

**FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME)
Report**

Iowa



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Appendix A – New and Continued Findings and Recommendations

Appendix B – Observations Subject to Continued Monitoring

Appendix C – Status of FY 2011 Findings and Recommendations

Appendix D – FY 2012 State Activity Mandated Measures (SAMM) Report

Appendix E – FY 2012 State OSHA Annual report (SOAR) – Available Separately

I. Executive Summary

This Abridged Federal Annual Monitoring Evaluation (FAME) assesses Iowa OSHA's performance during Federal Fiscal Year (FY 2012) and progress in completing recommendations that were developed as a result of the FY 2011 FAME Report and Corrective Action Plan (CAP).

A. State Plan Summary

The State of Iowa operates a program in accordance with Section 18(e) of the *Occupational Safety and Health Act of 1970*. The Iowa Occupational Safety and Health Administration (Iowa OSHA) is an essential member of the Region VII team. Iowa OSHA is in the Iowa Workforce Development, Labor Services Division administered by the Commissioner of Labor. The Iowa OSHA Administrator also serves as the Deputy Commissioner of Labor. Iowa OSHA's total allocated funding for the FY 2012 23(g) program was \$4,630,450 which included \$2,066,500 (Federal) and \$2,563,950 (Iowa). They are benchmarked for 16 Safety Compliance Officers and 13 Health Compliance Officers with a total of 42 full time staff. Two compliance officers transferred in FY 2012, and sequestration may result in the loss of more staff. Three Public Service Executives (PSE-2) manage the compliance officers and another PSE-2 Manager serves as the Consultation and Education Project Manager.

Iowa OSHA's enforcement program functions very similar to Federal OSHA. Iowa OSHA adopts most Federal OSHA instructions as promulgated. They conduct inspections, including programmed National and Local Emphasis Programs in the same manner as Federal OSHA. However, like most states, Iowa OSHA did not adopt the enhanced penalty structure. Iowa OSHA Consultation and Education conducts public 23(g) and private 21(d) consultation activities in addition to providing training and education services. The consultation and cooperative programs highlight and support the enforcement effort to reduce the high severity and high frequency hazards. Iowa OSHA also maintains an active Voluntary Protection Program.

B. FY 2011 FAME Report Status of Corrective Actions and Program Improvement

Fatal incidents continued to decline in Iowa. There were sixteen Iowa OSHA fatality investigations in FY 2012 and one catastrophe investigation. This was a reduction of 36% from FY 2011 and a 6.2% reduction from FY 2010. A total of eleven findings and recommendations were issued to Iowa OSHA in the FY 2011 FAME Report. Three of the previous recommendations involved various aspects of the Safety and Health Program. Two of those recommendations were verified as completed.

Eight of the findings and recommendations concerned the operation of the Iowa OSHA Whistleblower Protection Program (WPP). The program is directly supervised by the Iowa OSHA Administrator. It went through a major change in FY 2011 with the retirement of the previous Investigator and the hiring of a new Investigator. As expected, this resulted in a delay and backlog of WPP investigation cases. Consequently, due to the short period between the issuance of the FY 2012 Corrective Action Plan, the end of the fiscal year, and the continued attempt by the Iowa OSHA WPP to catch up with the case load, an onsite

review was not conducted. In addition, the State Activity Mandated Measures for the WPP (SAMM 11-13) showed definite improvement. All of the recommendations will be verified during the FY 2013 evaluation. However, one new finding is issued regarding the low percentage of 11(c) Complaints that are deemed Meritorious, with a recommendation to pursue early resolution of those complaints.

II. Major New Issues

Iowa OSHA's Labor Commissioner and Deputy Labor Commissioner/IOSH Administrator expressed grave concern about the uncertain impact of sequestration on the program. There were no Iowa State legislative issues that negatively impacted the program. The program avoided the major budget cuts and staff furloughs such as occurred in FY 2011. However, budget concerns remain salient to Iowa OSHA's program when attempting to increase program quality and efficiency while dealing with a strained budget and potential budget reduction.

Iowa OSHA strongly relies on the Federal OSHA funding share for the state program and budgets. Budget projections have become an increasingly difficult challenge for Iowa OSHA over the past several years due to Federal Continuing Resolutions, uncertainty of State and Federal Budget cuts, and the date difference between Federal and State Fiscal Years.

III. State Progress in Addressing FY 2011 FAME Report Recommendations

The following information describes Iowa OSHA's progress in addressing the Recommendations contained in the FY 2011 FAME Report.

Finding #11-1: 43.5% of the formal complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff. 35.7% of the inspection case files that did not contain a response letter were in-compliance and citations were not issued.

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

Status: Completed. Iowa OSHA conducted 156 inspections generated from formal employee complaints. Three random sample sets from the Integrated Management Information System (IMIS) data of those inspections were generated over three different monitoring periods. The records were queried to determine if all of the selected complaint records contained a date in the "H Letter" column. This column indicated the date that a response letter was sent to the complainant. The three sets showed an improvement over the FY 2011 FAME period. 15.6% of the letters were not sent when a citation was issued during

early FY 2012. This was reduced to 5.6% during the two month period following the issuance of the FY 2011 FAME in August of 2012.

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

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

Status: Awaiting Verification. Supervisors, inspectors and administrative staff were instructed to follow FOM Chapter 5, Section X. The state reports that a Phone/Activity Log is now used as a case file diary. This finding will be verified in FY 2013.

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

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

Status: Completed. Finding #11-3 was corrected during the course of the FY 2011 FAME. While the evaluation was ongoing, the Iowa OSHA Consultation and Education Project Manager consolidated all VPP case files into a centralized filing system area.

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

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

Status: Awaiting Verification. The state reports the investigation evidence is now tested and weighed. In addition, SAMM #13-15 improved during the year.

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

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

Status: Awaiting Verification. The state reports the work refusal elements are evaluated. In addition, SAMM #13-15 improved during the year.

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

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

Status: Awaiting Verification. The state reports the content of settlement agreements is analyzed. In addition, SAMM #13-15 improved during the year.

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

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

Status: Awaiting Verification. The state reports the analysis of the respondent's defense is conducted in accordance with the Iowa 11c Investigator's Manual (Section 5-2). In addition, SAMM #13-15 improved during the year.

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

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

Status: Awaiting Verification. The state reports the closing letters provide the parties with factual findings. In addition, SAMM #13-15 improved during the year.

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

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

Status: Awaiting Verification. The state reports the IMIS codes are being used properly. In addition, SAMM #13-15 improved during the year.

Finding #11-10: 100% of 11(c) investigations were not completed within the 90 day goal. Iowa OSHA did not meet the Reference/Standard of 100% with only 26% of the 11(c) investigations completed within 90 days. This was down from 53% in FY09. There were forty-two 11(c) complaints docketed for investigation in FY11 compared to nineteen in FY 2009. REPEAT Finding - This is #09-2 in the FY 2009 Audit.

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

Status: Closed. The improvement of SAMM #13 was a step forward in the Iowa OSHA Whistleblower Protection Program.

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

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

Status: Open. Internal Staff Training was provided by Region VII WPP personnel to Iowa OSHA including Management, Consultants, 11(c), Wage, Child Labor, and the Phone and Fax Duty Officer in the summer of 2011. However, the Attorney assigned to WPP activities was enrolled in the OTI #1420 Basic Whistleblower Investigations Course in FY 2013, but was unable to attend. The attorney and/or manager will be enrolled in FY 2014.

IV. Assessment of FY 2012 State Enforcement Measures

A. Enforcement

1. Complaints

SAMM #1 - During FY 2012, Iowa OSHA averaged 3.76 days to initiate a complaint inspection which is an increase from the 3.39 days in FY 2011. The 3.76 is still well within the negotiated benchmark of five days. During FY 2012, 163 complaint inspections were initiated.

SAMM #2 - During FY 2012, Iowa OSHA initiated 100.0% of the 360 non-formal complaint investigations within one day. Per the FY 2011 EFAME, complainants were contacted by phone to inform them of the results of the phone and fax complaint investigation. The complainants were offered the opportunity to receive a response in writing. Non-Formal complaints were handled exclusively by the permanently assigned duty officer.

SAMM #3 – During FY 2012, Iowa OSHA notified complainants within the required time frame 96.9% of the time. While the standard is 100.0% of the time, the activity measurement equates to one hundred and fifty-eight (158) complainants out of one hundred sixty-three (163) that were notified by Iowa OSHA.

Finding #11-1: 43.5% of the formal complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff. 35.7% of the inspection case files that did not contain a response letter were in-compliance and citations were not issued.

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

Status: Completed. Iowa OSHA conducted 156 inspections generated from formal employee complaints. Three random sample sets from the Integrated Management Information System (IMIS) data of those inspections were generated over three different monitoring periods. The records were queried to determine if all of the selected complaint records contained a date in the “H Letter” column. This column indicated the date that a response letter was sent to the complainant.

Reviews of 32 randomly sampled complaints representing 20% of the 158 inspections were conducted using IMIS data. In the timeframe from beginning of the FY 2012 to mid-year 2012, the data showed an average of 84.3% (27 of 32) responses (H Letter) to the complainant. In the 2 month time period following the Federal OSHA final FY2011 EFAME report in August of 2012, there was an increase to 95.2% (20 of 21) based on the sampling reviews.

The reviews indicated that Iowa OSHA made a concerted effort to send a response letter to Complainants. The three sets showed an improvement over the FY 2011 FAME period.

SAMM #4 - During FY 2012, Iowa OSHA had no responses to complaints, or referrals whereby the employee was exposed to potential imminent danger hazards.

SAMM #5 - During FY 2012, Iowa OSHA did not have any denial of entries where entry was not obtained.

2. Fatalities

There were sixteen Iowa OSHA fatality investigations in FY 2012 and one catastrophe investigation. This was a reduction of 36% from FY 2011 and a 6.2% reduction from FY 2010. Iowa OSHA filed OSHA-36 fatality notification report in 100.0% of the cases, and

both the Des Moines Area Office and Kansas City Regional Office received copies. This supported the OSHA fatality notification process at the agency level. At the completion of the investigation, the OSHA-170 fatality report was completed in 100% of the cases

3. Targeting and Programmed Inspections

Iowa OSHA conducted 1,040 enforcement inspections during FY 2012, resulting in 2,248 violations and 2.1 violations per inspection. 829 of the 1,040 inspections were programmed inspections. 575 of the inspections were construction and 465 general industry inspections with 941 and 1,307 violations respectively.

Iowa OSHA used inspection targeting programs such as the Site-Specific Targeting (SST) Inspection Program, and the University of Tennessee Construction Research Analysts reports. Iowa OSHA also used its Construction by Zip Codes, Hexavalent Chromium, Amputations, Asbestos in Construction, Falls in Construction, and Grain Handling programs. National emphasis programs (NEPs) for Combustible Dust and Silica were also used. Iowa OSHA also implemented an NEP for Primary Metals.

SAMM #8 – The percent of programmed safety inspections with serious, willful, or repeat (S/W/R) violations was 58.1%. The percent of programmed health inspections with S/W/R violations was 55.66%. The percent of programmed inspections that resulted in S/W/R violations nearly mirrors the national averages of 58.5% (S) and 53.0% (H).

Compared to FY 2011, there was a 2.9% reduction in safety programmed inspections with S/W/R violations, and a 1.7% reduction in health programmed inspections with S/W/R violations. In FY 2012, Iowa OSHA conducted approximately 40 additional safety inspections and 10 additional health inspections.

4. Citations and Penalties

Iowa OSHA Safety Compliance Officers and Health Compliance Officers conducted their inspections in a manner that resulted in spending less time per inspection than the national averages while exceeding the number of violations per inspection.

SAMM #7 - Iowa OSHA took an average 34.7 calendar days from opening conference to citation issuance for safety inspections, and an average of 40.4 days from opening conference to citations issuance for health inspections

SAMM #9 - The average number of violations per inspection with S/W/R violations was 2.36. This value exceeded the three year national average of 2.1 violations by 12%.

SAMM #10 - The average initial penalty per serious violation was \$1330.04 for FY 2012 which was 6.6% less than FY 2011 of \$1423.80 and 19% less than FY 2010 of \$1642.21.

5. Abatement

SAMM #6 - Abatement was verified in 99.9% of the 1,333 S/W/R violations that were issued by Iowa OSHA to private employers. 100.0% of the 16 violations that occurred at the employers of public employees were also verified. Additionally, Iowa OSHA had 37 case files with abatement greater than 60 days.

6. Employee and Union Involvement

An IMIS scan report showed that 18% of the inspections were union and that 82% of them were nonunion. Additionally, the report showed that employee interviews were coded to have occurred in 98.8% of the inspections.

B. Review Procedures

1. Informal Conferences

Iowa OSHA settled 521 inspections through Informal Conferences. This equates to about 50% of the case files.

2. Formal Review of Citations

Iowa OSHA had 36 case files that were processed for formal review. The Contest rate was 4.3 for FY 2012.

C. Standards and Federal Program Changes Adoption

1. Standards Adoption

During FY 2012 Iowa OSHA responded to 3 Standard Adoptions and 7 Federal Program Changes. Standard adoptions were responded to as follows:

- a. Standards Improvement Project, Phase III - Parts 1910,1926,and1928 were adopted identically.
- b. Revising Standards Referenced in the Acetylene Standard - Adopted in full on July 18, 2012.
- c. Hazard Communication - Globally Harmonized System of Classification - Adopted on July 18, 2012.

2. Federal Program/State Initiated Changes

Federal Program Changes were responded to as follows:

- a. CPL-02-01-052, Enforcement Procedures for Incidents of Workplace Violence was adopted on November 1, 2011.
- b. CPL-01-11-03, Site Specific Targeting 2011 (SST-11) was adopted on December 1, 2011.

- c. CPL-02-03-003, Whistleblower Investigations Manual was adopted on January 1, 2012.
- d. CPL-02-01-053, Compliance Policy for Manufacture, Storage, Sale, Handling, Use and Display of Pyrotechnics was adopted on December 31, 2011.
- e. CPL-03-00-016, Nursing Home NEP was adopted on June 22, 2012.
- f. CPL-02-00-153, Communicating OSHA Fatality Inspection Procedures to a Victim's Family was adopted on October 1, 2012.

D. Variances

Iowa OSHA did not grant any permanent or temporary variances during FY 2012.

E. Public Employee Program

1. Public Sector Inspections

Iowa OSHA conducted 26 public sector inspections with 36 violations accounting for 2.5% of the total inspections. These inspections were one accident investigation, nineteen complaints, three referrals, two programmed, and one unprogrammed related inspections.

2. Public Sector On-site Consultation Program

Iowa Public Sector visits for FY 2012 totaled 10 visits where 20 serious hazards were identified.

F. Whistleblower Protection Program

SAMM #13 - Iowa OSHA resolved 42 Whistleblower Protection Program (WPP) investigation cases during FY 2012. Of those cases, 52% were completed within the statutory 90 day completion period.

SAMM #14 - Iowa OSHA resolved 42 WPP investigation cases during FY 2012. Of those investigations, 6 of 42 cases were deemed Meritorious.

Finding #12-1: 6 of 42 11(c) Complaints, or 14.3% were deemed Meritorious. The 14.3 % meritorious rate was 61.1% of the 3 year national average rate of 23.4%. The standard is plus, or minus 20% of the 3 year national average.

Recommendation: Attempt voluntary, early resolution of each 11(c) complaint in a process that is conducted in a neutral, collaborative manner with both complainant and respondent.

SAMM #15 - Iowa OSHA resolved 42 WPP investigation cases during FY 2012. Of the 6 cases that were deemed meritorious, 83.3% or 5 cases were settled.

The Whistleblower Protection Program (WPP) was the subject of a Special Study conducted by Region VII during the FY 2011 FAME onsite activity. The special study resulted in the bulk of the Findings and Recommendations for the report, and the subsequent Corrective Action Plan (CAP) items. Most of the Findings and Recommendations are carried over to the FY 2012 FAME in the status of Verification Required. One Open Finding and Recommendation item was the lack of training for management and support personnel. The new investigator attended the two-week OTI 1420 Whistleblower course. The attorney who was newly assigned to handle the Whistleblower cases was not enrolled in the OSHA Training Institute Course #1420 in FY 2013 as expected, and this will need to be accomplished for the program to be completely successful. A comprehensive evaluation, including case file reviews, will be conducted during the FY 2013 FAME onsite activity.

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

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

Status: Awaiting Verification. The state reports the investigation evidence is now tested and weighed. In addition, SAMM #13-15 improved during the year.

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

Status: Closed. The improvement of SAMM #13 was a step forward in the Iowa OSHA Whistleblower Protection Program.

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

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

Status: Open. Internal Staff Training was provided by Region VII WPP personnel to Iowa OSHA including Management, Consultants, 11(c), Wage, Child Labor, and the Phone and Fax Duty Officer in the summer of 2011. However, the Attorney assigned to WPP activities was enrolled in the OTI #1420 Basic Whistleblower Investigations Course in FY 2013, but was unable to attend. The attorney and/or manager will be enrolled in FY 2014.

G. Voluntary Compliance Program

1. Voluntary Protection Program

Iowa currently has 41 active VPP Participants. In FY 2012, Iowa OSHA added one new VPP company and removed four participants.

2. Partnerships

Iowa's partnerships remained constant throughout the fiscal year with eight active partnerships per quarter. The Compliance Assistant was onsite at each partnership jobsite at least once a month. There were no serious injuries or fatalities that occurred on partnership sites and the jobsite TRC/DART rates were below the state and national average for general contractors. The construction partnerships covered approximately 2,135 employees. These provide Iowa OSHA with the opportunity to provide assistance to smaller subcontractors who may not be reached through the enforcement inspections.

In FY 2012, 11 new partnerships were signed. Two of these partnerships involve construction on large hospitals. Iowa had twelve partnerships that were closed out during FY 2012 due to completion.

3. Alliances

Iowa maintained three active alliances during FY 2012. The 2011 Alliance with the City of Cedar Rapids continued regarding 2010 Flood recovery projects. The Renewable Fuels Association Alliance was renewed in August of 2012. The Worksafe Alliance with the Master Builders of Iowa was signed in August of 2012, and was formed to promote,

train and recognize best safety practices on construction sites and facilities in the state of Iowa.

4. Iowa Consultation Program

Iowa conducted outreach activities that totaled 14,004 participants. Iowa also conducted 395 private sector consultative visits identifying 2471 hazards that were corrected.

H. Program Administration

Budget challenges, departures by compliance personnel, and the resurrection of the Whistleblower Protection Program created the greatest challenges to the Iowa OSHA program. However, WPP data reflects improvement and the program data will be comprehensively verified during the FY 2013 evaluation. Inspection based mandated measures did not reveal any major problems despite the loss of personnel.

The Labor Commissioner and Deputy Commissioner of Labor / Iowa OSHA Administrator remained strong proponents for parity regarding the 50/50 funded programs. They strongly advocated on behalf of Iowa OSHA in communications with Iowa's Governor, Senators and Representatives and their staffs to obtain actual funding at the 50% level. In addition, their advocacy included over-match amounts required to ensure continuance of essential functions when unexpected activities negatively impacted the already strained, fixed budget.

As indicated by its FY 2012 23(g) and 21(d) Program accomplishments, Iowa OSHA made judicious and prudent use of both its Federal and State fiscal granted resources. However, budget issues remain hallmark to the Iowa OSHA program and its ability to weather future cuts. Iowa OSHA management continued to communicate that the agency needs and appreciates the necessary Federal funding for its' programs.

V. State Progress in Achieving Annual Performance Goals

Iowa OSHA completed the fourth year of its five year strategic plan cycle that began in Federal Fiscal Year FY 2009. Iowa OSHA made sufficient progress toward achieving its annual performance goal and is on track to accomplish its five-year strategic goals. FY 2012 efforts primarily focused on incident rate reduction through occupational hazard exposure reduction. To accomplish the reduction three goals were set:

- (1) Promoting safety and health culture through cooperative programs and direct intervention.
- (2) Maximizing effectiveness and efficiency by strengthened capabilities and infrastructure.
- (3) Reducing hazards, hazard exposure, injuries, illnesses and fatalities.

In accordance with its FY 2012 Cooperative Activities Measure goal to promote safety and health culture, Iowa OSHA showed progress in its two major measures: Voluntary Protection Programs (VPP) and Partnership Programs. It achieved 100% of its partnership increase goal and 33% of its VPP goal. Measured against its FY 2007 Cooperative Activities Measure

baseline, Iowa OSHA had a 720% increase in its VPP participants and a 167% increase in its partnerships.

In accordance with its FY 2012 Hazard Reduction, Hazard Exposure, Injuries, Illnesses, and Fatalities Reduction Performance Measure goals, Iowa OSHA showed significant progress by exceeding its targeted number of inspections and hazards abated by 29.3% and 45.95% respectively. Measured against its FY 2007 total fatalities baseline, Iowa OSHA had a 31.8% decrease in fatalities and a 27.8% decrease in the total recordable case rate for Iowa. Measured against its FY 2007 direct safety intervention and health intervention outcome baselines, it achieved a 190.3% and a 94.6% outcome increase, respectively. Iowa OSHA employed a combination of seven national and local emphasis programs for targeting to affect the safety and health intervention goals.

VI. Other Areas of Note

There was one Complaint About State Program Administration (CASPA) during Fiscal Year 2012. CASPA 2012-19 alleged that Iowa OSHA misplaced the original copy of an FY-2010 fatality investigation case file. In addition, it alleged the manners in which the case file was subsequently reconstituted, and a copy of the reconstituted case file was delivered to the complainant were not appropriate.

The complaint alleged items of miscommunication which included inadequate communications with the next of kin (NOK) throughout the process; revealing the name of the CASPA complainant to the deceased victim's employer; keeping the accident employer's employees informed of the ongoing investigation status; and not informing the NOK of petitions to modify abatement (PMA) granted to the accident employer. CASPA 2012-19 further alleged insufficiency of the reconstituted copy; lack of investigation of the ongoing practice that led to the fatality incident and other violations when informed; and information received from the reconstituted case file that did not pertain to the circumstances surrounding the accident.

Of the eleven (11) allegations summarized above, the Regional Office determined that improvement could be made in three (3) of the areas and made recommendations to the State as follows:

- (1) Iowa OSHA expands its written instruction to include the filing of open inspection case files, along with training of its pertinent personnel on its expanded instruction.
- (2) Iowa OSHA expands its instruction to specifically include PMA as an authorization to conduct monitoring inspections.
- (3) Iowa OSHA implements a policy to ensure more timely delivery of investigation status information to the NOK during future inspections.

In accordance with the Regional Office's recommendations, Iowa OSHA amended its written instruction to include the filing of open inspection case files, along with training of its pertinent personnel on its expanded instruction. Iowa OSHA also expanded its instruction to specifically include PMA as an authorization to conduct monitoring inspections, as well as performed a follow up inspection # 316877414 to physically verify abatement of the hazards identified during the investigation at the accident employer's location at which the fatality occurred. The

inspection revealed that the hazards were abated and that unsafe practices related to the fatality were not ongoing. Additionally, Iowa OSHA implemented policy to ensure more timely delivery of investigation status information to the NOK during future inspections.

Appendix A – New and Continued Findings and Recommendations
FY 2012 Iowa State Plan Abridged FAME Report

Rec #	Findings	Recommendations	FY 11
12-1	6 of 42 11(c) Complaints, or 14.3% were deemed Meritorious. The 14.3 % meritorious rate was 61.1% of the 3 year national average rate of 23.4%. The standard is plus, or minus 20% of the 3 year national average. (SAMM 14)	Attempt voluntary, early resolution of each 11(c) complaint in a process that is conducted in a neutral, collaborative manner with both complainant and respondent.	
12-2 Formerly 11-2	Inspection case files did not routinely utilize a case file diary.	Recommend all case files utilize a case file diary in accordance with the Field Operations Manual, Chapter 5, Section X. Ensure the diary is utilized by supervisors, compliance officers, and administrative personnel to note the inspection activities during and after the inspection. <i>Corrective Action Complete – Awaiting Verification</i>	11-2
12-3 Formerly 11-4	Adequate investigation of a whistleblower complaint was not conducted in that both the complainant’s allegation(s) and the respondent’s proffered non-retaliatory reason(s) for the alleged adverse action were not fully tested before reaching a determination in the case. This deficiency was noted in one of the thirty investigations reviewed.	The investigator must ensure that every effort is made to test and weigh all of the evidence before reaching a determination and avoid shutting down an investigation before sufficient documentation has been collected and all relevant witnesses have been interviewed. (Manual, Section 3-1) <i>Corrective Action Complete – Awaiting Verification</i>	11-4
12-4 Formerly 11-5	Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint. This deficiency was noted in both of the work refusals reviewed. REPEAT Finding - This is Finding #09-9 in the FY 2009 Audit.	The investigator must conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed. (Manual, Sections 3-5 to 3-12 & 7-4) <i>Corrective Action Complete – Awaiting Verification</i>	11-5
12-5 Formerly 11-6	Documentation of the investigator’s assessment of the settlement agreement and the withdrawal request were not present in the case file. This deficiency was noted in all four of the settled cases and two of the withdrawal cases reviewed.	The investigator must document in the ROI his analysis of the content of the settlement agreement to describe the relief obtained and the withdrawal request to ensure the withdrawal was submitted voluntarily. (Manual, Section 4-2, 5-6 & Chapter 6) <i>Corrective Action Complete – Awaiting Verification</i>	11-6
12-6 Formerly 11-7	Documentation of the testing of the respondent’s defense to determine if it is believable or a pretext was not present in the case file. This deficiency was noted in all of the thirty cases reviewed.	The investigator must add a Respondent Defense discussion to his analysis section of the ROI. (Manual, Section 5-13) <i>Corrective Action Complete – Awaiting Verification</i>	11-7
12-7 Formerly 11-8	Closing letters to Complainants did not utilize OSHA’s Secretary’s Findings template and did not fully explain the reason for the dismissal. This deficiency was noted in twenty-one of the twenty-	Draft closing letters to Complainants utilizing OSHA’s Secretary’s Findings template in order to adequately inform the parties of the outcome of the investigation by succinctly documenting the factual	11-8

Appendix A – New and Continued Findings and Recommendations
 FY 2012 Iowa State Plan Abridged FAME Report
 (Continued)

Rec #	Findings	Recommendations	FY 11
	two dismissal cases reviewed.	findings as well as Iowa OSHA’s analysis of the elements of a violation. (Manual, Section 5-6 to 5-11) <i>Corrective Action Complete – Awaiting Verification</i>	
12-8 Formerly 11-9	Appropriate entry of administratively closed 11(c) complaints in IMIS was not accomplished. This deficiency was noted in one of the four screened out cases reviewed.	Select the proper reason for closure when entering codes for administratively-closed complaints in IMIS. (Manual, Section 2-3) <i>Corrective Action Complete – Awaiting Verification</i>	11-9
12-9 Formerly 11-11	Although the investigator attended the two-week OTI 1420 whistleblower course, adequate whistleblower training has not been provided to other IOSH staff members and stakeholders. REPEAT Finding – This is #09-12 in the FY 2009 Audit.	Provide internal whistleblower training to the new duty officer and other key stakeholders within the IOSH facility, such as front-line staff that are responsible for transferring incoming phone calls. Accomplish training for the IOSH Discrimination Program supervisor by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations – 11(c) in FY12 or FY13.	11-11

Appendix B – Observations Subject to Continued Monitoring
FY 2012 Iowa State Plan Abridged FAME Report

Iowa does not have any new or continued observations.

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Iowa State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-1	43.5% of the formal complaint inspection case files contained a complainant response letter. The complainant response letters were generated by supervisory and administrative staff. 35.7% of the inspection case files that did not contain a response letter were in-compliance and citations were not issued.	Recommend compliance officers draft the complainant response letter prior to submitting the case for review. This will ensure the response is applicable to the complaint items and will facilitate the letter being mailed once Iowa OSHA is notified that the employer received the citation, or the case is closed in the case of an in-compliance inspection.	The Iowa OSHA Administrator will ensure the supervisors have checked that each file has included the complainant response letter that will be completed by the Word Processors when they prepare the citations prior to submitting the file to the administrator to sign off on the citations.	The Iowa OSHA Administrator set policy for the Word Processors to complete the letters as part of the citation assembly and completion process and for supervisors to ensure that they have a complainant response letter to sign at the same time that the citations are signed. As a result, Iowa OSHA eliminated a systemic problem as indicated by reducing the high error percentages shown in the FY 2011 FAME to 5.6%.	Completed
11-2	Inspection case files did not routinely utilize a case file diary.	Recommend all case files utilize a case file diary in accordance with the Field Operations Manual, Chapter 5, Section X. Ensure the diary is utilized by supervisors, compliance officers, and administrative personnel to note the inspection activities during and after the inspection.	All 88 case files selected and the 75 case files reviewed did include a case file diary sheet. Supervisors, inspectors and administrative staff have been instructed to follow FOM Chapter 5, Section X in their use.	Supervisors, inspectors and administrative staff were instructed to follow FOM Chapter 5, Section X in their use. The state reports that a Phone / Activity Log is now used as a case file diary.	Awaiting Verification
11-3	Iowa OSHA Voluntary Protection Program case files were stored in multiple locations, including some separate parts of some files that were not stored as a complete case file	Recommend Iowa OSHA store Voluntary Protection Program case files in one location to ensure portions of the case files are not misplaced, become missing, or are lost.	The Iowa OSHA Consultation and Education Project Manager has consolidated all VPP case files into a centralized filing system area.	The Iowa OSHA Consultation and Education Project Manager consolidated all VPP case files into a centralized filing system area.	Completed

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Iowa State Plan Abridged FAME Report

(Continued)

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-4	Adequate investigation of a whistleblower complaint was not conducted in that both the complainant's allegation(s) and the respondent's proffered non-retaliatory reason(s) for the alleged adverse action were not fully tested before reaching a determination in the case. This deficiency was noted in one of the thirty investigations reviewed.	The investigator must ensure that every effort is made to test and weigh all of the evidence before reaching a determination and avoid shutting down an investigation before sufficient documentation has been collected and all relevant witnesses have been interviewed. (Manual, Section 3-1)	The complainant's allegation and the respondent's position statement will be fully tested in all cases before the case file is closed. Iowa OSHA will continue to ensure the documentation in discrimination case files is complete.	The state reports the investigation evidence is now tested and weighed. In addition, SAMM #13-15 improved during the year.	Awaiting Verification
11-5	Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint. This deficiency was noted in both of the work refusals reviewed. REPEAT Finding - This is Finding #09-9 in the FY 2009 Audit.	The investigator must conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed. (Manual, Sections 3-5 to 3-12 & 7-4)	Work refusal elements are thoroughly evaluated. These elements are not put into the ROI and are not required by the Iowa Whistleblower Investigators Manual. Iowa OSHA will include work refusal evaluations in future case files.	The state reports the work refusal elements are evaluated. In addition, SAMM #13-15 improved during the year.	Awaiting Verification
11-6	Documentation of the investigator's assessment of the settlement agreement and the withdrawal request were not present in the case file. This deficiency was noted in all four of the settled cases and two of the withdrawal cases reviewed.	The investigator must document in the ROI his analysis of the content of the settlement agreement to describe the relief obtained and the withdrawal request to ensure the withdrawal was submitted voluntarily. (Manual, Section 4-2, 5-6 & Chapter 6)	Iowa OSHA will include an evaluation in future case files that describes whether the settlement agreement is "make whole" or "fair and impartial" and an assessment of the withdrawal request.	The state reports the content of settlement agreements is analyzed. In addition, SAMM #13-15 improved during the year.	Awaiting Verification

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Iowa State Plan Abridged FAME Report

(Continued)

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-7	Documentation of the testing of the respondent's defense to determine if it is believable or a pretext was not present in the case file. This deficiency was noted in all of the thirty cases reviewed.	The investigator must add a Respondent Defense discussion to his analysis section of the ROI. (Manual, Section 5-13)	Iowa OSHA will include a Respondent Defense analysis in future cases.	The state reports the analysis of the respondent's defense is conducted in accordance with the Iowa 11c Investigator's Manual (Section 5-2). In addition, SAMM #13-15 improved during the year.	Awaiting Verification
11-8	Closing letters to Complainants did not utilize OSHA's Secretary's Findings template and did not fully explain the reason for the dismissal. This deficiency was noted in twenty-one of the twenty-two dismissal cases reviewed.	Draft closing letters to Complainants utilizing OSHA's Secretary's Findings template in order to adequately inform the parties of the outcome of the investigation by succinctly documenting the factual findings as well as Iowa OSHA's analysis of the elements of a violation. (Manual, Section 5-6 to 5-11)	The closing letters in future cases will add detail to fully explain the reason for the dismissal.	The state reports the closing letters provide the parties with factual findings. In addition, SAMM #13-15 improved during the year.	Awaiting Verification
11-9	Appropriate entry of administratively closed 11(c) complaints in IMIS was not accomplished. This deficiency was noted in one of the four screened out cases reviewed.	Select the proper reason for closure when entering codes for administratively-closed complaints in IMIS. (Manual, Section 2-3)	The investigator will use the proper IMIS reason code when cases are screened out.	The state reports the IMIS codes are being used properly. In addition, SAMM #13-15 improved during the year.	Awaiting Verification

Appendix C - Status of FY 2011 Findings and Recommendations

FY 2012 Iowa State Plan Abridged FAME Report

(Continued)

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-10	100% of 11(c) investigations were not completed within the 90 day goal. Iowa OSHA did not meet the Reference/Standard of 100% with only 26% of the 11(c) investigations completed within 90 days. This was down from 53% in FY09. There were forty-two 11(c) complaints docketed for investigation in FY11 compared to nineteen in FY09. REPEAT Finding - This is #09-2 in the FY 2009 Audit.	Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within 90 days. (SAMM 17)	The discrimination investigator had to complete 20 back log cases in addition to his new investigations. The investigator will attempt to complete his future investigations within the 90 day time limit and will provide an analysis for the cases that are not completed within 90 days.	The improvement of SAMM #13 was a step forward in the Iowa OSHA Whistleblower Protection Program.	Closed
11-11	Although the investigator attended the two-week OTI 1420 whistleblower course, adequate whistleblower training has not been provided to other IOSH staff members and stakeholders. REPEAT Finding – This is #09-12 in the FY 2009 Audit.	Provide internal whistleblower training to the new duty officer and other key stakeholders within the IOSH facility, such as front-line staff that are responsible for transferring incoming phone calls. Accomplish training for the IOSH Discrimination Program supervisor by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations – 11(c) in FY12 or FY13.	Internal staff training was provided by RVII WPP personnel to IOSH personnel including Management, Consultation, 11c Staff, Wage, Child Labor, and the Phone and Fax Duty Officer as well as the Area Office Staff in the summer of 2011. Legal staff assigned to the 11(c) program had duty responsibilities changed. The newly assigned attorney will be enrolled in the OTI Course #1420 Basic Whistleblower Investigations as soon as possible.	Internal Staff Training was provided by Region VII WPP personnel to Iowa OSHA including Management, Consultants, 11(c), Wage, Child Labor, and the Phone and Fax Duty Officer in the summer of 2011. However, the Attorney assigned to WPP activities was enrolled in the OTI #1420 Basic Whistleblower Investigations Course in FY 2013, but was unable to attend. The attorney and/or manager will be enrolled in FY 2014.	Open

Appendix D - FY 2012 State Activity Mandated Measures (SAMM) Report

FY 2012 Iowa State Plan Abridged FAME Report

NOV 09, 2012
RID: 0751900

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	614 3.76 163	11 2.20 5	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	27 .07 360	6 .15 39	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	158 96.93 163	4 100.00 4	100%
4. Percent of Complaints and Referrals responded to within 1 day - Imm Danger	0 0	0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	1332 99.92 1333	40 95.24 42	100%
Public	16 100.00 16	1 100.00 1	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	18994 34.78 546	1347 28.06 48	2032800 55.9 36336
Health	7107 40.38 176	747 41.50 18	647235 67.9 9527

Appendix D - FY 2012 State Activity Mandated Measures (SAMM) Report

FY 2012 Iowa State Plan Abridged FAME Report

NOV 09, 2012 RID: 0751900

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	337	34	76860
Safety	58.10	80.95	58.5
	580	42	131301
			National Data (3 years)
Health	59	4	9901
	55.66	33.33	53.0
	106	12	18679
			National Data (3 years)
9. Average Violations per Inspection with Violations			
S/W/R	1705	191	367338
	2.36	2.89	2.1
	722	66	175950
			National Data (3 years)
Other	533	26	216389
	.73	.39	1.2
	722	66	175950
			National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2113440	256500	624678547
	1330.04	1457.38	1990.5
	1589	176	313826
			National Data (3 years)
11. Percent of Total Inspections in Public Sector	25	0	64
	2.40	.00	2.1
	1040	86	2987
			Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	7809	0	3197720
	216.91	0	187.0
	36	0	17104
			National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	22	7	
	52.38	70.00	100%
	42	10	
14. Percent of 11c Complaints that are Meritorious	6	0	1619
	14.29	.00	23.4
	42	10	6921
			National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	5	0	1444
	83.33	0	89.2
	6	0	1619
			National Data (3 years)

Appendix E - State OSHA Annual Report (SOAR)
FY 2012 Iowa State Plan Abridged FAME Report

[Available Separately]