenue Finance Estimating Committee did not ask for any additional state budget cuts before the end of the state fiscal year in June 2011. Unlike previous years, there were no furloughs or mandatory time off without pay for contract, or non-contract staff.

3. Training

Iowa OSHA adopted the TED 01-00-018 on January 1, 2009. The PSE 2 supervisors developed protocols to track individual training for enforcement and consultation personnel. However, compliance officer training was an issue that resulted in the

following findings and recommendations that were included in both FY-2009 FAME and FY-2010 FAME CAP reports.

Finding #09-22 - Iowa OSHA Employees have not received all the required training.

Recommendation #09-22 - Iowa OSHA must review their training directive IOSH Instruction TED 01-00-018 and ensure that employees receive the required training.

Status #09-22 - Item was completed, discussed, and signed off at the August 2011 quarterly meeting. Iowa hosts training courses when the budget prevents them from sending personnel to the OSHA Training Institute. Iowa OSHA personnel also participated in the Federal OTI webinars.

Finding #09-23 - No IDPs were developed for Iowa OSHA personnel.

Recommendation #09-23 - Iowa OSHA must work with compliance officers to develop initial IDPs and update them annually.

Status #09-23 - Item was completed, discussed, and signed off at the August 2011 quarterly meeting.

V. Assessment of State Annual Goals

During FY-2011, Iowa OSHA was in the third year of its current five (5) year strategic plan. Iowa continued to achieve goals set in the performance plan.

A. Performance Goal One

1. Goal

Increase the percentage of employers who participate in Iowa OSHA outreach and voluntary compliance programs.

2. Result

Iowa promoted programmatic and systematic approaches to safety and health programs in the workplace. This occurred via the modification of Iowa workplace cultures. Iowa achieved this goal by increasing program participation in the Voluntary Protection Program by two employers, developed two new partnerships, and formed another new alliance. In addition, the number of outreach efforts to Hispanic workers increased by fifteen (15) programs, and school to work activities increased by ten programs.

The total number of one-on-one outreach contacts nearly tripled from nine thousand, six hundred and fourteen (9,614) to twenty six thousand, seven hundred and sixty-

eight (26,768) contacts. Much of the compliance assistance was oriented to youth in high schools and community colleges. In addition, the Hispanic outreach safety consultant promoted youth safety through contact with agricultural employers as well as social service agencies involved with immigrants.

Iowa continued education outreach on health hazards such as Hexavalent Chromium. A health consultant was asked to speak at the Governor’s Safety Conferences held in Sioux City and Des Moines, Iowa regarding her experience with a company who had requested her assistance in reducing employee exposure to health hazards. Five outreach sessions were held throughout the state to homebuilders associations in order to provide outreach regarding the residential fall protection directive. There were over two hundred and forty (240) participants at those homebuilder sessions.

B. Performance Goal Two

1. Goal

Secure public confidence through excellence in the development and delivery of Iowa OSHA programs and services.

2. Result

The Iowa OSHA leadership team met weekly to discuss safety and health issues as well as direct intervention activities. The team reviewed statistics from various types of inspections including the emphasis programs to determine the program effectiveness.

These reviews also included direct information from the inspectors regarding their inspection activity. Success stories included a construction site where an imminent danger sign was posted and the employer voluntarily shut the worksite down. Employer feedback during activities such as informal settlement conferences was also monitored by the leadership team. In addition, the team monitored staff performance using the Des Moines Area Office “Red / Green Report” provided weekly by the federal OSHA office. The report identified performance measures that met regional expectations by highlighting them in green and highlighting those that did not meet established parameters in red.

Iowa OSHA implemented one new local emphasis program (LEP) last year for grain handling. In addition the National emphasis program (NEP) for primary metals exposure was also adopted. There were 653 inspections regarding Iowa OSHA safety LEPs and 98 inspections for health LEPs. The following table shows the success of the emphasis programs.

Iowa OSHA LEP	Number of Inspections	Number of citations
Amputations	168	569

Asbestos	80	201
Blood	0	0
Hexavalent Chromium	18	101
Fall	234	543
Grain	1	4
Scaffold	105	295
SW2000	0	0
Zip Code Construction	145	331

Iowa OSHA will monitor progress toward reducing injuries and illnesses by tracking the effectiveness of direct interventions and cooperative programs.

C. Performance Goal Three

1. Goal

Reduce injuries, illnesses and fatalities by five (5) percent as listed below.

2. Finding

Fatalities, injuries, and illnesses are indicators that Iowa OSHA attempts to directly measure this performance goal. On the surface, this goal was not met for FY-2011. There were increases in the number of total fatality cases by fifty-six point three (56.3) percent to twenty-five (25) cases, increases in general industry fatalities by thirty (30.0) percent to thirteen (13) cases, and increases in construction fatalities by one hundred (100) percent to twelve (12) cases. However, the total non-fatal injury and illness rate declined four point five (4.5) percent, the general industry rate declined nine point one (9.1) percent, and the construction industry rate declined by thirteen point four (13.4) percent. In addition, at the time of this report, Iowa OSHA has experienced only seven (7) fatalities to date during FY-2012.

Appendix A-1
FY 2011 Iowa OSHA Federal Annual Monitoring Evaluation (FAME) Report
Occupational Safety and Health Enforcement
Summary of Findings and Recommendations

Findings		Recommendations	
11-1	Forty-three point five (43.5) percent of the formal complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff. Thirty-five point seven (35.7) percent of the inspection case files that did not contain a response letter were in-compliance and citations were not issued.	Recommend compliance officers draft the complainant response letter prior to submitting the case for review. This will ensure the response is applicable to the complaint items and will facilitate the letter being mailed once Iowa OSHA is notified that the employer received the citation, or the case is closed in the case of an in-compliance inspection.	
11-2	Inspection case files did not routinely utilize a case file diary	Recommend all case files utilize a case file diary in accordance with the Field Operations Manual, Chapter 5, Section X. Ensure the diary is utilized by supervisors, compliance officers, and administrative personnel to note the inspection activities during and after the inspection.	
11-3	Iowa OSHA Voluntary Protection Program case files were stored in multiple locations, including some separate parts of some files that were not stored as a complete case file	Recommend Iowa OSHA store Voluntary Protection Program case files in one location to ensure portions of the case files are not misplaced, become missing, or are lost.	

Appendix A-2

FY 2011 Iowa OSHA Federal Annual Monitoring (FAME) Report Whistleblower Protection Program Summary of Findings and Recommendations

	Findings	Recommendations
11-4	Adequate investigation of a whistleblower complaint was not conducted in that both the complainant's allegation(s) and the respondent's proffered non-retaliatory reason(s) for the alleged adverse action were not fully tested before reaching a determination in the case. This deficiency was noted in one of the thirty investigations reviewed.	The investigator must ensure that every effort is made to test and weigh all of the evidence before reaching a determination and avoid shutting down an investigation before sufficient documentation has been collected and all relevant witnesses have been interviewed. (Manual, Section 3-1)
11-5	Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint. This deficiency was noted in both of the work refusals reviewed. REPEAT Finding - This is Finding #09-9 in the FY-2009 Audit.	The investigator must conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed. (Manual, Sections 3-5 to 3-12 & 7-4)
11-6	Documentation of the investigator's assessment of the settlement agreement and the withdrawal request were not present in the case file. This deficiency was noted in all four of the settled cases and two of the withdrawal cases reviewed.	The investigator must document in the ROI his analysis of the content of the settlement agreement to describe the relief obtained and the withdrawal request to ensure the withdrawal was submitted voluntarily. (Manual, Section 4-2, 5-6 & Chapter 6)
11-7	Documentation of the testing of the respondent's defense to determine if it is believable or a pretext was not present in the case file. This deficiency was noted in all of the thirty cases reviewed.	The investigator must add a Respondent Defense discussion to his analysis section of the ROI. (Manual, Section 5-13)
11-8	Closing letters to Complainants did not utilize OSHA's Secretary's Findings template and did not fully explain the reason for the dismissal. This deficiency was noted in twenty-one of the twenty-two dismissal cases reviewed.	Draft closing letters to Complainants utilizing OSHA's Secretary's Findings template in order to adequately inform the parties of the outcome of the investigation by succinctly documenting the factual findings as well as Iowa OSHA's analysis of the elements of a violation. (Manual, Section 5-6 to 5-11)

11-9	Appropriate entry of administratively closed 11(c) complaints in IMIS was not accomplished. This deficiency was noted in one of the four screened out cases reviewed.	Select the proper reason for closure when entering codes for administratively-closed complaints in IMIS. (Manual, Section 2-3)
11-10	100% of 11(c) investigations were not completed within the 90 day goal. Iowa OSHA did not meet the Reference/Standard of 100% with only 26% of the 11(c) investigations completed within 90 days. This was down from 53% in FY09. There were forty-two 11(c) complaints docketed for investigation in FY11 compared to nineteen in FY09. REPEAT Finding - This is #09-2 in the FY-2009 Audit.	Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within 90 days. (SAMM 17)
11-11	Although the investigator attended the two-week OTI 1420 whistleblower course, adequate whistleblower training has not been provided to other IOSH staff members and stakeholders. REPEAT Finding – This is #09-12 in the FY-2009 Audit.	Provide internal whistleblower training to the new duty officer and other key stakeholders within the IOSH facility, such as front-line staff that are responsible for transferring incoming phone calls. Accomplish training for the IOSH Discrimination Program supervisor by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations – 11(c) in FY12 or FY13.

Appendix B-1
Iowa State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region VII
Status of Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	Iowa periodically sees a reduction in fatalities but the average number of fatalities for the past eleven (11) years is twenty (20). Seven (7) of eleven (11) years (64%) have experienced more than twenty (20) fatalities. Beginning in FY 2003 every year experienced more than 20 workplace fatalities.	Review the previous ten (10) years of fatality data and compare this to the fatality rates for construction and general industry. After the evaluation, develop enforcement and compliance assistance programs to target industries or hazards associated with the fatalities which have occurred during the previous ten (10) years.	Iowa OSHA will collate Iowa fatality data from Bureau of Labor Statistics (BLS), Iowa OSHA Strategic Planning and Federal OSHA fatality analysis studies and will develop a table that lists findings. Iowa OSHSHA will then compare findings to determine if there are trends in fatal hazards in Iowa's work-places and then develop new or continue existing Iowa OSHA targeting programs that address identified fatal workplace hazards.	Iowa completed an analysis in April 2011 of fatality data for as far back as 1998 and identified 3 groups of fatalities: falls, crushed by and struck by. Given this data, Iowa has adjusted their process of identifying a constantly moving fatality statistic. Iowa OSHA reviews the data no less than annually and the Des Moines Area Office continues to work with Iowa OSHA during quarterly meetings to monitor their fatality rates.	Complete
09-2	Iowa OSHA did not ensure that adequate abatement was received for all phone and fax investigations.	Review with employees, who review abatements for phone and fax complaints, the FOM and what is considered adequate abatement.	Iowa OSHA will develop a Complaint and Referral Processing tracking sheet which will accompany each phone and fax intervention and retrain the single duty officer in the FOM and the abatement process.	Iowa created a phone fax tracking sheet for use with all non-formal complaints and has implemented its use. During upcoming quarterly monitoring meetings, OSHA will conduct a brief sampling of non-formal complaint case files to ensure that the forms are being used to ensure adequate abatement.	Complete
09-3	The IMMLANG policy is not consistently followed.	Review the IMMLANG policy with all employees and ensure that information is entered into the IMIS system.	Iowa OSHA PSE2 supervisors have reviewed the IMMLANG policy and become more diligent in reviewing the OSHA 1s for accuracy. Iowa OSHA administrative support staff will be trained to edit OSHA 1s for coding and will inform supervisors of potential missing items. Iowa OSHA will also include refresher training for all compliance officers in the IMMLANG policy by December 2010.	This matter was addressed by Iowa managers and administrative staff immediately following the original 2009 E fame, which was conducted in February 2010. At that time, Iowa OSHA initiated and currently maintains fatality file review to ensure the IMMLANG policy is complied with. The DMAO monitoring included an interview with a supervisor to ensure he was familiar with the policy and its requirements. When questioned, the supervisor was intimately familiar with the policy. In addition, a fatality inspection case file was randomly selected and	Complete

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				reviewed and found to be in compliance with the policy.	
09-4	Families of victims are not always contacted when a fatality investigation is initiated, citations are issued, a settlement conference is held or when the case is closed. There is limited additional communication with family members once the investigation has begun.	We suggest communication with families when the investigation is initiated, when citations are issued, when informal settlement agreements are signed, when the case is contested and when the case is closed. Additionally, a tracking system should be developed and implemented to help ensure that required correspondence is sent to families of victims.	Since the final E-Fame was made available, Iowa OSHA has initiated the development and implementation of a spreadsheet to track the letters sent to the family of the victim to ensure appropriate letters as indicated in column B are sent in a timely manner.	The administrative person assigned to this duty was interviewed and she was asked to describe the agency's process for ensuring the family of victims had been identified and contacted as required during fatality inspections. The administrative person accurately described a process that was initiated by Iowa OSHA as a corrective action in April 2011. In addition, the administrative person tracks letters by way of electronic spreadsheet.	Complete
09-5	LEP and NEP inspections were not coded properly in the IMIS system.	Provide refresher training to all employees on LEP and NEP program and IMIS requirements.	Iowa OSHA will become more diligent in reviewing OSHA 1s for accuracy and will include reviewing the LEP and NEP inspection codes with the inspectors in each quarterly meeting.	Iowa OSHA has initiated running Inspection Summary Reports to identify LEP codes and then making necessary corrections to the affected case files when found. In addition this matter is now included as a discussion topic for regularly scheduled quarterly meetings. Managers have issued instructions to all persons not to use the two LEP codes that are currently in the drop down menu. The process for removing the two codes is still in process. A supervisor was interviewed and was aware of the two out of date codes and the need to not use them. The out of date codes are: BLOOD and SW2000. This process will be completed upon removal of the two out of dated codes in the IMIS.	Complete
09-6	Excessive and inappropriate grouping issues were identified.	Iowa OSHA must review its current citation grouping policies and procedures and issue citations in accordance with its FOM.	Iowa OSHA will become more diligent in reviewing OSHA 1B's for accuracy and ensure the FOM is followed with regards to grouping.	Supervisors have been advised of this E fame issue as far back as April 2010 and have undertaken a program of file review and inspector training to ensure the FOM requirements are	Complete

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				being followed. A supervisor was interviewed and he stated that he has instructed his compliance staff to refer to the FOM regarding grouping and if a doubt exists to not use grouping. The supervisor also indicated if his compliance staff have any questions or are unable to make the determination the supervisor will then make the final determination about the use of grouping. Case files were chosen at random and the supervisor illustrated how citations issued in those files were properly grouped or not grouped and defended his position in light of the requirements of the FOM.	
09-7	Fifty-three percent (53%) of the programmed safety inspections resulted in Serious/Willful/Repeat violations.	(Repeat) Iowa OSHA must evaluate its safety targeting system and make modification to ensure that its limited resources are inspecting locations where serious hazards are present. Iowa OSHA must also ensure that violations are being classified in accordance with the FOM and other policy directives.	Iowa OSHA will become more diligent in reviewing OSHA 1b's for accuracy and to ensure citations are properly classified according to the FOM.	As a result of the 2009 E fame, supervisors have become more diligent in properly classifying citations. A supervisor was interviewed and was asked about citation classification. His response was that information was sent to all CSHO's about classification criteria as required by the FOM via email and .pdf. The supervisor stated he has been more diligent in reviewing the 1B's and requires CSHO's to explain their assessment classification in writing in the 1B. In addition, the most recent documentation contained in the first six month SAMM report indicated Iowa OSHA has issued 66% SWR which is 13% more that originally reported in the 2009 E fame.	Complete
09-8	In 35 percent of the cases reviewed, hazards that were identified during inspections were not addressed in citations or a letter to the employer.	All hazards identified during inspections must be addressed. Case files must be reviewed more thoroughly including review of photographs for hazards not identified	Supervisors have instituted a photo review process which is now included in the initial case file review. Conditions noted in photographs that may constitute citations or letters to the employer are	Since April 2010, supervisors have become more diligent in addressing hazards that may have been overlooked by reviewing case file photographs. One supervisor was interviewed and he stated the program	Complete

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		or addressed by CSHO's.	addressed with the compliance officer for validity and possible issuance prior to issuing the case file.	was successful. Two case files were randomly selected and the file photos were reviewed to ensure any apparent hazards were address by citation or letter.	
09-9	Employees are unclear what constitutes employer knowledge to document a prima facie case.	Iowa OSHA must work with the legal staff to provide training to employees to ensure violations are supportable and have all elements for a prima facie case.	The field staff supervisors will ensure the case files with citations contain all documents and necessary employee statements to ensure elements for a prima facie case are present and are factors that constitute supportable violations.	Iowa OSHA has conducted CSHO training to ensure each supervisor and CSHO has the ability to discover and document Employer Knowledge as required to establish the prima facie in an inspection. A supervisor was selected at random and was interviewed about this matter and successfully described prima facia and was able to successfully describe information necessary to establish employer knowledge. A CSHO was interviewed and he stated he recently had taken the legal aspects class at OTI and the matter was discussed and he accurately described prima facie as evidence, information and documentation adequate to sustain a citation. The CSHO went on to successfully describe employer knowledge. A case file was selected at random and reviewed for employer knowledge, item 23 in the OSHA 1B, employer knowledge and that information was adequately described.	Complete
09-10	Severity assessments are inaccurate which result in incorrect penalty assessments. Other than serious violations had injuries and illnesses described as eye injuries and hearing loss which should have been classified as serious. In addition machine	Iowa OSHA must review the FOM requirements for severity assessments with employees and ensure that severity assessments are evaluated during case file reviews conducted by PSE2s	Iowa OSHA will review its severity assessment policies and procedures and issue citations in accordance with its FOM.	This matter has been addressed by supervisors shortly after the 2009 E fame and follows closely with Item #7 of this report. Supervisors have since reviewed OSHA 1B's and communicated their suggestion to CSHO's regarding severity assessment. This process is considered to be instrumental in the increase of SWR citations as discussed in Item #7 of this report. A case file was	Complete

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	guarding and fall protection violations were classified as other-than-serious and should have been classified as serious.			selected at random and the citation classifications for the nature of the citations issued were reviewed and there were no apparent citation misclassifications.	
09-11	The Open Inspection Report is not effectively utilized to track cases with incomplete abatement with twenty-three percent (23%) of the cases having abatement more than thirty (30) days past due.	Iowa OSHA must develop a procedure to analyze the Open Inspection Report, identify cases with past due abatement and obtain timely abatement.	Since this report was issued, Iowa OSHA support staff has been running 3 IMIS reports automatically each Friday: Cases with Citations Pending, Employer Response due for Non-formal Complaints, and Unsatisfied Activities Report. The IMIS Open Case Report is also run manually on Friday. These four reports are discussed at the Monday morning staff meetings.	Iowa OSHA runs the Open Inspection Report twice monthly and that report is provided to the supervisors for their review. The most recent reports were provided and their run dates were April 8 and April 22. A supervisor was interviewed and he verified he uses the report to track overdue abatement.	Complete
09-12	Abatement dates are not assigned in accordance with the FIRM.	Provide training to employees on the current FOM and other adopted directives to ensure that abatement dates are assigned in accordance with current policy.	Training and review of the FOM and other adopted directives is conducted during inspector meetings including abatement practices and time frames	A supervisor was interviewed and he verified that inspector meetings are periodically conducted and a wide variety of matters are discussed, one of which is determining abatement time frames. The supervisor stated that CSHO's are relied upon to use sound judgment in establishing abatement time frames and that CSHO's encourage employers to abate while the CSHO is onsite. When this is not possible CSHO's enter into a dialogue with employers to abate citations as quickly as possible.	Complete
09-13	Iowa OSHA does not conduct follow-up inspections when they are indicated.	Iowa OSHA must evaluate the Candidates from the Follow-Up Inspection Report to identify inspections without adequate abatement and where follow-up inspections could be conducted.		Iowa OSHA conducted 5 (five) follow up inspections during FY 2010. A supervisor was interviewed and he stated the inspections targeted employers who provided inadequate or overdue abatement. In this current FY, Iowa OSHA has started scheduling follow-ups and has one scheduled for April 25, 2011.	Complete
09-14	The LEP table included inactive LEP codes for use	Update the IMIS LEP tables to reflect active LEPs and ensure proper	Iowa NCR Administrator will contact the National Office to ensure that the	Iowa OSHA contacted the National Office on 22 April 2011 and requested	Complete

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	by employees.	IMIS coding.	IMIS codes are current and updated. During the interim, all CSHO's have been informed about obsolete LEP's.	assistance removing the inactive LEP codes. This item has not yet been completed.	
09-15	The TRC and DART rates for public sector employers are higher than private sector employers and Iowa OSHA conducts approximately twenty (20) inspections in the public sector each year.	Iowa OSHA must identify a targeting measure to address the high incidence rates for public sector employers.	Iowa OSHA will review BLS rates for public sector employers to identify where the injuries and illnesses are occurring and take appropriate targeting action.	Iowa OSHA has dedicated time and resources by their administrative and enforcement staff to research and study this matter. They have accumulated accident and injury data for the public and private sectors and have assimilated this data into spreadsheets and charting in order to develop a process to address this item. This matter is ongoing and requires review at least annually to redirect resources to the necessary inspection and consultation areas.	Complete
09-16	Iowa has experienced a reduction in the TRC and DART rates for private sector employers, but the rates still remain above the national rates for employers.	Iowa OSHA must identify enforcement activities that will reduce TRC and DART rates for private industry.	Iowa OSHA will review BLS rates for public sector employers to identify where the injuries and illnesses are occurring and take appropriate targeting action.	Iowa OSHA has dedicated time and resources by their administrative and enforcement staff to research and study this matter. They have accumulated accident and injury data for the public and private sectors and have assimilated this data into spreadsheets and charting in order to develop a process to address this item. This matter is ongoing and requires review at least annually to redirect resources to the necessary inspection and consultation areas.	Complete
09-17	Notifications for Federal Program Changes were not provided by the specified dates.	Iowa OSHA must implement a procedure to ensure that Federal Program Change notifications are provided by the specified date.	Staff assignments will be made to ensure that future Federal Program changes will be responded to on a timely basis.	The most recent Federal Program Change responses were submitted by Iowa OSHA within the prescribed time frame and the log is currently up to date. This item is typically discussed at each quarterly meeting and a procedure has previously been established with DMAO to ensure the changes are acted upon in the prescribed time frame.	Complete
09-18	Yearly partnership	Complete the yearly	The Compliance Assistant	The Compliance Assistance	Complete

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	evaluations were not completed and placed in the partnership files.	evaluations in accordance IOSH Instruction CSP 03-02-002 and place in the partnership file.	Specialist is currently working to complete the four yearly evaluations that are past due and will continue to keep them completed on timely basis and placed in the partnership files.	Specialist was interviewed and the partnership file was examined. The file for terminated partnerships was reviewed and there was a final report for each of the closed partnerships. The active partnership file was reviewed and of those partnerships that were at least one year old there was a current annual review on file.	
09-19	Partnership employers were not required to provide notification to Iowa OSHA abatement information for hazards identified during non-enforcement on-site visits.	Request that partnership employers submit documentation to Iowa OSHA of abatement actions taken for hazards identified during non-enforcement verification inspections.	The Compliance Assistance Specialist has developed a standard document to track corrective actions taken by the employer and has initiated the process.	Three partnership files were selected at random and reviewed. Each file contained documentation from the employer regarding hazardous conditions that had been observed during the non-enforcement visits and they verified corrective action had been taken. One file contained very descriptive photographs of the corrected conditions.	Complete
09-20	Employers were not provided with formal notification of receipt of their VPP applications.	Provide formal acknowledgement of receipt of the application within fifteen (15) days of receipt. This should be completed in accordance with CSP 03-01-003.	Iowa OSHA will review the CSP 03-01-003 and ensure compliance with this document. Iowa OSHA will also ensure that notification of receipt of VPP applications is done within fifteen (15) days.	The Consultation Education Secretary and the Consultation Education Supervisor were interviewed. The supervisor stated he was aware of the requirement and of the notification period. The supervisor produced the two VPP applications his department had received since November 2010 and in each case, a response letter was sent within the required time frame.	Complete
09-21	Iowa OSHA did not utilize 90 day items to ensure uncontrolled hazards were corrected prior to the final on-site evaluation report.	Implement the use of 90 day items to ensure uncontrolled hazards are corrected prior to the final on-site evaluation report.	In addition to the current on-site verification of communicated hazards to the employer, Iowa OSHA will incorporate the 90 day items into a draft report sent to the employer.	The Consultation and Education Supervisor and The Consultation and Education Administrative Person were interviewed and stated the 90-day items are now included in the VPP draft report to the employer and the employers response verifies corrective action. A file was selected at random and the site report checklist was in the file and the employer's response to the 90-day list	Complete

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
				was in the file.	
09-22	Iowa OSHA employees have not received all required training.	Iowa OSHA must review their training directive IOSH Instruction TED 01-00-018 and ensure that employees receive the required training.	The Iowa OSHA Administrator and supervisors will look at each of their individual employee's training status. An excel spreadsheet will be used to track training with special emphasis given to ensuring the core courses for new CSHO's are given priority status.	The completion date for this item was negotiated for May 30, 2011. Completion of this item will be discussed at the August Quarterly Meeting at which time all CSHO required training will be reviewed and priorities will be established.	Not Complete
09-23	No IDPs were developed for Iowa OSHA personnel.	Iowa OSHA must work with compliance officers to develop initial IDPs and update them annually.	Supervisors will complete IDP's for each employee in their work group which will project their employee's suggested training path in advance for a 5 year period. The IDP's will be revisited at the end of each fiscal year for the purpose of updating and creating a new 5-year projection.	The negotiated time frame for completion of the IDP's was May 30, 2011. The completed documents will be reviewed at the August Quarterly meeting for completion.	Not Complete

Appendix B-2
Iowa State Plan
11(c) Discrimination Program Review
FY 2010 Enhanced FAME Follow-up Report Prepared by Region VII
Status of Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	A copy of the closing letter to the Complainant was not provided to Federal OSHA upon completion of the dual filed complaint investigation.	Provide Federal OSHA with a copy of the closing letter to the Complainant upon completion of the dual filed complaint investigation.	The State of Iowa 11(c) program suffered a breakdown of its 11(c) process that resulted in findings 1-12 of this report. IOWSHA will review its 11(c) program and processes and initiate a new program with a newly hired and trained 11(c) Investigator.	The State of Iowa 11c Investigator retired during the 3rd Quarter of FY 2010. Iowa hired a new 11(c) Investigator in the 4th Quarter. The Investigator completed the OSHA Basic Investigator Course, and continues On-the-Job Training. The Investigator began the process of properly initiating, developing and completing 11(c) investigations that follow current Federal OSHA guidelines and address Items 09-1 thru 09-11.	A Region VII Whistleblower Protection Program (WPP) Investigator conducted an assist visit with the new Iowa 11(c) Investigator. RVII WPP continues to provide program support as the Iowa Investigator gains experience and knowledge.
09-2	[47 percent] of 11(c) investigations were not completed within the 90 day goal.	Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within 90 days.	See Item 09-1	See Item 09-1	See Item 09-1
09-3	Adequate allegation summary statements were not entered into IMIS for all 11(c) cases and IMIS updates were not recorded to track all actions taken on each 11(c) case.	Draft adequate allegation summary statements for entry into IMIS which clearly convey Complainant's alleged protected activity and adverse action. Update IMIS entries for whistleblower cases as each new action occurs throughout the investigative and appeal stages until final case closure.	See Item 09-1	See Item 09-1	See Item 09-1
09-4	Adequate and timely opening letters were not provided to all Complainants and Respondents for	Draft adequate opening letters and send or deliver them to the parties in a timely manner.	See Item 09-1	See Item 09-1	See Item 09-1

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	notification purposes that a whistleblower case had been opened for investigation.				
09-5	Face-to-face interviews were not conducted by the Investigator with all Complainants in a timely manner to obtain signed statements documenting detailed information as evidence in 11(c) cases.	Schedule a meeting of the investigator with the Complainant as soon as possible after a prima facie allegation has been presented in order to conduct a face-to-face interview and obtain a signed statement.	See Item 09-1	See Item 09-1	See Item 09-1
09-6	Adequate case file organization was not accomplished in all 11(c) case files.	Utilize adequate case file organization techniques to aid review of investigations.	See Item 09-1	See Item 09-1	See Item 09-1
09-7	Face-to-face interviews were not conducted by the Investigator with all relevant witnesses to obtain signed statements documenting detailed information as evidence in 11(c) cases. Documentation was not present on interview forms to verify that confidentiality was offered to non-management witnesses	Schedule a meeting of the Investigator with all relevant witnesses during the whistleblower investigation in order to conduct face-to-face interviews and obtain signed statements. Include a confidentiality statement on all non-management witness interview statement forms.	See Item 09-1	See Item 09-1	See Item 09-1
09-8	Settlement agreements were not negotiated and documented per established policies and procedures.	Accomplish early resolution of 11(c) complaints through implementation of established settlement agreement policies and procedures.	See Item 09-1	See Item 09-1	See Item 09-1

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-9	Adequate evaluation of the elements of a work refusal was not performed during the Investigation of a whistleblower complaint.	Conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed.	See Item 09-1	See Item 09-1	See Item 09-1
09-10	Adequate Final Investigation Reports for 11(c) case files were not prepared per established policies and procedures.	Draft Final Investigation Reports that effectively communicate results of investigations as required by established policies and procedures.	See Item 09-1	See Item 09-1	See Item 09-1
09-11	Adequate documentary evidence was not gathered in all 11(c) cases to determine if a violation had occurred.	Seek and obtain all necessary documentary evidence to reach a conclusion.	See Item 09-1	See Item 09-1	See Item 09-1
09-12	IOSH Discrimination Program Investigators and Supervisors have not attended the most current 11(c) training provided by Federal OSHA.	Accomplish training for all IOSH Discrimination Program Investigators and Supervisors by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations - 11(c) in FY 10 or FY 11.	The State of Iowa 11(c) program suffered a breakdown of its 11(c) process that resulted in findings 1-12 of this report. IOSHA will review its 11(c) program and processes and initiate a new program with a newly hired and trained 11(c) Investigator.	Close cooperation between Iowa OSHA and the Region 7 Supervisory 11c Investigator will ensure Iowa's 11c investigations will comply with Federal OSHA guidelines. Discussions continue between Region VII and Iowa OSHA regarding an agreeable training method for the Administrator and/or Legal Staff.	Neither Administrative Staff, nor Legal Staff have attended the OSHA 11C Training Course. RVII WPP continues to provide program support to assist Administrative and Legal Staff as necessary.

**Appendix C – Enforcement Comparison
Iowa State Plan
FY 2011 Enforcement Activity**

	IA	State Plan Total	Federal OSHA
Total Inspections	970	52,056	36,109
Safety	780	40,681	29,671
% Safety	80%	78%	82%
Health	190	11,375	6,438
% Health	20%	22%	18%
Construction	529	20,674	20,111
% Construction	55%	40%	56%
Public Sector	17	7,682	N/A
% Public Sector	2%	15%	N/A
Programmed	624	29,985	20,908
% Programmed	64%	58%	58%
Complaint	109	8,876	7,523
% Complaint	11%	17%	21%
Accident	24	2,932	762
Insp w/ Viols Cited	722	31,181	25,796
% Insp w/ Viols Cited (NIC)	74%	60%	71%
% NIC w/ Serious Violations	72%	63.7%	85.9%
Total Violations	2,366	113,579	82,098
Serious	1,550	50,036	59,856
% Serious	66%	44%	73%
Willful	5	295	585
Repeat	68	2,014	3,061
Serious/Willful/Repeat	1,623	52,345	63,502
% S/W/R	69%	46%	77%
Failure to Abate	5	333	268
Other than Serious	738	60,896	18,326
% Other	31%	54%	22%
Avg # Violations/ Initial Inspection	3.2	3.4	2.9
Total Penalties	\$2,531,985	\$ 75,271,600	\$ 181,829,999
Avg Current Penalty / Serious Violation	\$ 1,300.10	\$ 963.40	\$ 2,132.60
% Penalty Reduced	50.3%	46.6%	43.6%
% Insp w/ Contested Viols	6.0%	14.8%	10.7%
Avg Case Hrs/Insp- Safety	22.9	17.1	19.8
Avg Case Hrs/Insp- Health	29.8	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	24.4	35.6	43.2
Lapse Days Insp to Citation Issued- Health	24.4	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	47	1,387	2,436

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.8.2011.

Appendix D – FY 2011 Sate Activity Mandated Measure (SAMM) Report

Measure	10/2010	11/2010	12/2010	01/2011	02/2011	03/2011	04/2011	05/2011	06/2011	07/2011	08/2011	09/2011
Avg # of days to initiate cmp insp	4.1 5	3.7 5	3.7 5	3.45 5	3.35 5	3.22 5	3.39 5	3.30 5	3.32 5	3.36 5	3.32 5	3.36 5
Avg # of days to initiate cmp invest	.2 1	.04 1	.05 1	.05 1	0.05 1	0.05 1	.04 1	0.05 1	.04 1	0.05 1	0.06 1	.06 1
% of cmp where cmp were notified on time	100 100	100 100	96.4 100	97.06 100	97.73 100	98.21 100	87.50 100	88.73 100	90.24 100	90 100	90.7 100	89.52 100
% of cmp & ref responded to w/i 1 day – lmm danger	nc* 100	nc* 100	nc* 100	nc* 100	nc* 100	100 100	50 100	100 100	100 100	100 100	100 100	100 100
# of denials where entry not obtained *	0 0											
% of S/W/R vio verified private	94.8 100	97.46 100	98.55 100	98.25 100	100 100	99.52 100	99.8 100	99.43 100	99.27 100	99.79 100	99.72 100	99.83 100
% of S/W/R vio verified public	100 100											
Avg # calendar days from oc to cit issue (S)	29.7 47.3	27.3 47.3	29.25 47.3	29.94 47.3	31.8 47.3	33.49 47.3	33.61 47.3	32.51 47.3	31.92 47.3	32.42 47.3	32.81 47.3	32.73 51.9
Avg # calendar days from oc to cit issue (H)	51.9 62	43.7 62	40.10 62	39.82 61.8	37.69 61.8	36.98 61.8	37.10 61.8	36.19 61.9	34.93 61.9	34.58 61.9	34.45 61.9	33.45 64.8
% prog insp with S/W/R vio (S)	65.8 58.4	70.3 58.3	67.62 58.3	69.57 58.3	67.86 58.3	65.89 58.3	64.96 58.3	67.28 58.3	66.84 58.3	63.23 58.3	65.13 58.3	64.5 58.6
% prog insp with S/W/R vio (H)	62.5 51	57.1 50.9	57.14 50.9	56.00 50.9	54.84 50.9	57.14 50.9	58.70 50.9	58.73 50.9	60.56 50.9	61.64 50.9	64.04 50.9	62.5 51.8
Avg vio per insp with vio (S/W/R)	2.66 2.1	2.53 2.1	2.39 2.1	2.31 2.1	2.43 2.1	2.61 2.1	2.65 2.1	2.67 2.1	2.59 2.1	2.55 2.1	2.58 2.1	2.56 2.1
Avg vio per insp with vio (O)	0.54 1.2	0.58 1.2	0.58 1.2	0.59 1.2	0.6 1.2	0.6 1.2	0.62 1.2	0.62 1.2	0.62 1.2	0.62 1.2	0.64 1.2	.63 1.2
Avg init pen per S vio (private sector only)	1630.4 1360.4	1489.0 1361.0	1479.0 1361.0	1469.6 1361.0	1583.5 1361.4	1553.5 1361.9	1552.3 1362.0	1515.5 1362.1	1494.6 1362.2	1485.2 1362.8	1445.2 1362.9	1423.8 1679.3
% of total insp in public sector	0 2.1	.81 2.1	1.1 2.1	1.53 2.1	1.57 2.1	2.18 2.1	1.98 2.1	1.81 2.1	1.83 2.1	1.76 2.1	1.68 2	1.79 2
Avg lapse time from receipt of contest to 1 st level decision	151 217.8	144.9 216.	159.6 215	175.5 212.6	182.77 210.8	209.4 208.6	221.40 206.6	242.27 204.4	224.97 202.6	237.97 200.0	239.07 197.1	236.84 200.7
% of 11c invest completed w/i 90 days	nc* 100	nc* 100	nc* 100	nc* 100	10.0 100	14.29 100	11.76 100	13.04 100	14.29 100	14.71 100	14.29 100	16.67 100
% of 11c cmp that are meritorious	nc* 21.2	nc* 21.2	nc* 21.2	nc* 21.2	20.0 21.2	14.29 21.2	11.76 21.2	8.70 21.2	10.71 21.2	17.65 21.2	21.43 21.2	22.92 23
% of meritorious 11c complaints that are settled	nc* 85.8	nc* 86	nc* 86	nc* 86	50 86	50 86	50 86	50 86	66.67 86	66.67 86.2	44.44 86.2	36.36 87.3
Number of required Federal Program Change responses** within established time frame (monthly)	0 0	0 0	2 2	1 1	1 1	0 0	2 2	0 0	**0 0	2 2	1 1	0 0

Appendix D – FY 2011 State Activity Mandated Measure (SAMM) Report

<i>Percent of State-initiated changes submitted within established time frame</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
<i>Percent of permanent standards adopted within 6 months, emergency temporary standards adopted with 30 days</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>100 100</i>	<i>n/a</i>						
<i>Number of permanent variances granted</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
<i>Number of temporary variances granted</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	

nc* no cases reported to meet measurement criteria. ** Changed from “adopted by” to “responses”.

Appendix E – State Information Report (SIR)

QQQQ Q SIR Q4SIR19 SIR19 111011 111834

PROBLEMS - CALL Y Goodhall 202 693-1734

1111011

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

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = IOWA

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	120	8169	310	18137	530	40070	1043
	61.3	72.3	61.4	74.2	62.5	69.7	63.7	68.7
	6026	166	13312	418	29042	760	62876	1519
B. HEALTH	480	19	1020	48	2126	87	4357	198
	39.7	44.2	36.4	53.3	34.6	50.0	34.7	54.2
	1208	43	2806	90	6150	174	12569	365

2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)

A. SAFETY	3378	113	7266	241	14959	398	32614	748
	73.7	70.6	72.4	67.9	70.1	64.7	69.1	61.4
	4583	160	10036	355	21330	615	47196	1218
B. HEALTH	456	23	890	47	1723	80	3487	173
	57.0	71.9	57.2	52.8	56.2	53.3	55.3	60.5
	800	32	1555	89	3068	150	6309	286

3. SERIOUS VIOLATIONS (%)

A. SAFETY	11703	370	23768	727	48704	1250	109064	2309
	79.6	70.6	77.4	68.6	76.7	68.6	78.4	68.9
	14698	524	30703	1060	63528	1822	139117	3350
B. HEALTH	2634	72	5290	140	10266	291	21598	553
	66.6	58.5	64.7	56.0	64.4	57.7	66.7	55.2
	3957	123	8180	250	15930	504	32380	1001

4. ABATEMENT PERIOD FOR VIOLS

A. SAFETY	2394	244	4978	472	10776	803	23693	1466
	16.6	54.1	16.8	52.8	17.9	51.5	17.9	50.8
PERCENT >30 DAYS	14465	451	29573	894	60243	1558	132414	2886
B. HEALTH	259	12	711	20	1451	52	3159	143
	6.5	12.0	8.6	10.6	9.4	13.3	10.0	17.8
PERCENT >60 DAYS	4006	100	8234	189	15507	391	31619	805

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = IOWA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	505479	40250	1258835	65475	2803637	120625	5086228	179675
OTHER-THAN-SERIOUS	1181.0	856.4	1195.5	779.5	1126.9	900.2	1055.2	893.9
	428	47	1053	84	2488	134	4820	201
B. HEALTH								
	219203	2200	441915	3400	853346	11800	1667151	16200
OTHER-THAN-SERIOUS	1184.9	1100.0	1077.8	850.0	980.9	1072.7	958.7	810.0
	185	2	410	4	870	11	1739	20
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	6874	182	15417	451	33850	841	73070	1683
	6.0	5.4	5.6	6.1	5.5	5.4	5.4	4.9
	1138	34	2730	74	6145	155	13476	344
B. HEALTH								
	1458	54	3330	133	7311	240	14958	486
	2.4	1.1	2.2	1.6	2.2	1.6	2.0	1.7
	615	47	1501	85	3390	153	7404	288
7. VIOLATIONS VACATED %								
	1270	8	3026	39	6577	74	12352	146
	5.6	1.0	6.6	2.5	7.0	2.7	6.2	2.9
	22608	769	46128	1567	93448	2697	200310	5023
8. VIOLATIONS RECLASSIFIED %								
	737	75	1997	186	4456	327	9147	586
	3.3	9.8	4.3	11.9	4.8	12.1	4.6	11.7
	22608	769	46128	1567	93448	2697	200310	5023
9. PENALTY RETENTION %								
	19478404	398593	40012395	853986	77322520	1455400	134938244	2635078
	61.0	53.7	61.6	55.2	62.8	54.9	62.8	50.3
	31918969	742025	65001782	1547475	123124542	2650040	214845679	5234530
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY								
	120	0	310	0	530	1	1043	4
	72.3	.0	74.2	.0	69.7	14.3	68.7	30.8
	166	2	418	2	760	7	1519	13
B. HEALTH								
	19	0	48	0	87	0	198	0
	44.2	0	53.3	0	50.0	0	54.2	0
	43	2	90	6	174	10	365	26
2. SERIOUS VIOLATIONS (%)								
A. SAFETY								
	370	1	727	1	1250	4	2309	7
	70.6	100.0	68.6	100.0	68.6	36.4	68.9	43.8
	524	1	1060	1	1822	11	3350	16
B. HEALTH								
	72	1	140	2	291	20	553	26
	58.5	50.0	56.0	66.7	57.7	74.1	55.2	66.7
	123	2	250	3	504	27	1001	39

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

STATE = IOWA

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 %								
	120	0	310	0	530	1	1043	4
A. SAFETY	72.3	.0	74.2	.0	69.7	14.3	68.7	30.8
	166	2	418	2	760	7	1519	13
	19	0	48	0	87	0	198	0
B. HEALTH	44.2	0	53.3	0	50.0	0	54.2	0
	43	2	90	6	174	10	365	26
2. SERIOUS VIOLATIONS (%)								
	370	1	727	1	1250	4	2309	7
A. SAFETY	70.6	100.0	68.6	100.0	68.6	36.4	68.9	43.8
	524	1	1060	1	1822	11	3350	16
	72	1	140	2	291	20	553	26
B. HEALTH	58.5	50.0	56.0	66.7	57.7	74.1	55.2	66.7
	123	2	250	3	504	27	1001	39
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %								
	579	15	1131	30	2220	35	4270	73
	22.8	17.9	23.4	16.9	23.5	13.1	23.0	12.9
	2542	84	4834	177	9442	268	18586	564
2. VIOLATIONS RECLASSIFIED %								
	328	19	620	30	1259	61	2360	121
	12.9	22.6	12.8	16.9	13.3	22.8	12.7	21.5
	2542	84	4834	177	9442	268	18586	564
2. PENALTY RETENTION %								
	3616720	74275	9500018	183175	16062961	242200	28079915	1217662
	56.1	71.3	62.4	48.8	62.3	48.4	60.6	61.2
	6443756	104150	15212620	375725	25766759	500025	46371522	1989825

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

**Appendix G – FY 2011 23(g) Consultation Activity Data
Public Sector Data**

	IA Public Sector	Total State Plan Public Sector
Requests	15	1,328
<i>Safety</i>	-	576
<i>Health</i>	10	560
<i>Both</i>	5	192
Backlog	-	123
<i>Safety</i>	-	51
<i>Health</i>	-	58
<i>Both</i>	-	14
Visits	17	1,632
<i>Initial</i>	17	1,336
<i>Training and Assistance</i>	-	175
<i>Follow-up</i>	-	121
<i>Percent of Program Assistance</i>	94%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
Employees Trained	17	5,030
<i>Initial</i>	17	2,144
<i>Training and Assistance</i>	-	2,886
Hazards	43	6,063
<i>Imminent Danger</i>	-	3
<i>Serious</i>	39	4,804
<i>Other than Serious</i>	4	1,171
<i>Regulatory</i>	-	85
<i>Referrals to Enforcement</i>	-	6
Workers Removed from Risk	314	171,075
<i>Imminent Danger</i>	-	55
<i>Serious</i>	275	136,884
<i>Other than Serious</i>	39	26,046
<i>Regulatory</i>	-	8,090

Appendix H – FY 2011 Whistleblower Protection Program Audit

April 6, 2012

MEMORANDUM FOR: Steve Carmichael
Assistant Regional Administrator, Enforcement Programs

FROM: Christine Stewart
Regional Supervisory Investigator

SUBJECT: Federal Fiscal Year 2011 Audit of the Iowa Occupational Safety and Health (IOSH) Whistleblower Program

Background:

Regional Supervisory Investigator Christine Stewart and Regional Investigator Mike Oesch conducted the above-referenced onsite audit from March 5 to March 8, 2012. The audit was conducted in accordance with the FY 2011 Federal Annual Monitoring and Evaluation (FAME) Guidance document. The document designates the whistleblower programs among the various states as a special study, focusing on three components: (1) Investigative Case Files, (2) Program Management, (3) and Resources.¹ In summary, the IOSH whistleblower program is in compliance with the three components.

Methodology:

We reviewed 30 case files, which were randomly chosen, and interviewed stakeholders, using the OSHA Whistleblower Investigation's Manual (Manual), Directive Number CPL 02-03-003, which was adopted on September 20, 2011, as our point of reference.² Those interviewed were the Deputy Labor Commissioner/IOSH Administrator, the IOSH investigator, the Iowa Division of Labor attorney in charge of appealed and meritorious whistleblower complaints, and the FY 2011 duty officer. In addition, a follow-up review was conducted regarding all Findings and Recommendations resulting from the comprehensive study of the IOSH whistleblower program conducted in the audit for the FY09 FAME.

Data for FY 2011:

The complaint intake data for FY 2011 is as follows:

- 63 total complaints were received. Of those 63:
 - 42 were docketed for investigation.
 - 11 of the 42 cases, or 26 percent, were completed in 90 days. (SAMM 17)³

¹ OSHA's last comprehensive audit of the IOSH whistleblower program took place in FY 2009. IOSH hired a new investigator in October 2010. As a result, OSHA did not conduct a comprehensive audit for FY 2010. In lieu of a comprehensive audit, OSHA sent an investigator to Iowa for training purposes, where the OSHA investigator spent time with the investigator in the field and office.

² Our comments for each case were captured in a spreadsheet. The spreadsheet has been saved to a CD, which is attached to this document.

³ It should be noted that the current investigator's 90-day rate was impacted by the backlog he inherited and by his attendance at OTI shortly after being hired.

- 21 were administratively closed.
- Of the 42 complaints that were docketed for investigation:
 - 32 were dismissed.
 - 8 were deemed merit for a merit rate of 19 percent. (SAMM 18) Of those 8:
 - 4 were settled.
 - 4 were submitted for litigation. Of those 4:
 - 2 were withdrawn.
 - 1 was settled.
 - 1 is still being reviewed by an Iowa Division of Labor attorney.
 - 2 were withdrawn.

In all, 5 of the 8 merit cases were settled for a settlement rate of 62.5 percent. (SAMM 19)

Audit Findings:

We conducted our opening conference on March 5. The Deputy Labor Commissioner/IOSH Administrator, among others, was in attendance. We explained the objectives of the audit and the methodology behind it. We conducted our closing conference on March 8, which was attended by the Deputy Labor Commissioner/IOSH Administrator along with the IOSH investigator. Our findings are based on the above-referenced three components of the special study.

1. Investigative Case Files:

The program is in compliance with this component of the special study:

- Screenings:

There is an intake system in place to ensure that complaints are captured and forwarded to the relevant parties. Complaints are properly documented in IMIS as are complaint screen-outs. Allegation statements are clearly written. Complainants are notified of their right to dual file with OSHA. Complaints involving statutes within the exclusive jurisdiction of federal OSHA are properly referred to the Kansas City Regional Office for OSHA. There was one instance, for example, where a complaint under Sarbanes Oxley was referred to and investigated by OSHA.

In one instance, the investigator was correct to administratively close a case but selected the wrong reason for closure when entering it in IMIS. The investigator closed it for lack of adverse action even though Complainant's employment had been terminated. We explained to the investigator that he should have chosen the code to indicate a lack of nexus, due to the closing of the facility where Complainant worked.

- Investigations:

When possible, with one notable exception that is described below, in-person interviews are conducted with Complainant, Respondent officials, and all other relevant witnesses. These interviews are documented in written statements or by audio recordings. Some of the earlier files show that confidentiality was not being

extended to non-management witnesses. In later files, however, confidentiality is being extended and documented in writing. The investigator explained that he consulted with an Iowa Division of Labor attorney, who approved the use of confidentiality for non-management witnesses.

Case files contain supporting documentation, such as personnel files and discipline records for similarly-situated employees.

Subpoenas are issued with the assistance of legal counsel when appropriate.

There was one instance, however, with a FY 2012 case where the investigation was concluded without testing all of the evidence. The investigator interviewed the Complainant, but closed the case as non-merit after receiving Respondent's position statement. No interviews were conducted with Respondent officials or Complainant's witnesses.

- Report Writing:

The investigator has incorporated the new Report of Investigation (ROI) format that was implemented in the new manual. The investigator has also retained a narrative section. The investigator cites to exhibits when discussing evidence. In the analysis section, the investigator properly applies the evidence to the prima facie elements, using the correct burdens of proof. His conclusions are based on the evidence and a proper application of the elements. The credibility of witnesses is also weighed.

The investigator needs to create a section for Respondent's defense in the analysis section. The investigator should also consider adding a chronology.

In one instance, the investigator failed to discuss a demotion as an adverse action in the analysis section of the ROI.

The elements of a work refusal need to be analyzed as part of the analysis for protected activity when a work refusal is at issue.

Withdrawal forms need to be signed by the supervisor. The investigator needs to analyze withdrawals in the ROI to ensure that they were submitted voluntarily.

- Settlement:

Settlement is attempted when appropriate. Settlement agreements are executed in accordance with OSHA's procedures. OSHA's standard settlement agreement is used as a template.

The program supervisor, however, needs to document his approval of settlement agreements by signing the agreement.

The investigator needs to analyze the terms of the agreement in his ROI, noting whether the agreement is fair and equitable and whether it provides a make-whole remedy, and if there is no make-whole remedy, explain why.

- Case File Management:

The investigator balances more than one investigation at one time without sacrificing the quality of his work. The respondents and complainants are provided with frequent updates and the investigator responds to requests from the parties in a timely manner.

While case files are well organized and the evidence is clearly marked and easily accessible, they are named using a format different from Federal OSHA. This can be confusing when attempting to identify the parties. The investigator needs to change the format of each case name from Complainant / Respondent / Case Number to Respondent / Complainant / Case Number for consistency and clarity.

It was noted during case file review that all opening letters to the complainants and the respondents were located on the right side of the case file. The investigator needs to place administrative material on the left side of the case file and evidentiary material on the right side of the case file. In addition, the completed case file should contain the Case Activity Worksheet.

- Timeliness:

See “Data for FY 2011” and footnote 3. The investigator works to complete his cases within the 90-day timeframe.

It would benefit the investigator to send the Respondent’s opening letter shortly after receiving the complaint. In some instances, there was a 30-day gap between the receipt of the complaint and Respondent being notified of the complaint.

2. Program Management:

The program is in compliance with this component of the special study:

Complaint data, for the most part, is entered into IMIS in a timely, accurate and complete manner. Some data needs to be updated in order to track all actions taken on each 11(c) case, which was brought to the investigator’s attention. The investigator stated that he would update it accordingly.

There is an effective appeals process in place. Complainants are notified of their right to appeal and of the steps involved. The appeal is conducted by the Iowa Division of Labor attorney for the whistleblower program. The result is to either uphold the initial determination or to return the case file to the investigator for further investigation. We pointed out that closing letters issued to both parties must contain more detail regarding the reason for the dismissal and must be more in line with OSHA’s Secretary’s Findings.

The program should run data management reports on a periodic basis for internal quality control purposes. This was reviewed with the supervisor and investigator. The investigator was shown how to run these reports in IMIS.

Complaints not involving a federal or state whistleblower statute are properly referred to other agencies if applicable. In addition, complaints involving federal whistleblower statutes are forwarded to OSHA in a timely manner.

Complaints that do not involve prima facie allegations are handled appropriately. Administratively-closed cases are tracked in IMIS.

The investigator has incorporated the changes in OSHA's new manual into the IOSH whistleblower manual.

3. Resources:

The program is in compliance with this component of the special study:

As of the date of this audit, the investigator had completed all investigations for 11(c) complaints filed in FY11.

The investigator did not make any request for additional equipment. He noted that the equipment he has been provided is sufficient.

The investigator has attended the two-week OTI 1420 whistleblower course that covers the fundamentals of whistleblower law and the procedure for investigating Section 11(c) complaints.

Both the investigator and attorney for the program attended the whistleblower conference held in Orlando, FL in September 2011.

The investigator, the attorney, the FY 2011 duty officer, and various team leaders attended the annual update of the whistleblower program presented by federal OSHA in FY11.

We would like to see the investigator attend advanced whistleblower courses as they become available at OTI. In addition, the supervisor needs to at least attend the OTI 1420 basic whistleblower course.

Additional basic whistleblower training needs to be provided for the various stakeholders within the IOSH facility, such as the new duty officer and front-line staff responsible for incoming phone calls. The investigator could conduct this training internally.

The state would like to see additional federal funding in order to increase its whistleblower staff.

SAMM 17: Percent of 11(c) investigations completed within 90 days (Reference/Standard 100%)

Findings: Iowa OSHA did not meet this Reference/Standard with only 26% of the 11(c) investigations completed within 90 days. This was down from 53% in FY 2009. There were forty-two 11(c) complaints docketed for investigation during this evaluation period.

SAMM 18: Percent of 11(c) complaints that were meritorious (Reference/Standard 20.7%)

Findings: Iowa OSHA did not meet the Reference/Standard with 19% of their 11(c) complaints being meritorious. In FY 2009, 15.8% of the 11(c) cases were meritorious.

SAMM 19: Percent of meritorious 11(c) complaints that are settled (Reference/Standard 86.2%)

Findings: Iowa OSHA did not meet the Reference/Standard with 62.5% of their meritorious cases being settled. There were four 11(c) complaints that were settled along with four 11(c) complaints which were submitted for litigation to the Iowa Division of Labor attorney, of which one was settled, two were later withdrawn by the complainant, and one is still under legal review. In FY 2009, 66.7% of their meritorious cases settled.

Findings and Recommendations:

1. **Finding:** Adequate investigation of a whistleblower complaint was not conducted in that both the complainant's allegation(s) and the respondent's proffered non-retaliatory reason(s) for the alleged adverse action were not fully tested before reaching a determination in the case. This deficiency was noted in one of the thirty investigations reviewed.

Recommendation: The investigator must ensure that every effort is made to test and weigh all of the evidence before reaching a determination and avoid shutting down an investigation before sufficient documentation has been collected and all relevant witnesses have been interviewed. (Manual, Section 3-1)

2. **Finding:** - Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint. This deficiency was noted in both of the work refusals reviewed. REPEAT Finding - This is Finding #09-9 in the FY-2009 Audit.

Recommendation: The investigator must conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed. (Manual, Sections 3-5 to 3-12 & 7-4)

3. **Finding:** Documentation of the investigator's assessment of the settlement agreement and the withdrawal request were not present in the case file. This deficiency was noted in all four of the settled cases and two of the withdrawal cases reviewed.

Recommendation- The investigator must document in the ROI his analysis of the content of the settlement agreement to describe the relief obtained and the withdrawal request to ensure the withdrawal was submitted voluntarily. (Manual, Section 4-2, 5-6 & Chapter 6)

4. **Finding:** Documentation of the testing of the respondent's defense to determine if it is believable or a pretext was not present in the case file. This deficiency was noted in all of the thirty cases reviewed.

Recommendation: The investigator must add a Respondent Defense discussion to his analysis section of the ROI. (Manual, Section 5-13)

5. **Finding:** Closing letters to Complainants did not utilize OSHA's Secretary's Findings template and did not fully explain the reason for the dismissal. This deficiency was noted in twenty-one of the twenty-two dismissal cases reviewed.

Recommendation: Draft closing letters to Complainants utilizing OSHA's Secretary's Findings template in order to adequately inform the parties of the outcome of the investigation by succinctly documenting the factual findings as well as Iowa OSHA's analysis of the elements of a violation. (Manual, Section 5-6 to 5-11)

6. **Finding:** Appropriate entry of administratively closed 11(c) complaints in IMIS was not accomplished. This deficiency was noted in one of the four screened out cases reviewed.

Recommendation: Select the proper reason for closure when entering codes for administratively-closed complaints in IMIS. (Manual, Section 2-3)

7. **Finding:** One hundred (100) percent of 11(c) investigations were not completed within the 90 day goal. Iowa OSHA did not meet the Reference / Standard of one hundred (100) percent with only twenty-six (26) percent of the 11(c) investigations completed within ninety (90) days. This was down from fifty-three (53) percent in FY-2009. There were forty-two (42) 11(c) complaints docketed for investigation in FY-2011, compared to nineteen (19) cases in FY-2009. REPEAT Finding - This is #09-2 in the FY-2009 Audit.

Recommendation: Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within ninety (90) days. (SAMM 17)

8. **Finding:** Although the investigator attended the two-week OTI 1420 whistleblower course, adequate whistleblower training has not been provided to other IOSH staff members and stakeholders. REPEAT Finding – This is #09-12 in the FY-2009 Audit.

Recommendation: Provide internal whistleblower training to the new duty officer and other key stakeholders within the IOSH facility, such as front-line staff that are responsible for transferring incoming phone calls. Accomplish training for the IOSH Discrimination Program supervisor by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations – 11(c) in FY-2012 or FY-2013.

Conclusion:

The IOSH whistleblower program has improved greatly with the arrival of its new investigator. The program has been found to be in compliance with the essential components of the special study.