

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
Division of Occupational Safety and Health (DOSH)

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

FY 2011 Report Period
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I. Executive Summary

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

Overall, DOSH met or exceeded the majority of its FY 2011 performance plan goals and fulfilled its obligations with regard to activities mandated by OSHA. Where the need for program improvement was identified, recommendations are made herein for corrective actions. One of the more significant challenges which DOSH faced in FY 2011 was the achievement of its inspection goal. The economic downturn and budget shortfalls negatively impacted the state's ability to retain experienced compliance officers and fill vacant positions, though 90% of enforcement positions were filled by the end of FY 2011. In FY 2011, DOSH had 25 compliance officers in new hire status, which affected DOSH's ability to meet its FY 2011 inspection goal of 7,000 inspections.

These negative impacts are likely to carry over into FY 2012, due to the number of newly hired and relatively inexperienced compliance officers, the number of transfers, promotions, and ongoing vacancies.

A. Summary of the Report

The purpose of this Federal Annual Monitoring and Evaluation (FAME) report is to assess DOSH's FY 2011 activities and to gauge the state's progress toward resolving recommendations from the FY 2010 FAME. As part of this evaluation, OSHA conducted a special study of DOSH's use of its "Phone and Fax" procedures for handling referrals, as outlined in the DOSH Compliance Manual.

In general, DOSH's performance with respect to activities that are mandated by the Occupational Safety and Health Act and its implementing policies and regulations continued to be very good. For example, the state's timely responses to imminent dangers and appeals were outstanding. Other positive findings in this report include timely verification of the abatement of serious hazards; inspection lapse times better than national averages; timely responses to fatalities and catastrophes; a modest increase in the average penalty for serious violations; and, continued reductions in injury and illness rates.

The FY 2010 FAME report on DOSH contained a total of nine recommendations, eight of which the state completed corrective actions for in FY 2011. The one unresolved recommendation relates to the timeliness of initiating phone/fax complaints, which was the focus of OSHA's special study.

This FAME report contains a total of three findings and recommendations, two of which are new - documentation of referral case files and achieving inspection goals. One finding and recommendation is repeated from the FY 2010 report and pertains to initiating phone/fax complaints. Each recommendation is summarized later in this Executive Summary and is discussed in detail in the body of this report.

B. State Plan Introduction

DOSH was established in accordance with Section 18 of the *Occupational Safety and Health Act of 1970*. The state's enabling legislation, the *Washington Industrial Safety and Health Act*, took effect in 1973, and the Secretary of Labor certified in 1982 that the state had completed all of the required developmental steps in the plan.

The director of the Washington Department of Labor and Industries is appointed by the Governor, and serves as the state plan designee. An assistant director is appointed by the director and is in charge of DOSH; the assistant director directs central office and regional operations. The current director is Judy Schurke; the assistant director of DOSH during this period was Michael Silverstein.

DOSH establishes policy, provides technical guidance, writes standards, develops internal and external training, monitors and evaluates programs, conducts inspections, and provides consultation services. The state inspects and provides consultative assistance to state and local government agencies and private sector employers not covered by OSHA. OSHA's jurisdiction in the state of Washington is limited to private employers at national parks and military installations; maritime activities on the navigable waters; and federal government employers. OSHA also covers establishments on Indian lands that are tribally-owned, as well as employers who are enrolled tribal members working on reservations or on trust lands.

Over the years, the state of Washington has adopted a number of safety and health standards which differ significantly from their federal counterparts. Examples include Washington's rules for fall protection, respiratory protection, aerial lifts, and agriculture. DOSH has also adopted a number of state-initiated rules for which there are no federal counterparts, including requirements for written safety and health programs, and for safety committees.

As part of its Standards Innovations Project, DOSH grouped a number of basic safety and health standards, applicable to most employers, into one code section (Chapter 296-800 WAC). These are referred to as Core Rules. The Core Rules include requirements for Safe Workplace (similar to the OSHA's General Duty Clause), Accident Prevention Program, First Aid, Personal Protective Equipment, Hazard Communication, Safety Bulletin Board/Poster, Lighting, Housekeeping, Sanitation, Environmental, Tobacco Smoke in the Office, Stairs and Railings, Floor Holes and Openings, Open-Sided Floors, Workplace Structural Integrity, Basic Electrical Rules, Portable Fire Extinguishers, and Exit Routes and Employee Alarm Systems.

Two DOSH-related programs are housed in other departmental divisions. The division of Administrative Service administers the public disclosure of DOSH's records, while the Information Services Division (ISD) is responsible for technical development and maintenance of the computer systems and databases used by DOSH, including the local node of federal IMIS (Integrated Management Information System), and the state's Web-based consultation and enforcement data systems in the WISHA Information Network (WIN). The Business Services Program in DOSH Operations identifies needs and prioritizes and oversees the planning, testing and implementation of all functions necessary to keep the computerized information system running smoothly.

The state plan was staffed with 367 positions, which included 115 compliance officers and 36 consultants. The program covers approximately 2.96 million workers employed in over 204,946 establishments statewide. In FY 2011, Washington's federally-approved state OSHA program was funded at about \$42.3 million, \$7.4 million of which were federal funds. There were 185 DOSH positions funded entirely by the state.

All on-site consultation (both public and private) in the state of Washington is provided through 23(g) funding. There is no 21(d) consultation component.

C. Data and Methodology

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

- OSHA's analysis and monitoring of the FY 2010 DOSH Corrective Action Plan which provides the state's status and response to the FY 2010 FAME (Appendix B).
- OSHA statistical reports (INSP & ENFC) comparing state performance on enforcement to federal performance (Appendix C).
- State Activity Mandated Measures (SAMM) report data (Appendix D).
- State Information Report (SIR) data (Appendix E).
- The state FY 2011 OSHA Annual report (SOAR) prepared by Washington DOSH (Appendix F), which contains details of the state's achievements with respect to its annual goals.
- Case file reviews of 84 referral inspection files, 43 closed referral cases processed by phone/fax, and 30 consultation case files.
- Interviews with enforcement and consultation staff.
- Quarterly monitoring meetings between OSHA and the state.

During FY 2011 a special study was conducted by OSHA of DOSH's use of its phone and fax policy for handling certain complaints. The study is discussed on pages 8-9 and more fully described in Appendix H.

D. Findings and Recommendations

The following is a summary of OSHA's findings and recommendations for the FY 2011 evaluation period. Details are further discussed in the body of the report. The finding and recommendation denoted as "continued" had been identified in the previous FY 2010 FAME report and constitute a repeat finding in this reporting cycle.

Finding 11-1 (Continued 10-1): Phone/fax complaints are not consistently initiated within five working days. The average time was 8.65 days, a slight increase from 8.54 days in FY 2010.

Recommendation 11-1 (Continued 10-1): Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual. The reason and circumstances for any case requiring more than five working days to contact the employer must be documented in the case file.

Finding 11-2: Where a referral inspection case file was identified as "other," the source of the referral was not documented in 17 of the 43 case files reviewed (40%).

Recommendation 11-2: Ensure adequate information is provided in referral case files to document the origination and determination that a referral exists.

Finding 11-3: DOSH did not meet its inspection goals. DOSH conducted 5,402 inspections during FY 2011, which was 1,598 or 23% short of its inspection goal of 7,000. The state's ability to meet its goal was negatively affected by employee turnover and budget issues.

Recommendation 11-3: Ensure appropriate inspection goals are set based on realistic expectations, taking into consideration resources, and the training status of compliance staff.

II. Major New Issues

Staffing: The recession and state budget shortfalls negatively impacted DOSH's ability to retain experienced compliance officers and fill vacant positions. DOSH may have had staffing problems during the year, but by the end of FY 2011, on-board compliance staffing was at 90% of authorized positions, the same as at the end of FY 2010. Included were 11 vacancies: 8 safety of 69 positions, and 3 health of 36 positions. At the end of FY 2010, by comparison, there were 12 vacancies, all in safety (out of 71 positions), with no health vacancies (35 positions). There were 3 more enforcement positions authorized in FY 2010, (2 safety, 1 health), and DOSH had 4 more compliance officers on board (2 safety and 2 health). Thus, DOSH had lost only 3 allocated CSHO positions and had only 4 fewer enforcement staff on board (102 vs. 106) by the end of FY 2011 compared to the end of FY 2010. Although staffing numbers alone do not account for the reduction in inspections, the cumulative effect of employee transfers, promotions, and ongoing vacancies coupled with newly hired staff in a learning mode, contributed greatly to DOSH's inability to meet its inspection goal. These negative impacts continue to be a concern to the state and OSHA, and a reduction in the state's FY 2012 inspection goal is anticipated.

Abatement During Appeals: Under DOSH's existing rules, if an employer appeals a citation for a serious workplace safety or health violation, there is no obligation to correct the hazard until the appeal is concluded. In April 2011, a bill was signed into law which amended the 1973 Washington Industrial Safety and Health Act. The bill requires public and private employers to correct serious violations and hazards during an appeal. As of this writing, DOSH was holding public hearings on the proposed rules which would become effective July 2012. This action illustrates Washington's continued efforts to ensure safe and healthful workplaces for the state's workers. Washington is one of only two states in the nation to pass such legislation.

Safety and Health-Related Discrimination: In September 2011, the Washington State Supreme Court rendered a decision in *Matthew Cudney v. ALSCO, Inc.*, concluding that the Washington Industrial Safety and Health Act (WISHA) in RCW 49.17.160 and accompanying WAC codes (Chapter 296-360) adequately protect public policies and are the sole remedy to employees discriminated against for reporting safety concerns in the workplace. This decision means employees are barred from pursuing a private right of action outside the provisions of the statute. The Supreme Court recently accepted reconsideration of this decision. Washington State no longer recognizes a separate tort in violation of public policy for safety and health-related discriminatory actions.

Hazardous Drugs: The 2011 Legislature passed Engrossed Substitute Senate Bill (ESSB) 5594, requiring the Department of Labor and Industries (L&I) to set requirements to protect workers who handle chemotherapy and other hazardous drugs. L&I must adopt rules that are consistent with but do not exceed provisions in the National Institute for Occupational Safety and Health (NIOSH) 2004 alert on preventing occupational exposures to antineoplastic and other hazardous drugs in health care settings, as updated in 2010. This was the first time that a NIOSH alert served as the framework for development of a government regulation, and Washington State is

the first and only state to adopt regulations specifically addressing worker exposure to hazardous drugs. The rule development process benefitted from strong stakeholder involvement including participation from NIOSH. L&I's hazardous drugs rule was adopted on January 3, 2012, and the rule will take effect in stages beginning January 1, 2014. In the next two years, L&I will be working with stakeholders to: (1) establish a hazardous drugs advisory committee; (2) develop model programs for rule implementation in a variety of health care facilities and settings; and (3) establish a hazardous drugs webpage and other resources.

Tunnel Construction: Over the past six years, DOSH technical staff have worked with contractors, local government officials, rescue services, and organized labor on a variety of worker protection issues related to tunnel construction using tunnel boring machines (TBM). Issues have included worker exposures to hyperbaric environments over 50 psi and exposures to diesel exhaust. Highlights in FY 2011 include the following:

- Tunneling contractors successfully completed the tunneling on the final section of the fourteen mile Brightwater conveyance tunnel in August 2011.
- Two contractor joint ventures initiated two additional sections of the tandem Sound Transit tunnels.
- Evaluated air contaminants related to diesel equipment for a hard rock tunnel for a future powerhouse.
- Attended the initial informational meeting with the joint venture contractor for the Alaska Way Viaduct Tunnel project.
- Provided technical input and direction for the Laborers' Safety and Health Awareness for Tunneling (SHAFT) worker protection training.
- DOSH initiated a meeting with industry stakeholders to discuss technical information and potential regulatory options related to 1962 Compressed Air Worker Rules.

DOSH is developing internal technical training for inspectors emphasizing safety issues related to tunneling using the TBM training devices. The state has also scheduled internal hyperbaric training in April 2012. DOSH and other divisions in L&I have formed a Tunnel Task Force to improve communication between divisions, facilitate early identification of tunneling projects, and to work together to identify additional worker protection opportunities.

III. State Response to FY 2010 FAME Recommendations

This section provides a summary of Washington's status for responding to remaining recommendations from the FY 2010 FAME report and the progress they are taking toward meeting the steps outlined in DOSH's Corrective Action Plan.

During FY 2011, the state submitted corrective actions and partially completed enforcement-related recommendations. OSHA has determined there is one enforcement-related item which remains unresolved. Follow-up is ongoing and will be monitored into FY 2012. Appendix B describes the status of all FY 2010 recommendations in detail.

Recommendation 11-1 (Continued 10-1): Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual.

Status: Pending. Results expected in FY 2012. DOSH has added this goal to its new performance plan submitted with its FY 2012 grant application. The state will review any phone/fax cases that exceed five working days for initial contact with the employer to see whether the reason and circumstances are documented in the case file as required by policy. If a justifiable reason is not documented, they will follow up with the responsible manager and supervisor and report results of any outliers at quarterly DOSH-OSHA meetings.

IV. Assessment of State Performance

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

A. Enforcement

1. Complaints

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

DOSH classifies complaints and referrals differently than OSHA. A complaint, which is reduced to writing and signed by an individual listed in DOSH's Compliance Manual, is classified by DOSH as a "complaint." All other complaints which do not meet the criteria contained in the compliance manual are classified as a referral. An evaluation of all complaints and referrals is performed to determine if an inspection will be conducted. When criteria for conducting an on-site inspection are not met, DOSH investigates the complaint or referral by a phone/fax/email inquiry. In FY 2011, data shows that only 3% of the state's inspections were conducted as a result of a complaint. Due to the differences in how DOSH classifies complaints and referrals, this percentage of inspections conducted as a result of a complaint appears to be much lower when compared to 17% for all state plans and 21% for OSHA (Appendix C). However, DOSH remains consistent with 3% complaint inspections in both FY 2010 and FY 2009, with the remaining inspections based on referrals not considered in this data.

During FY 2011, the state responded to a total of 243 complaints, 199 with on-site inspections and 44 by the phone/fax procedure. The average time to respond with an on-site inspection in FY 2011 was 8.65 days, which is slightly over last year's average of 8.5 days and within the state's requirement of 15 days. The average time for initiating phone/fax complaints was 8.0 days which is an increase over last year's average of 7.72 days and is 3.0 days over the state's requirement of five working days (SAMM 1,2,3).

Recommendation 11-1 (Continued 10-1): Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual.

OSHA SPECIAL STUDY ON USE OF PHONE/FAX FOR REFERRAL INSPECTIONS

A four-phase special study was completed in FY 2011. The study focused on the state's handling of referral inspections to determine if they were being evaluated for processing under the phone and fax procedures contained in the DOSH Compliance Manual. Because the state does not have a non-formal complaint process, all non-qualifying complaints are treated as referrals. This results in DOSH inspections of referrals that OSHA would normally process as a phone or fax complaint. The study was conducted to evaluate if the state could have more expeditiously handled the referral inspections by phone/fax rather than conducting an on-site inspection which resulted in no violations. The special study consisted of a data review, manager interviews, and review of referrals for the period of April 1, 2010, through March 31, 2011. OSHA focused its review on referral inspections which resulted in no violations to see if they could have been more appropriately addressed through the phone and fax process. The criteria for selecting the files for review was random selection of 84 referral inspection case files out of 526 total in-compliance referral inspections (out of 1,657 total referrals). In addition, separate on-site reviews were conducted of 43 closed referral cases of the 46 that were processed through phone and fax investigation procedures during the evaluation period.

The results of the Special Study indicated that DOSH effectively screens referrals for alleged serious hazards to determine if they qualify for investigation under its phone and fax policy. Case file reviews found that a serious hazard was alleged in 95% of referrals resulting in inspections. The case file review team noted when the referral origination source was marked as "other." This occurred in 17 of the 43 referral cases with no further explanation as to the origination of who had made the referral. The referral form has a space to annotate this information, but it was not being utilized in those instances. This led to the following recommendation in the FY 2011 FAME:

Recommendation 11-2: Ensure adequate information is provided in referral case files to document the origination and determination that a referral exists.

A detailed description of the Special Study is included in Appendix H.

2. Imminent Danger

Ensure imminent danger situations are responded to promptly and appropriately.

DOSH received six imminent danger complaints/referrals in FY 2011. All were responded to within one day. DOSH met this goal.

3. Fatalities and Catastrophes

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

There were 39 fatalities reported in FY 2011 (IMIS Micro-to-Host Report). Of these, 34 fatalities were inspected; 5 were found to be not work-related or were considered a motor vehicle accident and not under the jurisdiction of DOSH. DOSH responded within one day of notification to 32 of the fatality notices; two were not inspected within one day. DOSH achieved a 94% response time for inspecting fatalities within one working day of notification (32 of 34). The two late responses had extenuating circumstances related to jurisdictional issues, and a hospitalization that resulted in a fatality at a later date.

It is standard procedure for DOSH compliance officers to make contact with the families of victims at the onset of an inspection and at the close of an investigation to inform families of any findings. Although OSHA did not conduct an on-site audit of DOSH's fatality case files and related investigations for FY 2011, IMIS fatality data for the period was reviewed. A comprehensive fatality case file review is scheduled to be conducted by OSHA in FY 2012 and will include a review of DOSH's communication with families of victims. The results of the evaluation will be reported in the FY 2012 FAME.

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

An overview of Washington's private industry TCIR¹ and DART² rates for calendar years 2006 through 2010 (the most recent calendar year for which data were available), as well as for select industries, is provided in the table that follows. [Data source: www.bls.gov]

	CY 2006	CY 2007	CY 2008	CY 2009	CY 2010	% Change, 06-10	% Change, 08-10
Private Industry							
TCIR	6.6	6.1	5.6	5.1	4.8	-27%	-14%
DART	3.2	2.9	2.7	2.5	2.4	-25%	-11%
Construction, NAICS³ 23							
TCIR	12.0	9.6	9.0	8.2	7.2	-40%	-20%
DART	6.0	4.7	4.3	3.9	3.4	-43%	-11%
Manufacturing, NAICS 31-33							
TCIR	8.2	8.3	7.0	6.4	6.0	-27%	-14%
DART	4.4	4.5	3.8	3.6	3.5	-20%	-8%
State and local government							
TCIR	7.8	6.7	6.4	6.7	6.4	-18%	-0-%
DART	3.1	2.9	2.7	2.9	2.8	-10%	+4%

Data indicates that between CY 2009 and CY 2010, injury and illness rates declined in the listed industry sectors.

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

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

³ NAICS is the North American Industry Classification System.

4. Targeting and Programmed Inspections

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

DOSH has a surveillance system which uses inspection data to identify non-traditional sectors or occupations where unexpected or significant hazards may be found. In addition, DOSH participates in OSHA's National Emphasis Programs including:

- Primary Metal Industries (DOSH Directive WRD 24.30).
- Injury and Illness Recordkeeping (WRD 2.66).
- Chemical Facility Process Safety Management (WRD 24.25).
- Hexavalent Chromium (WRD 12.90).

DOSH conducted 2,672 programmed safety inspections and 459 programmed health inspections in the private sector during FY 2011. Of these inspections, 65.1% of safety inspections resulted in a violation, with a corresponding in-compliance rate of 34.9%. Of the programmed health inspections in the private sector, 72.4% resulted in violations, with a corresponding in-compliance rate of 27.6% (SIR 1,2). Based on these data, DOSH's targeting of hazards through programmed inspections is generally comparable to OSHA's. Safety and health programmed inspections by OSHA resulted in violations 70.1% and 56.2% of the time, respectively.

In FY 2011, 1,132 of 2,830 DOSH programmed safety inspections, or 40%, resulted in Serious, Willful, and/or Repeat violations. For health programmed inspections, 175 of 464, or 38%, resulted in Serious, Willful and/or Repeat violations (SAMM 8,9). When analyzing all programmed and unprogrammed inspections conducted, the state cited Serious, Willful and Repeat violations 36% of the time. The corresponding rate for all state plans is 46%, and OSHA is 77% (Appendix C). DOSH's citing of serious violations 33% of the time has remained virtually unchanged since FY 2009.

DOSH conducted a total of 5,402 inspections during FY 2011. That was less than DOSH's inspection goal of 7,000 by 1,598 inspections, or 23% less than the established goal (Appendix C). The number of FY 2011 inspections was also much lower than the inspections conducted in FY 2010 and FY 2009. (See table on page 13).

Recommendation 11-3: Ensure appropriate inspection goals are set based on realistic expectations in consideration of current resources, abilities and training status of compliance staff, and properly allocated in order to achieve goals.

The state set and established reasonable inspection goals for FY 2011 based on their history of inspections in the past. However, DOSH was affected by employee turnover and budget issues in FY 2011, which impacted their ability to reach their inspection goal.

Inspections	FY 2011	FY 2010	FY 2009	FY 2008	FY 2007
Goal	7,000	7,000	6,600	7,230	7,230
Conducted	5,402	7,145	7,654	5,674	6,139
Difference	(1,598)	145	1,054	(1,556)	(1,091)

5. Citations and Penalties

Ensure an effective program exists for timely issuance of citations.

The state has successfully managed to issue citations in a timely manner. This significant achievement of DOSH to reduce and maintain both industrial hygiene and safety lapse times is commendable.

The following tables represent DOSH's five-year performance history for both industrial hygiene and safety citation lapse times. The data was compiled using the end-of-year final SAMM report. See Appendix D for details.

IH Lapse Times (Days)	FY 2011	FY 2010	FY 2009	FY 2008	FY 2007
Goal	61.8	58.7	59.9	60.2	60.0
Actual	56.6	55.5	55.3	70.6	74.6
Difference	-5.2	-3.2	-4.6	+10.4	+14.6

Safety Lapse Times (Days)	FY 2011	FY 2010	FY 2009	FY 2008	FY 2007
Goal	47.3	45.5	45.6	47.3	45.7
Actual	38.2	32.2	30.5	42.3	52.4
Difference	-9.1	-13.3	-15.1	-5.0	+6.7

Ensure serious violations cited are assessed penalties.

The state has written procedures for imposing first-instance sanctions for violations of standards. The average penalty assessed per serious violation in the private sector in FY 2011 was \$787, which is below the federal average of \$1,680 by \$893, or 53% lower (SAMM 10). Using data from Appendix C, the state’s average serious penalty of \$739 remains below the total state plan average of \$963 by \$224, or 23% lower (Appendix C).

However, it is especially noteworthy that DOSH has increased their average penalty assessed per serious violation by \$145 in the past year, a 22.6% increase from their FY 2010 penalties and an overall 58% increase in penalties over the past five years. This increase was achieved without any state proposal for legislative action on penalties. The state was able to accomplish this through an increased emphasis in accurate probability and severity assessments on cited serious hazards.

The following table represents DOSH’s five-year average serious penalty issuance history (SAMM):

Average penalty assessed per serious violation	FY 2011	FY 2010	FY 2009	FY 2008	FY 2007
	\$787	\$642	\$530	\$673	\$498

6. Abatement

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

Washington requires that each hazard be abated, and that adequate verification of the correction is included in the case file. For FY 2011, the timely abatement of serious, willful and repeat violations was 97.6%, which exceeded DOSH’s goal of 95%.

Of interest is that in April 2011, a new bill was signed into law that amends the 1973 Washington Industrial Safety and Health Act (WISHA). The bill requires employers to correct serious safety violations and hazards during an appeal. DOSH is holding public hearings on the proposed rules which would become effective July 2012. Under existing rules, if an employer appeals a DOSH citation involving a serious workplace safety or health violation, there is no obligation to correct the hazard until the appeal is resolved. This action by the state illustrates Washington’s continued effort to ensure a safe and more healthful workplace for the state’s workers.

7. Employee and Union Involvement

Ensure employees are allowed to participate in inspection activities.

During DOSH inspections, employees are given the opportunity to participate either through interviews or by having employee representatives accompany inspectors. Employees are also afforded the opportunity to privately express their views about the workplace away from the employer. In addition, inspection results are provided to union or other labor representatives and complainants. The state's policy is identical to the federal policy for the allowance of employee participation in inspection activities.

Monitoring did not identify any cases where employees were not afforded the right to participate in the inspection process.

OSHA intends to conduct a case file review of DOSH fatality inspections in the FY 2012 monitoring period and will take special note of employee participation factors which will be evaluated and presented in the FY 2012 FAME.

B. Review Procedures

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

1. Informal Conferences

DOSH's procedures for informal and formal review of appealed Citation and Notices (C&N) are administered in the Appeals Program. The Reassumptions Program is responsible for reassumed C and N appeals and has a Central Office RHO Supervisor and seven hearings Officer (RHO) positions located statewide. RHOs act as the presiding officer at first level informal conferences for the appeal of a DOSH Citation and Notice. An RHO position adjudicates appeals of C&Ns that have been issued for violations of workplace safety and health regulations taking into account established DOSH policy and procedures (RCW and WAC requirements). The RHO must make decisions regarding stays of abatement, abatement actions in cited hazards, and then issue a Corrective Notice of Redetermination (CNR).

The outcomes of the Reassumptions Program are similar to OSHA's informal conference process, although the time frames are different. Once a citation is issued to an employer, the employer has 15 working days to file an appeal with the state. If the department decides to reassume jurisdiction, the state has 30 days (45 with agreement of both parties) to reconsider the decision. Once the decision to reassume has been confirmed, the state holds an informal conference with the employer, and changes to the terms of Citation and Notice are made prior to issuing the Corrective Notice of Redetermination (CNR) to the employer.

If the state determines that they will not reassume a notice of citation, the appeal is sent directly to the Board of Industrial Insurance Appeals (BIIA). Also, if the employer decides to appeal the Reassumptions decision further, they may appeal the CNR directly to the BIIA within 15 working days from receipt of the CNR. The BIIA is a separate agency that hears the contested cases of the department. The department is represented by an Assistant Attorney General. The process can result in a settlement agreement or if this cannot be reached, the matter goes before an Administrative Law Judge (ALJ) who will make a determination based on the case presented.

During reassumption, the state's data reflect that 88% of violations were affirmed, 5.4% were modified and 6.9% were vacated during the period of FY 2011. Their penalty retention during reassumption is at 94%, which is better than OSHA's penalty retention of 62.8% (SIR C 7,8,9).

2. Formal Review of Citations

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

In Washington State, post-contest data reflect the outcomes of the second-level appeals at the Board of Industrial Insurance Appeals (BIIA). A lower percentage of DOSH's violations, 14%, were vacated in FY 2011 in comparison to the federal percentage of 23.5%. DOSH's post-contest penalty retention for FY 2011 was 60%, compared to 62.3% retention federally. In the area of post-contest violation reclassification, the BIIA affirmed 75%, modified 11% and vacated 14% of DOSH's second appealed violations, compared to OSHA's reclassification rate of 13.3% (SIR E 1,2,3).

C. Standards and Federal Program Changes (FPCs) Adoption

1. Standards Adoption

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

DOSH has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA. During this evaluation period, there were two final rules issued by OSHA. The General Working Conditions in Shipyard Employment rule is scheduled to be adopted on June 5, 2012, and the Standards Improvement Project – Phase III rule has encountered technical issues, and as a result DOSH has been unable to schedule an adoption date. Once the technical issues are resolved, a timeline will be determined.

Last year, the state requested an additional eight months to promulgate the Cranes and Derricks in Construction rule. The state needed additional time to work with stakeholder groups and then address draft provisions that differed from the OSHA rule. The state is on track to adopt the crane rule on December 20, 2011.

2. Federal Program/State Initiated Changes

Ensure timely adoption of program changes.

OSHA policy requires states to acknowledge each Automated Tracking System (ATS) change within 70 days of a program change's transmittal date. In those changes requiring state change, acknowledgement by the state must include whether it intends to adopt the change or adopt an alternative approach which is at least as effective as the federal change. The states also must provide a projected date of adoption.

A total of 10 federal program changes (FPCs) were issued by OSHA which required a response in FY 2011. There were three remaining FPCs that will carry over into FY 2012. DOSH's response to those will be evaluated during the next FAME cycle. In all cases, Washington provided their intent of adoption or to otherwise administer a program change that was at least as effective as the federal program change in a timely manner.

DOSH submitted 19 state-initiated changes this period. All state-initiated changes were submitted timely and were provided in quality form which met the federal requirement. Where a website location for the state-initiated changes was requested to be posted in the ATS system, the state responded accordingly.

DOSH did not adopt OSHA's revised penalty policy. DOSH's penalty structure is written in rule and can only be changed by following the state's Administrative Procedures Act. The state has taken notice of OSHA's revised penalty policy, and when corresponding state action is required after revision of the federal Field Operations Manual, it will initiate rulemaking.

D. Variances

DOSH granted 23 permanent variances during this evaluation period, 17 more than the number of permanent variances granted during the previous period. During the previous three years of reporting, DOSH granted an average of 16 permanent variances a year. Two interim variances were granted during this period which is 13 less than the number granted during the last period. During the previous three years of reporting, DOSH granted an average of nine interim variances a year. Other variance actions included 10 variances being withdrawn, and 13 applications were denied. DOSH did not grant any temporary variances during the previous period.

During this period, the state conducted an internal review of their variance application evaluation process and implemented several new steps to ensure their variances are appropriate. Their variance files are well maintained and the decisions to grant the variances were justified.

E. Public Employee Program

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

In FY 2011, DOSH conducted 4.3% of its inspections in the public sector. That is consistent with previous years and is satisfactory. DOSH met this element.

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

F. Discrimination Program

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

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

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

Disposition	Totals
Total cases from FY 2011	108
Cases completed FY 2011	88
Cases completed timely	87
Overage cases	1
~ Withdrawn	15
~ Dismissed	37
~ Merit	37
~ Settled	30
~ Settled Other	2
~ Reinstatement (if any)	1
~ Litigated	0
Investigators on staff	5

DOSH received nine less complaints than in FY 2011 and completed eight less investigations. DOSH's timeliness of completed cases was 99%, considerably higher than the state plan rate of 63%. DOSH's merit rate was 42%, which is considerably higher than the overall state plan rate of 17%.

All of DOSH's investigative staff attended the whistleblower conference in September 2011 during this monitoring cycle.

In FY 2010, a review of DOSH discrimination case files was conducted by OSHA during an on-site audit. The state's discrimination case files were determined to be well organized, appropriately maintained, and well written. Only one recommendation resulted pertaining to ensuring settlement agreements were completed in accordance with current policy and accurately recorded in the IMIS database. DOSH responded accordingly to correct each subitem under this recommendation. The state's response is detailed in Appendix B, Recommendation 10-2. OSHA considers this recommendation completed.

OSHA did not conduct an on-site audit of DOSH during FY 2011. An on-site audit is scheduled again for FY 2012.

G. Complaints About State Plan Administration (CASPs)

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

Five new CASPAs were filed in FY 2011; four of these were investigated and closed within the same period and one CASPA was still pending. One CASPA remained open from the previous fiscal year and was completed in FY 2011. Of the five CASPAs which were completed in the period covering this FAME, three were found to be invalid, one partially valid, and one was found valid. The state's actions concerning the valid CASPA were appropriate and the CASPA was closed. The fifth CASPA filed in FY 2011 was still under investigation at the end of the fiscal year and closed in early FY 2012.

CASPA W-360 was filed at the end of FY 2010 and was investigated and closed in FY 2011. The CASPA complainant alleged that DOSH did not inspect all the tools and equipment related to the original safety and health complaint filed with DOSH. This complainant's allegations were determined to be partially valid after DOSH responded to the CASPA by reinspecting the work site; and during the reinspection of the workplace related to the CASPA, DOSH inspectors did identify and address new safety and health hazards at the work site that were unrelated to the CASPA. The state's response was deemed adequate and the case was closed midway through the year.

CASPA W-361 was investigated and closed in FY 2011. The complaint alleged the state did not investigate a discrimination complaint which was filed. In the course of the investigation, it was determined the complainant had not filed the discrimination complaint timely and the state had administratively closed the complaint. There was no record that the state notified the complainant of the closure in the file. Two findings for program improvement were identified and the state responded appropriately to the recommendations.

CASPA W-362 alleged that DOSH's variance actions, analyses and decisions have been inappropriate, especially with respect to construction employers. The state's investigation of the allegation found partial validity to the CASPA concerns, and a review of DOSH's variance

procedures was accomplished as well as training of staff for process improvement. OSHA concurred with the state's findings and closed the CASPA in FY 2011.

CASPA W-363 was about a complainant who was unsatisfied with the determination of a discrimination complaint that was closed out by DOSH. This complaint was found to be invalid in that the complainant had not exhausted the administrative appeal rights.

CASPA W-364 was about a complainant who alleged the state did not act on a safety and health complaint in 2009. This complaint was determined to be invalid and closed in that the complainant could not provide any proof that his safety and health complaint was ever filed with DOSH. It was recommended that the complainant file a new safety and health complaint with the state.

CASPA W-365 alleged he was misled by DOSH in that DOSH suggested he withdraw his discrimination complaint and file in another forum. This CASPA was investigated by OSHA and no recommendations were warranted. OSHA provided two suggestions to the state; the first suggestion was regarding informational language in DOSH's withdrawal letter and a second suggestion was regarding case file documentation. This CASPA was closed in early FY 2012.

CASPA W-366, filed at the beginning of FY 2012, alleges several items of a significant and sensitive nature within the internal organization of DOSH. The complaint alleges that DOSH compliance officers are required to conduct a quota of 10-12 inspections monthly without regard to the complexity or quality of the inspection, which has resulted in low quality inspections with few violations in relation to the high number of inspections conducted. The state has cooperated fully in all aspects of this investigation by OSHA. This CASPA continues to be under investigation with the results expected in summer 2012.

H. Voluntary Compliance Program

DOSH maintains a Voluntary Protection Program that is consistent with federal OSHA's policies in the corresponding VPP Manual. At the end of FY 2011, there were 31 VPP sites in DOSH jurisdiction. In response to three OSHA policy memorandums on further improvements to the VPP program dated August 3, 2011, November 9, 2009, and June 29, 2011, DOSH has updated their VPP Manual to be consistent with the federal requirements. This includes providing on-site assistance to VPP employers when a Star participant's TCIR and/or DART rates exceed the required level, evaluation of safety and health incentive programs of VPP applicants and participants, and ensuring that all issues requiring correction will have completion dates that do not exceed 90 days.

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

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

The state of Washington covers both public and private sector for on-site consultation through their grant under the 23(g) funding program.

OSHA, in conjunction with its stakeholders, developed a set of mandated activity measures or standards of acceptable performance for consultation programs. Quarterly data relating to each of those standards are reported in the Mandated Activities Report for Consultation (MARC). The MARC and supplemental monitoring data are typically used to assess states' performance.

According to MARC data for public and private sector, DOSH conducted a total of 2,289 consultation visits in FY 2011, which was slightly below DOSH's goal of 2,300 visits. Based on this information, DOSH essentially met their goal of 2,300 consultation visits in FY 2011. See table below.

The following table represents consultation activities within the public and private sector based on OSHA's IMIS MARC reports for the period:

	Initial at Small Businesses	Follow-Up Visits	Training Visits	Total Consultations
Public	132	7	0*	139
Private	2079	71	0*	2150
Total	2211	78	0*	2289

*Note number of training visits in appendix G for public sector is 21 and private sector is 136.

In FY 2011, 90% (1,870 of 2,079) of Washington's private sector initial consultation visits occurred at high-hazard establishments (Private MARC 1). This is equivalent to the MARC reference standard of 90%. During the same period, 76% (101 of 132) of DOSH's public sector initial consultation visits occurred at high-hazard establishments (Public MARC 1). All of Washington's initial consultation visits were to smaller businesses which OSHA defines as having 250 or fewer employees.

For the same period, 98.3% (5,411 or 5,503) of the serious hazards identified by consultants in the private sector and 96% (192 of 199) in the public sector were verified as corrected in a timely manner (Private/Public MARC 4A). For the purposes of this measure, verification is considered timely when it occurs within 14 days or fewer from the latest correction due date for each visit. The MARC reference standard is 100%. DOSH's FY 2011 annual performance plan goal was 95% or better, so this performance exceeded the state's performance plan goal. One employer was referred to enforcement for failing to verify hazard abatement.

An audit of the consultation program was conducted by OSHA in FY 2011. Recommendations and conclusions were provided at the end of the audit which included the following:

- DOSH develop and implement an internal audit program to evaluate the effectiveness and efficiency of the consultation program.
- Collect and review OSHA 300 Injury and Illness Logs during a consultation visit with employers. These documents should be included in the case file.
- Ensure industrial hygienists are encouraged to conduct sampling during consultation visits.

DOSH responded to these recommendations with a plan of action for correction of these items that was acceptable to OSHA. There are no current open findings regarding the audit of this program.

A comprehensive audit of DOSH's consultation program was also conducted in FY 2009. At that time seven recommendations were proposed that included:

- Assure OSHA 300 logs are included in the case file if available; if not available include maintaining the logs as a finding in the hazard report.
- Assure that all case files have a completed Form 33 or equivalent and rationale for the score awarded is evident.
- Turn cases over to enforcement in which the employer fails to report abatement of hazards.
- Be more accurate when recording the number of employees interviewed on the Form 30.
- Be more critical when reviewing abatement language provided by the employer to assure the hazards were abated adequately.
- Require consultants to use recognized practices to determine employee exposure to air contaminants and noise before making statements or recommendations about employee exposure.
- Review industrial hygiene requirements with the industrial hygienists to assure proper techniques are used and facts documented.

Washington responded within 30 days to these recommendations with adequate plans to correct them.

Overall, Washington has been improving and developing their consultation program over the last year. The current audit showed improvement in the reduction of five findings from FY 2009 to FY 2011.

J. Program Administration

The state of Washington continues to maintain a well-developed training program that is as effective as federal OSHA. Both compliance and consultation staffs are given training opportunities to increase their knowledge and keep them current in standards and guidelines. DOSH dedicates resources to training both new employees and experienced staff members. The

state program maintains an excellent relationship with the OSHA Training Institute (OTI), sharing ideas and training materials. OTI is often asked by the state program to present one or two training courses in Washington every fiscal year. In addition, DOSH always participates in course offerings from OSHA national alliances, often asking for the presentation of two sessions because the demand is so great. DOSH management has shown a strong support for ongoing training of their professional staff.

Since DOSH's training program is internal and the state continues to prioritize training, travel and budget haven't negatively impacted it. DOSH's safety and health training center in Olympia, Washington, is used for various on-site training sessions, including some initial training for new compliance officers. Online training and webinars are used to provide supplemental low-cost training to compliance officers. In addition, due to the nature of DOSH's formal training program for new CSHOs, which includes on-the-job training and self-instruction, a large part of required training is accomplished without expending excessive funds. All new safety and health staff continue to receive the required training as specified in the state's training directive.

At the end of the year, on-board staffing was at 90% of the authorized enforcement positions and at 98% of consultation positions. The details are as follows:

- Authorized safety compliance program positions are above the prescribed enforcement staffing benchmark. Washington's safety enforcement benchmark is 55 with 77 positions authorized and 69 of those filled.
- For health enforcement, the benchmark is 74 with 36 authorized and 33 filled.
- The state's 23(g) consultation program has 44 consultant positions (27 safety and 17 health). As of September 30, 2011, 43 consultant positions were filled (27 safety and 16 health).

DOSH uses an information management system, called WIN, to enter their enforcement, consultation and other programmatic data. This system is different from the IMIS system currently used by federal OSHA. The state's data is fed to the OSHA IMIS database, enabling both OSHA and the state to run reports for purposes of determining the state's effectiveness and performance with respect to their mandated activities and annual goals. These reports are utilized and discussed during quarterly monitoring meetings with state representatives.

DOSH operates its own laboratory for analyzing industrial hygiene samples. The laboratory is accredited by the American Industrial Hygiene Association and is a participant in the Bulk Asbestos Proficiency Analytical Testing (BAPAT) Program. The laboratory was rated as proficient for all contaminant categories of the BAPAT program and passed all fields of testing for Rounds 183 through 185 covering the past year. In PAT Round 187, the state failed one field test, but is currently rated as proficient. The state has also been rated proficient for the BAPAT program as they have passed two of the three previous rounds of the program (Rounds A84-310,

A85-410, and A86-111). However, in BAPAT Round A88-311, the state failed Rounds A86-111 and A88-31 for bulk asbestos and then later passed Round A89-411, which resumed their proficient status. Washington will be monitored for further performance due to having a failure in the current or previous round of testing.

The state has established an internal evaluation program in FY 2011 called the DOSH Internal Audit (DIA) program. The DIA's primary purpose will be to evaluate DOSH activities and determine if existing policies and procedures are effective, appropriate, and consistent throughout the various programs within DOSH. The program has created draft policies and procedures which, in effect, will adopt the International Standards for the Professional Practice of Internal Auditing and Code of Ethics. The program is currently conducting a trial audit to test these policies and procedures with program finalization and full implementation by mid-FY 2012. During FY 2012, OSHA will be looking at this audit program and reporting on their progress in the FY 2012 FAME report.

V. Assessment of State Progress in Achieving Annual Performance Goals

In fiscal year 2011, DOSH revised and implemented a new updated five-year strategic plan which included short- and long-range objectives aimed at improving safety and health for Washington workers. DOSH's five-year strategic plan covers the period of FY 2011 through FY 2015. Each year DOSH develops annual performance plans which support the achievement of its strategic goals, and submits the plans to OSHA for review and approval. DOSH developed and submitted its FY 2011 annual performance plan in support of its strategic plan as part of its application for federal funds.

The following is OSHA's assessment of DOSH's performance against its FY 2011 annual goals, and the state's progress in achieving the three broad goals in its 2011-2015 Strategic Plan. Washington's more detailed report on its accomplishments with respect to its 2011 Annual Performance Plan goals is attached as Appendix F, the State OSHA Annual Report (SOAR).

Strategic Plan Related Goals

Strategic Goal 1 - Identify and act on the highest safety risks.

Annual Strategic Plan Related Goals A-1 and A-2 – Evaluate and revise the current criteria for establishment inspection-targeting lists by January 1, 2011. Begin implementation of the new targeting protocol by January 1, 2011.

***Five-Year Performance Goal* – During 2011-2015, each year increase the percentage of programmed inspections where serious violations are found.**

Result – Inspection scheduling criteria have been evaluated and revised. New scheduling list protocols were put into place October 1, 2010, three months prior to anticipated implementation date.

OSHA Assessment – This goal was met.

Annual Strategic Plan Related Goal A-3 - Begin to generate periodic hazard surveillance reports and use them for inspection, consultation and outreach assignments by December 31, 2010.

***Five-Year Performance Goal* – Implement a hazard surveillance system that uses DOSH inspection data from WIN to identify non-traditional industry sectors or occupations where DOSH has found unexpected significant hazards.**

Result – The first planned inspection list, as a result of the hazardous surveillance analysis, will be generated soon. The working group has completed their basic analysis and is scheduled to

present findings to management of which industry will be targeted in the second quarter of FY 2012.

OSHA Assessment – This goal was essentially met.

Strategic Goal 2 - Prevent and reduce work injuries, illness and disability.

Annual Strategic Plan Related Goal A-4 – Establish models of comprehensive service delivery, identify their objectives, and determine what will be needed to evaluate their effectiveness in impacting claims experience.

Five-Year Performance Goal – Provide more fully integrated risk management and safety and health consultation services to employers.

Result – DOSH has established models of comprehensive service delivery for consultation and risk management in each region. Model objectives have been identified, and evaluation of model effectiveness is being conducted by documenting changes in claims rates and costs in participating workplaces to non-participating workplaces. DOSH is on track to evaluate results in June 2012.

OSHA Assessment – This goal was met.

Annual Strategic Plan Related Goal A-5 – Identify what is needed to add capacity to the WIN system to capture when languages other than English are needed during an inspection or consultation.

Five-Year Performance Goal – Focus on “at-risk” populations and get to more places where vulnerable workers experience higher risk by 2015.

Result – A system solution has been approved by the DOSH management team and will be placed into production by the end of March 2012.

OSHA Assessment – This goal was met.

Strategic Goal 3 - Increase effective safety communications to the public.

Annual Strategic Plan Related Goal A-6 – Develop and implement processes and procedures to ensure tracking of five-year performance goal to increase DOSH’s activities with community-based organizations that work with vulnerable population groups by 10%.

Five-Year Performance Goal – Increase DOSH’s activities with community-based organizations that work with vulnerable population groups by 10%.

Result – In FY 2011, 73 community-based outreach activities were conducted. The 2010 baseline is 63 outreach activities.

OSHA Assessment – This goal was exceeded.

Additional Direct Service Goals

Annual Direct Service Goal B-1 – Reduce deaths from work-related injuries in support of the 2015 goal of no more than 2.0 deaths per 100,000 full-time workers.

Result – Preliminary data indicates reduced workplace fatalities as compared to the previous year.

OSHA Assessment – This goal was met.

Direct Service Goal B-2 – Reduce workplace injuries and illnesses by at least 10% as measured by the average time loss claims rate for employers with DOSH enforcement or consultation visits.

Result – The results of a ten-year study, conducted by the state’s Safety and Health Assessment Research and Prevention program (SHARP), provide strong evidence that DOSH enforcement and consultation activity is followed by a decrease in compensable claims rates. Enforcement inspections at fixed-site businesses were followed by a 4.3% greater decline in compensable claims rates than at non-visited businesses. Among non-fixed-site businesses, such as construction, there was a 3.1% greater decline in compensable claims rates than at non-visited businesses. This data for this study was from 1999 to 2008. **However, it must be noted that the current BLS/CFO11 data is not mature enough for reporting, and the data release dates are significantly delayed.**

OSHA Assessment – This goal cannot be fully evaluated at this time.

Annual Direct Service Goal B-3 – Conduct at least 2,300 on-site consultations.

Result – The OSHA MARC reports data and DOSH’s internal database differ with respect to the number of on-site consultations conducted in the period. OSHA reports that 2,289 on-site consultations were conducted, which is slightly below the goal of 2,300. DOSH was affected by employee turnover and budget issues in FY 2011.

OSHA Assessment – OSHA considers this goal essentially met.

Annual Direct Service Goal B-4 – Conduct at least 7,000 compliance inspections.

Result – DOSH conducted 5,402 compliance inspections in FY 2011.

OSHA Assessment – This goal was not met. OSHA believes this was due in large part to a significant amount of staff turnover during the same period. DOSH provided supporting data and information during quarterly meeting discussions, and by mutual agreement, the goal was not adjusted during the performance year. OSHA will be monitoring the state’s progress to re-staff safety and health compliance officers while aiming to achieve their goals over the next fiscal year. DOSH has adjusted the goal for FY 2012, taking into consideration the lasting impacts of staff turnover.

The following recommendation was made previously in the mandated activities section of the report under Section IV-4:

Recommendation 11-3: Ensure appropriate goals are set based on realistic expectations in consideration of current resources, abilities and training status of compliance staff, and properly allocated in order to achieve goals.

Annual Direct Service Goal B-5 – Ensure that at least 95% of the time, consultants verify the correction of serious hazards within 14 days of the abatement date.

Result – DOSH consultants verified the correction of serious hazards within 14 days of the abatement data 98.3% of the time (5,416 of 5,508 hazards).

OSHA Assessment – This goal was met.

Annual Direct Service Goal B-6 – Ensure that at least 95% of the time, inspectors verify the correction of serious violations within 14 days of the abatement date.

Result – DOSH inspectors verified the correction of serious violations within 14 days of the abatement data 96% of the time (2671 of 2781 hazards).

OSHA Assessment – This goal was met.

Annual Direct Service Goal B-7 – Maintain hygiene lapse time at or below the current national average of 61.8 calendar days (for citations with violations, from opening conference to issuance date).

Result – Hygiene lapse time for FY 2011 was 56.6 days.

OSHA Assessment – This goal was met.

Annual Direct Service Goal B-7 – Maintain safety lapse time at or below the current national average of 47.3 calendar days (for citations with violations, from opening conference to issuance date).

Result – Safety lapse time for FY 2011 was 38.2 days.

OSHA Assessment – This goal was met.

Additional Operational Goals

Annual Operational Goal C-1 – Ensure that only work-related fatality and catastrophe investigations are counted as fatality and catastrophes in OSHA and DOSH systems.

Result – DOSH has put into place administrative controls to ensure accurate information is electronically entered into IMIS. Due to the need to remain flexible to accommodate OSHA's conversion to the new OSHA Information System (OIS), DOSH cannot fully implement these changes until that update is complete. DOSH is periodically monitoring the data to ensure accuracy.

OSHA Assessment – This goal was essentially met.

Annual Operational Goal C-2 – Develop and begin implementation of measurement tool for targeting protocol effectiveness.

Result – System modifications have been implemented to conduct monthly monitoring of protocol effectiveness. The baseline percent of inspections where serious hazards are found has been established for future measurement comparison.

OSHA Assessment – This goal was met.

Annual Operational Goal C-3 – Develop and implement processes and procedures for WIN management reports.

Result – WIN management reports have been deployed and are being used regularly by managers and supervisors.

OSHA Assessment – This goal was met.

Annual Operational Goal C-4 – Clarify policies on what documents must be included with inspection case files, and improve case file documentation of decisions related to case file disposition.

Result – Inspection case file documentation policy was published in the July 2011 Compliance Manual update.

OSHA Assessment – This goal was met.

APPENDIX A
FY 2011 Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 10 Rec #
11-1	Phone/fax complaints are not consistently initiated within five working days. The average time was 8.65 days, a slight increase from 8.54 days in FY 2010.	Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual.	10-1
11-2	Where a referral inspection case file was identified as “other,” the source of the referral was not documented in 17 of the 43 case files reviewed (40%).	Ensure adequate information is provided in referral case files to document the origination and determination that a referral exists.	
11-3	DOSH did not meet its inspection goals. DOSH conducted 5,402 inspections during FY 2011, which was 1,598 or 23% short of its inspection goal of 7,000. The state’s ability to meet its goal was negatively affected by employee turnover and budget issues.	Ensure appropriate inspection goals are set based on realistic expectations, taking into consideration resources, and the training status of compliance staff.	

APPENDIX B

Status of State Actions in Response to FY 2010 FAME

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-1	The state responded to a total of 273 complaints, 237 with on-site inspections and 36 by the phone/fax procedure. The average time to respond with an on-site inspection in FY 2010 was 8.5 days, which is an improvement over last year's average of 8.9 days and within the state's requirement of 15 days. The average time for initiating phone/fax complaints was 7.72 days which is an increase over last year's average of 4.0 days and is 2.72 days over the state's requirement of five working days.	Ensure that phone/fax complaints are initiated within five working days as required in the DOSH Compliance Manual.	DOSH has added this goal to its new performance plan submitted with our FY 2012 grant application. We will review any phone/fax cases that exceed five working days for initial contact with the employer to see whether the reason and circumstances are documented in the case file as required by policy. If a justifiable reason is not documented, we will follow up with the responsible manager and supervisor and report results of any outliers at our quarterly DOSH-OSHA meetings along with any denial of entry or imminent danger outliers.	Phone/fax complaints initiated within five working days	Ongoing monitoring in FY 2012 (10/1/11 to 9/30/12)
10 -2	Two settlement agreements contained language about making "disparaging remarks," but neither specified that workplace safety and health issues were exempt. When DOSH signs and approves settlement agreements forbidding employees from making "disparaging remarks," which is subjective in nature, open to interpretation, and can be used to intimidate an employee from raising workplace safety and health concerns. DOSH is not consistent with how it is entering "settled" and "settled other" cases into the IMIS program. Three cases were entered as "settled other" in the IMIS when the settlement agreements that were signed by DOSH. DOSH entered two cases in the IMIS as "settled," although the settlement	Ensure that settlement agreements are completed in accordance with current policy and accurately recorded in IMIS. The following are the issues to be addressed: a. The agreement must be approved and signed by a DOSH official who has authority to approve settlement agreements especially if the agreement has to be enforced by the state Attorney General's Office. b. The agreement should only refer to "damages" when DOSH has evidence that a	a. We agree and are following this practice. b. We will discontinue referring to general damages when developing and negotiating settlement agreements, and will ensure that the rationale and supporting documentation for the settlement amount is included in the case file. c. DOSH has not been given statutory authority to collect interest on back wages and we have been unable to find anything demonstrating that a requirement exists. If a case goes to litigation at the Superior Court level, the courts have the authority to order that interest would be paid. We will assess the issue of seeking	a, b, d, e. Have already been implemented. c. Will be assessed if any cases move to the Superior Court level. f. Investigators received training on settlements at Whistleblower Conference, September 2011. WISHA Discrimination Quarterly Training December 2011 will include an in-depth discussion of settlement policies, practices and requirements.	Completed.

	<p>agreements were not signed by DOSH. DOSH has established an impressive track record of settling complaints before making a determination about the merits of the complaints. DOSH has noted that settlements reached before a merit finding is a “make whole” settlement. However, these settlements are not “make whole” unless the agreements include reinstatement for the complainant (if the complainant was fired). Most likely, the majority of DOSH’s settlement agreements provide a “fair and equitable” remedy rather than a “make whole” remedy. This is an important distinction because the WISH Act requires reinstatement as a make whole remedy (also known as “all appropriate relief”). Therefore, if DOSH is informing the parties that they have obtained a “make whole remedy,” then the agreements should include reinstatement – if the complainant was fired.</p>	<p>complainant incurred damages such as compensatory, pain and suffering and/or punitive damages. The case files should clearly document these damages.</p> <p>c. Interest computed on back wages is required and should be referenced in the settlement agreement and the Final Investigative Report or Memo to File.</p> <p>d. A copy of the complainant’s pay stub should be included in the case file in order to justify settling a case for back wages.</p> <p>e. DOSH should seek legal guidance to see if the agency can enter into and approve a “severance” as part of its settlement agreements.</p> <p>f. DOSH should train its investigators and discrimination program staff on the technicalities of settling discrimination complaints.</p>	<p>interest on cases that move to Superior Court, especially if the back wage and relative interest amounts are substantial.</p> <p>d. We agree and have ensured that all staff are aware of this policy.</p> <p>e. DOSH had a single case where the term “severance” was inadvertently used, and as such, this was an anomaly. We will further advise staff not to use this term but instead to refer to back wages and/or front pay whenever calculating settlement amounts.</p>		
--	---	---	--	--	--

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-3	<p>In five of the [18] fatality cases, critical decisional information was not maintained in the case file. Although the case files were closed, documentation to explain why the files were closed without citations was not present. When brought to DOSH's attention, emails that were not copied to the case files were provided...[that] supported DOSH's case closure decisions. Two of these five case files did not have a narrative of the fatal event and the email information was the only explanation of what happened and why a citation was not issued. One case file stated that the employee died of a heart attack, but no supporting documentation, such as [a] death certificate or medical examiner's report, was included in the file to document the cause of death.</p>	<p>Develop a clear policy identifying what documents must be maintained with the case file. When discussions regarding the case file are held, key information should be reduced to a memorandum and maintained in the case file, especially if it involves decisions on the disposition of the case.</p>	<p>The DOSH Compliance Manual was updated to provide for this policy language, effective June 15, 2011. State Plan Change (SPC) 11-21 was also submitted June 15th.</p>	<p>Updated policy.</p>	<p>Completed.</p>
10-4	<p>The state rated probability lower than would be expected for a violation that resulted in a fatality. Of the 36 violations issued, the probability assigned to 25 of them was classified as either a 1 or 2, or as a low on the state's probability system. Further, eleven violations were classified as either 3 or 4, or as a medium... Finally, none of the case files reviewed had any citations that were classified with a probability of 5 or 6, or high. ..The data suggest that DOSH was reluctant to use the high probability classification when developing fatality-related violations and penalties.</p>	<p>Closely monitor the use of probability when calculating penalties for violations directly related to a fatality, and use higher values where appropriate.</p>	<p>We understand the importance of appropriately using the penalty calculations formula and guidance provided by applicable penalty policies. We will continue to evaluate and monitor our application of probability values when calculating penalties, especially in the development of fatality-related penalties. This will include using higher values when appropriate.</p>	<p>Continued monitoring through FY 2012.</p>	<p>Completed.</p>

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-6	The state did not collect injury and illness data in every case file reviewed where it was required. 12 employers from the study files were required to maintain logs [but none of their case files included] a copy of the injury and illness logs. Only one of the 12 case files showed that the employer's logs were checked.	Ensure that injury and illness logs are reviewed and copied for the case files on all inspections where logs are required. Document findings in the case file.	We have included injury and illness log review and collection on the case file documentation checklist. We have also taken steps to address this at recent Compliance Manager meetings and will monitor files for inclusion of injury and illness logs.	Create and use a file documentation checklist. Policy directive or manual change.	Completed.
10-7	The DOSH compliance manual...states "As appropriate, CSHOs must review injury and illness records to the extent necessary to determine compliance and identify trends." There is no mention of a requirement to obtain a copy of the injury and illness logs.	Revise the DOSH compliance manual to require that injury and illness logs be obtained from the employer where appropriate, and that a copy be maintained in the case file.	We agree. The DOSH Compliance Manual was updated to provide for this policy language, effective June 15, 2011. State Plan Change (SPC) 11-21 was also submitted June 15.	Policy directive or manual change.	Completed July 2011.
10-8	DOSH penalties were significantly lower than federal comparison penalties. DOSH penalties were significantly lower than federal comparison penalties.	Increase penalty amounts significantly in order to encourage voluntary compliance and to serve as a strong deterrent. Policy adjustments should be made to impose higher penalties for serious violations.	We cannot simply make policy adjustments; DOSH's penalty structure is written in rule and can only be changed by following the state's Administrative Procedures Act. We have taken note of OSHA's revised penalty policy and at the point where it would require corresponding state action, we would then initiate rulemaking. It should be noted that our average initial penalty for serious violations has increased during the current monitoring period (FY 2011). During the quarter ending June 30, 2011, the average initial penalty for serious violations was \$825. This is up significantly compared to previous years and is higher than the FY 2011 average to date. We believe that the increase can be attributed primarily to training we have conducted on existing policies covering the assessment of penalty factors including probability.	OSHA will refer this concern to the ALAE working group regarding guidance for penalty policy and any OSHA mandated policy changes.	Completed.

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-9	DOSH consultants did not always advise the employer on recordkeeping deficiencies nor capture the 300 logs for the visit file.	If a company is not keeping the 300 logs and is required to, an item should be included in the list of hazards for recordkeeping or training on recordkeeping noted in the case file. Copies of 300 logs should be collected from businesses and put into the case file for the previous three years.	We agree, and are updating the Consultation manual and anticipate finalizing and posting by September 30, 2011.	Submitted to Region X.	Completed.

APPENDIX C
Enforcement Comparison

	WA	State Plan Total	Federal OSHA
Total Inspections	5,402	52,056	36,109
Safety	4,203	40,681	29,671
% Safety	78%	78%	82%
Health	1,199	11,375	6,438
% Health	22%	22%	18%
Construction	1,667	20,674	20,111
% Construction	31%	40%	56%
Public Sector	234	7,682	N/A
% Public Sector	4%	15%	N/A
Programmed	3,247	29,985	20,908
% Programmed	60%	58%	58%
Complaint	185	8,876	7,523
% Complaint	3%	17%	21%
Accident	38	2,932	762
Insp w/ Viols Cited	3,547	31,181	25,796
% Insp w/ Viols Cited (NIC)	66%	60%	71%
% NIC w/ Serious Violations	50.8%	63.7%	85.9%
Total Violations	13,199	113,579	82,098
Serious	4,327	50,036	59,856
% Serious	33%	44%	73%
Willful	78	295	585
Repeat	346	2,014	3,061
Serious/Willful/Repeat	4,751	52,345	63,502
% S/W/R	36%	46%	77%
Failure to Abate	34	333	268
Other than Serious	8,414	60,896	18,326
% Other	64%	54%	22%
Avg # Violations/ Initial Inspection	3.5	3.4	2.9
Total Penalties	\$7,037,418	\$ 75,271,600	\$ 181,829,999
Avg Current Penalty / Serious Violation	\$ 739.20	\$ 963.40	\$ 2,132.60
% Penalty Reduced	54.9%	46.6%	43.6%
% Insp w/ Contested Viols	18.3%	14.8%	10.7%
Avg Case Hrs/Insp- Safety	13.7	17.1	19.8
Avg Case Hrs/Insp- Health	25	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	28.3	35.6	43.2
Lapse Days Insp to Citation Issued- Health	42.9	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	138	1,387	2,436

*Note: Federal OSHA does not include OIS data.
The total number of inspections for Federal OSHA is 40,684.*

APPENDIX D

FY 2011 State Activity Mandated Measures (SAMM) Report

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

NOV 09, 2011
 4.
 PAGE 1 OF 2
 5.
 6.
 7.
 8.
 9.
 10. RID: 1055300
 11. -----

12.
 13. MEASURE
 REFERENCE/STANDARD
 14. -----

From: 10/01/2010 CURRENT
 To: 09/30/2011 FY-TO-DATE

15.				
16.	1. Average number of days to initiate number for each State	1722	155	Negotiated fixed
17.	Complaint Inspections	8.65	9.68	
18.		199	16	
19.				
20.	2. Average number of days to initiate number for each State	336	39	Negotiated fixed
21.	Complaint Investigations	8.00	13.00	
22.		42	3	
23.				
24.	3. Percent of Complaints where	193	6	100%
25.	Complainants were notified on time	95.54	100.00	
26.		202	6	
27.				
28.	4. Percent of Complaints and Referrals	6	1	100%
29.	responded to within 1 day -ImmDanger	100.00	100.00	
30.		6	1	
31.				
32.	5. Number of Denials where entry not	3	0	0
33.	obtained			
34.				
35.				
36.	6. Percent of S/W/R Violations verified			
37.				
38.		2602	104	
39.	Private	96.19	96.30	100%
40.		2705	108	
41.				
42.		69	3	
43.	Public	90.79	100.00	100%
44.		76	3	
45.				
46.	7. Average number of calendar days from			
47.	Opening Conference to Citation Issue			
48.		110351	14555	2631708
49.	Safety	38.24	46.50	51.9
50.	National Data (1 year)			
51.		2885	313	50662
52.		50751	5370	767959
53.	Health	56.57	52.64	64.8
54.	National Data (1 year)			
		897	102	11844

*WA FY11

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

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

NOV 09, 2011

55. ADMINISTRATION

OCCUPATIONAL SAFETY AND HEALTH
PAGE 2 OF 2

STATE ACTIVITY MANDATED MEASURES (SAMMs)

56.

57.

58.

State: WASHINGTON

59.

60.

61. RID: 1055300

62. -----

63.

From: 10/01/2010

CURRENT

64. MEASURE

To: 09/30/2011

FY-TO-DATE

65. REFERENCE/STANDARD

66.	8. Percent of Programmed Inspections			
67.	with S/W/R Violations			
68.		1132	113	90405
69.	Safety	40.00	42.97	58.5
	National Data (3 years)			
70.		2830	263	154606
71.				
72.		175	18	10916
73.	Health	37.72	39.13	51.7
	National Data (3 years)			
74.		464	46	21098
75.				
76.	9. Average Violations per Inspection			
77.	with Violations			
78.		4921	657	419386
79.	S/W/R	1.29	1.58	2.1
	National Data (3 years)			
80.		3789	415	198933
81.				
82.		8429	903	236745
83.	Other	2.22	2.17	1.2
	National Data (3 years)			
84.		3789	415	198933
85.				
86.	10. Average Initial Penalty per Serious	3355992	579880	611105829
87.	Violation (Private Sector Only)	787.05	976.22	1679.6
	National Data (3 years)			
88.		4264	594	363838
89.				
90.	11. Percent of Total Inspections	234	17	740
91.	in Public Sector	4.33	3.37	3.6
	Data for this State (3 years)			
92.		5402	504	20277
93.				
94.	12. Average lapse time from receipt of	75742	2880	3533348
95.	Contest to first level decision	111.71	110.76	199.7
	National Data (3 years)			
96.		678	26	17693
97.				
98.	13. Percent of 11c Investigations	87	10	100%
99.	Completed within 90 days	98.86	100.00	
100.		88	10	
101.				
102.	14. Percent of 11c Complaints that are	37	7	1517
103.	Meritorious	42.05	70.00	23.0
	National Data (3 years)			
104.		88	10	6591
105.				
106.	15. Percent of Meritorious 11c	32	7	1327
107.	Complaints that are Settled	86.49	100.00	87.5
	National Data (3 years)			

108.
109.
110.
111.
112.

*WA FY11
REVISION

	37			7		1517

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND

APPENDIX E

State Information Report (SIR)

1111011
PAGE 1

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011
STATE = WASHINGTON

INTERIM STATE INDICATOR REPORT (SIR)

MONTHS-----	-----24 MONTHS-----		----- 3 MONTHS-----		----- 6 MONTHS-----		-----12
PERFORMANCE MEASURE			FED	STATE	FED	STATE	FED
STATE	FED	STATE					
 C. ENFORCEMENT (PRIVATE SECTOR)							
1. PROGRAMMED INSPECTIONS (%)							
2672	40070	6796	3694	630	8169	1281	18137
	A. SAFETY		61.3	64.2	61.4	65.2	62.5
66.8	63.7	70.2					
3999	62876	9687	6026	981	13312	1964	29042
	B. HEALTH		480	101	1020	230	2126
459	4357	928	39.7	36.3	36.4	39.3	34.6
40.0	34.7	38.4					
1147	12569	2419	1208	278	2806	585	6150
 2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)							
1972	32614	4998	3378	426	7266	883	14959
	A. SAFETY		73.7	68.9	72.4	65.5	70.1
65.1	69.1	67.6					
3028	47196	7395	4583	618	10036	1349	21330
	B. HEALTH		456	81	890	168	1723
370	3487	766	57.0	73.0	57.2	68.3	56.2
72.4	55.3	74.7					
511	6309	1025	800	111	1555	246	3068
 3. SERIOUS VIOLATIONS (%)							
2763	109064	6022	11703	684	23768	1281	48704
	A. SAFETY		79.6	33.1	77.4	31.6	76.7
32.5	78.4	31.6					
8490	139117	19067	14698	2069	30703	4057	63528

1363	21598	2740	2634	371	5290	706	10266
	B. HEALTH		66.6	37.1	64.7	34.6	64.4
32.5	66.7	33.5					
4188	32380	8185	3957	999	8180	2041	15930

4. ABATEMENT PERIOD FOR VIOLS

406	23693	931	2394	97	4978	170	10776
	A. SAFETY PERCENT >30 DAYS		16.6	13.0	16.8	12.0	17.9
13.2	17.9	13.9					
3070	132414	6719	14465	744	29573	1413	60243
			259	0	711	7	1451
110	3159	282					
	B. HEALTH PERCENT >60 DAYS		6.5	.0	8.6	.9	9.4
7.3	10.0	9.3					
1514	31619	3046	4006	395	8234	772	15507

1111011

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011
STATE = WASHINGTON

INTERIM STATE INDICATOR REPORT (SIR)

MONTHS-----			-----24 MONTHS-----		----- 3 MONTHS-----		----- 6 MONTHS-----		-----12
PERFORMANCE MEASURE					FED	STATE	FED	STATE	FED
STATE	FED	STATE							
C. ENFORCEMENT (PRIVATE SECTOR)									
5. AVERAGE PENALTY									
A. SAFETY									
23630	5086228	37380			505479	7020	1258835	14220	2803637
	OTHER-THAN-SERIOUS				1181.0	137.6	1195.5	135.4	1126.9
125.0	1055.2	128.0							
					428	51	1053	105	2488
189	4820	292							
B. HEALTH									
48050	1667151	54300			219203	4300	441915	8500	853346
	OTHER-THAN-SERIOUS				1184.9	165.4	1077.8	160.4	980.9
462.0	958.7	387.9							
					185	26	410	53	870
104	1739	140							
6. INSPECTIONS PER 100 HOURS									
4526	73070	10606			6874	1082	15417	2208	33850
	A. SAFETY				6.0	13.0	5.6	7.3	5.5
6.3	5.4	6.4							
					1138	83	2730	302	6145
723	13476	1662							
					1458	296	3330	648	7311
1276	14958	2673			2.4	7.2	2.2	4.0	2.2
	B. HEALTH								
3.4	2.0	3.3			615	41	1501	161	3390
372	7404	810							
					1270	0	3026	0	6577
0	12352	0			5.6	.0	6.6	.0	7.0
	7. VIOLATIONS VACATED %								
.0	6.2	.0			22608	2552	46128	5084	93448
10372	200310	22404							
					737	0	1997	0	4456
0	9147	0			3.3	.0	4.3	.0	4.8
	8. VIOLATIONS RECLASSIFIED %								
.0	4.6	.0			22608	2552	46128	5084	93448
10372	200310	22404							

1860763	134938244	3449115	19478404	360365	40012395	746235	77322520
9. PENALTY RETENTION %			61.0	100.0	61.6	100.0	62.8
99.9	62.8	100.9					
1861773	214845679	3419480	31918969	360405	65001782	746575	123124542

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011
STATE = WASHINGTON

INTERIM STATE INDICATOR REPORT

MONTHS-----			----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12	
PERFORMANCE MEASURE			PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	
PUBLIC	PRIVATE	PUBLIC						
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
109	6796	213	630	24	1281	58		2672
	A. SAFETY		64.2	50.0	65.2	56.9		66.8
58.9	70.2	57.6	981	48	1964	102		3999
185	9687	370						
			101	2	230	2		459
3	928	11	36.3	22.2	39.3	9.5		40.0
	B. HEALTH		278	9	585	21		1147
6.5	38.4	9.3						
46	2419	118						
2. SERIOUS VIOLATIONS (%)								
			684	39	1281	64		2763
108	6022	191	33.1	52.7	31.6	45.4		32.5
	A. SAFETY		2069	74	4057	141		8490
41.5	31.6	42.1						
260	19067	454	371	5	706	63		1363
			37.1	22.7	34.6	58.9		32.5
103	2740	195	999	22	2041	107		4188
	B. HEALTH							
57.9	33.5	53.7						
178	8185	363						

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011
STATE = WASHINGTON

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

MONTHS-----			----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12
PERFORMANCE MEASURE			FED	STATE	FED	STATE	FED
STATE	FED	STATE					
E. REVIEW PROCEDURES							
398	4270	850	579	57	1131	170	2220
1. VIOLATIONS VACATED %			22.8	8.2	23.4	10.7	23.5
11.1	23.0	12.3					
3580	18586	6911	2542	694	4834	1587	9442
81	2360	150	328	12	620	39	1259
2. VIOLATIONS RECLASSIFIED %			12.9	1.7	12.8	2.5	13.3
2.3	12.7	2.2					
3580	18586	6911	2542	694	4834	1587	9442
1425951	28079915	2442555	3616720	256588	9500018	614479	16062961
3. PENALTY RETENTION %			56.1	72.2	62.4	70.4	62.3
66.6	60.6	65.8					
2139745	46371522	3709742	6443756	355462	15212620	872412	25766759

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

APPENDIX G
FY 2011 23(g) Consultation Data

	WA Public Sector	Total State Plan Public Sector	WA Private Sector
Requests	177	1,328	2,375
<i>Safety</i>	105	576	1,786
<i>Health</i>	72	560	589
<i>Both</i>	-	192	-
Backlog	16	123	66
<i>Safety</i>	7	51	25
<i>Health</i>	9	58	41
<i>Both</i>	-	14	-
Visits	155	1,632	2,189
<i>Initial</i>	127	1,336	2,053
<i>Training and Assistance</i>	21	175	136
<i>Follow-up</i>	7	121	-
<i>Percent of Program Assistance</i>	28%	67%	27%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%	100%
Employees Trained	569	5,030	965
<i>Initial</i>	94	2,144	453
<i>Training and Assistance</i>	475	2,886	512
Hazards	485	6,063	9,689
<i>Imminent Danger</i>	-	3	6
<i>Serious</i>	230	4,804	5,618
<i>Other than Serious</i>	240	1,171	3,821
<i>Regulatory</i>	15	85	244
<i>Referrals to Enforcement</i>	-	6	-
Workers Removed from Risk	13,419	171,075	210,929
<i>Imminent Danger</i>	-	55	138
<i>Serious</i>	6,812	136,884	119,917
<i>Other than Serious</i>	6,110	26,046	85,642
<i>Regulatory</i>	497	8,090	5,232

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011.

APPENDIX H

Special Study on Use of Phone/Fax for Referral Inspections

A four-phase special study of the Washington State Division of Occupational Safety and Health (DOSH) was initiated. The study focused on the state's handling of non-formal complaints as referral inspections to determine if they were being evaluated for processing under the phone and fax procedures contained in the DOSH Compliance Manual. OSHA focused its review on referral inspections which resulted in no violations to see if they could have been more appropriately addressed through the phone and fax process. The special study consisted of a data review, manager interviews, and a review of referrals for the period April 1, 2010, through March 31, 2011. OSHA reviewed 526 referral inspections which were conducted, but resulted in no violations. In addition, an onsite review of 43 of 46 investigations conducted under the phone and fax policy were evaluated for all pertinent case file documentation. In addition, the special study focused on the following areas:

- 1. Did the referral allege a serious hazard(s).*
- 2. Was the referral evaluated for processing as a phone and fax complaint.*
- 3. Was the referral item adequately addressed in the case file.*

Summary of Findings:

The state effectively screens referrals for alleged serious hazards to determine if they qualify for investigation under the DOSH phone and fax policy. DOSH's definition of a referral allows the supervisor greater flexibility in determining when an inspection can be initiated as opposed to the federal complaint process. This allows the state to enter more workplaces and to evaluate not only the referral item, but also the employer's entire safety and health program.⁴ The state has the compliance officer staff to respond timely to referrals.

Relevant Policies and Directives:

- State Policy and Procedure Manual CSP-01-00-022.*
- FY 2010 State Plan Evaluation Reports Follow-up to the FY 2009 Enhanced FAME Reports memo dated December 10, 2010.*
- OSHA Field Operations Manual: CPL-02-00-150.*
- WISHA Compliance Manual dated June 15, 2011.*
- OSHA Instruction STP 2.22.*

⁴ The state of Washington has a requirement that all employers with greater than 10 employees develop and implement an Accident Prevention Program.

BACKGROUND

Study Purpose:

The study was initiated after an analysis of the State Activity Mandated Measures (SAMM) showed the state conducted 46 phone/fax investigations of non-formal complaints for the study period. In contrast, during the same period, the state responded to 1,657 referrals with inspections. Of these 1,657 inspections, 526 were in-compliance inspections resulting in a 31.7 percent in-compliance rate. These inspections impacted the overall in-compliance rate by 7.7 percent for the total inspections the state conducted during the study period.

Terminology:

The state's definition of a complaint is virtually identical to that within the federal formal complaint process. However, because the State does not have a non-formal complaint process, all non-qualifying complaints are treated as referrals. This results in DOSH inspections of referrals that OSHA would normally process as a phone or fax complaint.

"Information received about an alleged workplace safety or health hazard that does not qualify as a complaint will be handled and processed as a referral. This includes any alleged violation that is not submitted in writing and signed by an individual listed in Section A.1.c.⁵, who is entitled to file a complaint..."⁶

For the purpose of this report, the term "referral" will be defined by the state's definition and will be synonymous with the federal non-formal complaint.

Description/Method:

The special study consisted of a four-phase evaluation of Washington State plan's use of their phone and fax program.

The first phase was a review of quarterly SAMM report data for the study period to determine the number of referrals. The data in the SAMM reports showed the state conducted 46 investigations using phone and fax procedures. For the purpose of the study, each of the phone and fax investigations was evaluated, and all of the 43 closed case files were selected for on-site review.

The second phase was a review of Integrated Management Information System (IMIS) data to determine the number of inspections initiated from referrals during the study period and to identify case files for the study. The source used to identify these case files was the Occupational Safety and Health Intranet webpage IMIS database. The

⁵ This refers to individuals who have standing under the WISH Act and are eligible to file a formal complaint.

⁶ DOSH Compliance Manual – Dated 06-15-11, Chapter 2, paragraph A.2

database was queried using the following input: *Inspection Within Specified SIC. The search criteria was SIC-blank, NAICS-All Industry Groups, Sort-date, Limits-2500, State-Washington, OSHA Office-All OSHA Offices, Insp Dates-run for each quarter for the period of the study, 04/01/10 to 03/31/2011, Emphasis-Blank, Optional Info-All Opt Info, Other Options-All Owner, State, Any Scope, Safety/Health-Safety/Health, FedAgn Code-Blank, CSHO ID-Blank, Show Viol-checked, Beryllium SIC's only-Unchecked.*

The initial IMIS search identified 7,193 inspections. This data was transferred to an Excel spreadsheet, sorted and refined to eliminate cases coded as no inspection, resulting in 6,786 files.

The data was further refined to identify cases coded as referrals, resulting in 1,657 inspections. Because the focus of the study was to evaluate the state's screening process for phone and fax investigations, it was determined to limit the selection of case files to referral inspections that were in-compliance. This narrowed the study population to 526 inspections. For the purpose of the study, 84 case files were randomly selected from this population to provide a statistically-significantly sample size in accordance with Appendix K, OSHA Instruction STP 2.22, Chapter 4, dated March 3, 1994.

The third phase of the study consisted of on-site case file reviews. Of the 84 inspection case files identified during phase two of the study, two were still open and not available for review. Further, some of the case files reviewed did have violations, but they were not excluded as they could be evaluated under the terms of the study. These two conditions arose because of the delay in data transfer from IMIS to the webpage database from which the study data was drawn. During the phone and fax case file review, 43 of the 46 identified were reviewed; three were still open and not available for inclusion in the study.

During the fourth phase of the study, OSHA interviewed managers to determine their knowledge of the phone and fax policy and to determine when and how the policy was implemented.

CASE FILE REVIEW FINDINGS AND RECOMMENDATIONS

General Case File Review:

The overall quality of the case file documentation was appropriate and addressed the alleged hazard(s) in the referral. The documentation clearly communicated on-site conditions and the reason why citations were or were not issued. The case file review also noted there was no documentation in the case file to show if a referral had been evaluated for handling as a phone and fax complaint. Further, the team identified that state CSHOs are obtaining OSHA 300 logs when appropriate. In some instances the OSHA 300 logs were not input into the WIN system, but not enough to identify a systemic problem.

1. Did the referral allege a serious hazard?

The case file reviews found that a serious hazard was alleged in 95 percent of referrals resulting in inspections. Three of the referrals that did not allege a serious hazard did allege a standard violation or potential chemical exposures to employees. With one exception, the state effectively screened referrals for on-site inspection activity.

Recommendation: None.

2. Was the referral evaluated for processing as a phone and fax complaint?

The case file review revealed that there was no documentation contained within the files to ascertain if they were evaluated for processing under the phone and fax procedures. However, during the interview of compliance managers, it was revealed that they regularly screen referrals to determine if they could be handled under the phone and fax policy. The consensus among the compliance managers interviewed was that if a referral alleged a serious hazard, an inspection would be initiated. Additionally, they stated resources exist to initiate an inspection, which provides DOSH the opportunity to evaluate an employer's safety and health program. The DOSH Compliance Manual dictates three specific instances where the referral must be considered for processing under the phone and fax policy:

- *Environmental Tobacco Smoke (ETS).*
- *Indoor Air Quality (IAQ).*
- *Work-Related Musculoskeletal Disorders (WMSDs) or Ergonomic Hazards.*

Since DOSH treats these three items as industrial hygiene issues, it was noted that industrial hygiene supervisors utilize the phone and fax procedure more than safety supervisors. The evaluation of the referrals handled as phone and fax complaints revealed that half of these fell into one of these three categories, 1 ETS, 15 IAQ, and 7 WMSD. The rest alleged various hazards that either no longer existed or were too vague to initiate an inspection. Finally, documentation in 29 of the phone and fax case files showed a CSHO had evaluated the complaint. The rest of the files did not contain documentation indicating whether they had or had not been evaluated, but since a phone and fax complaint was initiated it can be assumed that they were.

The case file reviews identified a Best Practice that the state uses to receive referrals. The state's local emphasis program (LEP) for Hospitalization provides for a direct pathway of communication between employer and DOSH for notification when an employee is hospitalized as a result of an apparent workplace or industrial hazard injury. This program allows the state to target employers where a serious hazard may exist and to respond with an immediate inspection.

Recommendation: None.

3. Was the referral item adequately addressed in the case file?

In all the case files reviewed, there was adequate documentation to determine that the referral item was evaluated and the reason why or why not a citation was issued. The case file review team did note that when the referral source was marked as “other” in 17 cases, there was no further explanation of who had made the referral. The referral form has a space to annotate this information, but it was not being utilized.

CASE FILE REVIEW CONCLUSION

The Washington State Division of Occupational Safety and Health is effectively screening referrals to determine if they should be handled under their phone and fax complaint policy. Further, the state’s broad definition of what constitutes a referral and who may make a referral allows the state great flexibility in responding to alleged serious hazards and allows them to expand inspection activity to sites that may not be on a targeting program. The state has implemented an effective program to receive notifications from employers when an employee is admitted to a hospital as a result of a work-related accident.

The recommendation below is made based on the findings of the study and is included in the body of the FAME report under Section IV-1.

Recommendation 11-2: Ensure adequate information is provided in referral case files to document the origination and determination that a referral exists.