

**FY 2013 Comprehensive  
Federal Annual Monitoring and Evaluation (FAME) Report**

**State Plan of Washington  
Department of Labor and Industries  
Division of Occupational Safety and Health (DOSH)**

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## **I. Executive Summary**

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

The purpose of this report is to assess the performance of Washington's Division of Occupational Safety and Health (DOSH) during FY 2013 with regard to activities mandated by OSHA, and to gauge the State Plan's progress toward resolving recommendations from the FY 2012 FAME. As part of this comprehensive evaluation, OSHA conducted a review of a portion of DOSH's enforcement inspection files and whistleblower case files to verify corrective actions for the FY 2012 recommendations. In addition, OSHA conducted a special study on targeting of programmed inspections. This report also assesses the State Plan's achievement of its annual performance plan goals as well as its progress toward the goals in its five-year strategic plan.

Overall, DOSH's performance with respect to activities that are mandated by the Occupational Safety and Health Act and its implementing policies and regulations continues to be acceptable with exceptions as noted in this report below.

During this evaluation period, a review of the State Plan's Fall Protection Standard in Residential Construction was completed and serious concerns were identified. A letter was sent requesting that the State Plan provide information on the effectiveness of their standard; this issue is still under review.

The State Plan completed corrective actions for two recommendations which resulted from the FY 2012 FAME. Appendix C describes the status of each FY 2012 recommendation in detail.

The FY 2013 FAME report on DOSH includes one recommendation relating to the enforcement program. Additionally, two observations were identified during this period.

One issue noted during the evaluation was a fatality inspection that was improperly and prematurely closed because DOSH did not consider the fatality victim to be a worker of the corporation. Upon review of the case file, it was determined the victim was a statutory worker of the corporation. OSHA is recommending DOSH review and revise its Compliance Manual for clarity of this issue and ensure all enforcement staff receive training on worker classification related to corporations, sole proprietorships, and partnerships.

In FY 2012, OSHA made three recommendations for program improvement related to DOSH's discrimination program. The State Plan made satisfactory progress to complete corrective action to implement a process of supervisory review and acceptance of discrimination case files and settlement agreements. OSHA considers DOSH's actions adequate to resolve this issue. OSHA also recommended DOSH ensure consistency with Integrated Management Information System (IMIS) entry of filing and closing dates in

discrimination case files. Although DOSH addressed this item by implementation of a review policy for discrimination case files and has improved in this area, several inconsistencies were again found during the FY 2013 case file review. OSHA has determined the previous finding would be reclassified to an observation for this period. OSHA will continue to monitor this item and is confident DOSH will eliminate IMIS entry errors in the future. The third recommendation from FY 2012 was reviewed by OSHA and is considered complete.

## **B. State Plan Introduction**

The State Plan 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). The WISH Act (WISHA) was established in accordance with Section 18 of the *Occupational Safety and Health Act of 1970*. The State Plan'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 Plan 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 official 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 Joel Sacks; the assistant director is Anne Soiza.

DOSH establishes policy, provides technical guidance, writes standards, develops internal and external training, monitors and evaluates programs, conducts inspections, and provides consultation services. All on-site consultation (both public and private) is provided through 23(g) or 100% state funding.

DOSH exercises jurisdiction over state and local government workplaces and private sector employers not covered by OSHA. OSHA's inspection authority 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 from their federal counterparts. Examples include Washington's rules for 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, safety committees, and heat related illnesses (HRI).

During FY 2013, the State Plan was staffed with 375 positions, which included 115 compliance officers and 45 consultants. The program covers approximately 2.78 million workers employed in over 235,230 establishments statewide. Washington's federally-approved State Plan OSHA program was funded at about \$40.66 million, \$7 million of which were federal funds. There were 197 DOSH positions funded entirely by the State Plan.

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

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

- Analysis and monitoring by OSHA of the FY 2012 DOSH Corrective Action Plan which provides the State Plan's status and response to the FY 2012 FAME (Appendix C).
- Statistical reports comparing State Plan performance to federal performance.
- State Activity Mandated Measures (SAMM) report data (Appendix D).
- State Information Report (SIR) data.
- The FY 2013 State Plan OSHA Annual Report (SOAR) prepared by Washington, which contains details of the State Plan's achievements with respect to its annual goals.
- The FY13 Mandated Activities Report for Consultation (MARC).
- Grant Assurances.
- Quarterly monitoring meetings between OSHA and the State Plan.
- Case file reviews of inspection and discrimination case files.

In addition to reviewing the SAMM and DOSH's implementation of its Annual Performance Plan and five-year Strategic Plan, OSHA conducted two on-site reviews of the State Plan's enforcement and discrimination programs to assess the quality of documentation, violation classification, penalty calculations, abatement verification, settlements and other factors.

From September 11-12, 2013, two OSHA discrimination investigators conducted a discrimination case file review of 18 case files and ten screened complaints which were processed or completed during FY 2013. All cases reviewed were randomly selected from a list compiled from IMIS data of all DOSH closed cases between October 1, 2012, and July 2013. A comprehensive case file review of DOSH inspections was also conducted during a three-day period from January 21-23, 2014. The inspection case file review team consisted of the Bellevue Area Director, a Safety Specialist and an Industrial Hygienist. During the case file review process, interviews were conducted with DOSH senior compliance staff. Both case file reviews were conducted on-site at DOSH's Tumwater, Washington, headquarters. These assessments resulted in recommendations which are discussed in the body of this report.

### Methodology:

The inspection case file review covered three major categories: fatality inspections, complaint inspections and programmed inspections. The case files were selected based on the goal of reviewing 100 case files and distributed as follows: 12 fatality case files, 48 programmed inspection case files and 40 complaint inspection case files. The actual number of case files reviewed was 11 fatality inspections, 41 complaint inspections, and 42 programmed inspections for a total of 94 case files reviewed. One case file was reviewed that had been identified as a fatality but was determined during the review to be a hospitalization. Due to time constraints, six case files were not reviewed. The State Plan Monitoring Access Database for Case File Review was used for the evaluation of the case files.

The fatality case files were identified using the IMIS scan report for fatalities for the period of October 1, 2012, through September 30, 2013, which generated a list with 19 establishments. The list was further narrowed to include only closed cases with 12 case files identified. One additional case file included in this category reported as a fatality was closed because work relatedness could not be determined.

The OSHA Intranet IMIS page supplied the population for complaint and programmed inspection case files for review. Parameters used at the Establishment Search link were all establishments, all DOSH offices throughout Washington, and the inspection date period of October 1, 2012, through September 30, 2013. After transferring this data to an excel spreadsheet, it was further refined by selecting only complaint and programmed inspections, which resulted in two review population lists, one of 290 complaint inspections and one of 2,547 programmed inspections. To accomplish a random selection of case files, the population list total divided by the targeted number of inspections, 48 programmed and 40 complaint, resulted in a selection interval of every fifty-second case file for programmed files and every seventh case file for complaint inspections. A check of the IMIS database ensured each file selected for entry into the access database was of a closed file. If an inspection file was open, the next file on the list was selected for review.

Special Note: Where FY 2013 National Data is identified throughout this report, these figures only include State Plan averages over three years. Federal data was not able to be compiled in this period's national average due to the movement of all federal data from IMIS to a new information system, OIS. Thus, any comparison of Washington's data to "national average" data will compare the State Plan's results with all other State Plan data averaged over three years. It is not expected that the lack of federal data in these figures will skew or sway the data negatively from the data of the particular State Plan discussed in this report; the data should reflect more favorably when compared to all State Plans.

## **D. Findings and Recommendations**

This section summarizes OSHA's findings and recommendations for the evaluation period of FY 2013. Details are further discussed in the body of the report.

Overall, DOSH met the majority of its FY 2013 performance 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.

This FAME report contains one finding with the corresponding OSHA recommendation which relates to the enforcement program. This evaluation period also identified an item for further monitoring which resulted from a previous finding and was newly reclassified as an observation for this period. One observation relates to residential fall protection. OSHA does not consider observations to directly impact the overall effectiveness of the State Plan and are included for purposes of future State Plan monitoring. They are as follows:

### **Finding 13-1**

A fatality inspection, where one worker was fatally injured, and another worker was seriously injured, was improperly and prematurely closed where DOSH did not consider the fatality victim to be a worker of the corporation. Upon review of the case file, it was determined the victim was a statutory worker of the corporation.

**Recommendation 13-1:** Review and revise the DOSH Compliance Manual for clarity of the issue of worker classification and ensure all enforcement staff receives training on worker classification related to corporations, sole proprietorships, and partnerships.

**Observation FY13-OB1 (Reclassified Finding 12-3):** Case closure dates were not consistent and contradicted documentation in 11(c) discrimination case files. Several discrimination case files reviewed had complaint filing dates which were inconsistent with IMIS data. This occurred in 14 of 23 (61%) FY 2012 discrimination case files reviewed; and 5 of 18 (28%) FY 2013 discrimination case files reviewed.

**Observation FY13-OB-2:** DOSH's standards and enforcement program for fall protection in residential construction may not be at least as effective as OSHA's. OSHA and DOSH have been in dialogue about this issue and it is currently under review by OSHA.

Additional detail of the finding and recommendation is provided in Appendix A; observations found in FY 2013 are provided in Appendix B.

## **II. Major New Issues**

### Residential Fall Protection

OSHA issued STD 03.11.002 on December 16, 2010, which required the use of conventional fall protection in residential construction. The directive became effective on June 16, 2011, and advised State Plans that they must have a compliance directive on fall protection in residential construction that, in combination with applicable State Plan standards, results in an enforcement program that is at least as effective as OSHA's program.

Washington standards and enforcement policies on fall protection in residential construction raised concerns, and on June 12, 2013, a letter was sent to DOSH. On August 8, 2013, Washington responded that it believed DOSH's fall protection standard is just as effective as OSHA's standard. Washington did not adopt STD 03.11.002 because the State Plan had not adopted the OSHA directive allowing alternatives to the fall protection standards. In addition, the State Plan contends they do not need a compliance directive specific to residential construction because they do not have a standard specific to residential construction and treat residential fall hazards the same as any other construction activity fall hazard.

Washington's response continues to be under review by OSHA.

### Process Safety Management (PSM) Standards

Washington has encountered challenges in legal processes and has not been able to adequately defend DOSH's PSM standards, which are identical to OSHA standards. While DOSH agrees with and supports OSHA's intent behind PSM, recent litigation haws prohibited sustaining that intent.

### Logger Safety Initiative

Recognizing that workers in the manual logging industry have more frequent and severe injuries than other industries, and that logging companies face increased workers compensation premium rates as a result, the Logger Safety Initiative was passed by the Washington State Legislature in April 2013 and signed into law by Governor Jay Inslee.

The initiative focuses on ways to promote occupational safety, reduce the frequency and severity of workplace injuries and fatalities, increase proper reporting, and explore options for reducing workers compensation premium rates in an effort to create a culture of safety that is pervasive throughout the logging industry in Washington.

DOSH in partnership with the Washington Department of Labor and Industries' (L&I) Insurance Services Division, worked with industry representatives to organize a Logger

Safety Taskforce that was responsible for the development of the initiative and its ultimate success. The taskforce is comprised of private land owners, the Washington Contract Loggers Association, logging companies, the Washington Department of Natural Resources and L&I. Incentives include reduced workers compensation premiums, but there is no inspection exemption incentive in this program.

There are 269 businesses in Washington reporting hours under the risk classification 5001-*Logging Operations NOC* within the past year, 83 (about 30%) have signed up to participate in the Logger Safety Initiative (LSI). To be eligible for discounted rates, participating businesses must complete a three-part process including a DOSH consultation, a workers compensation audit, and a third party safety certification. Two businesses have already completed each of the three steps and 16 more are well on their way to having completed two of the three steps.

While initially the number/percentage of new LSI participants will be a good indicator of our efforts, this number will taper off over time as the program reaches a saturation point. Eventually the focus is anticipated to shift to tracking each business's progress through the three requisite steps and claims data will be reviewed to determine the success of the program's participants in reducing injuries.

### **III. Assessment of FY 2013 State Plan 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.

#### **1. ENFORCEMENT**

##### **a) Complaints**

The FY 2013 data showed that 6.1% of the State Plan's inspections were in response to complaints, with the relatively low rate attributable to how DOSH classified complaints and referrals during the period covered by this review.

The State Plan's definition of a complaint is virtually identical to that of OSHA's formal complaint. However, because DOSH does not have a non-formal complaint process, all non-qualifying complaints, per the State Plan's definition, are treated as referrals. This results in DOSH inspections of referrals that OSHA

would normally process as a phone and fax type complaint or a non-formal complaint.

During FY 2013, the State Plan responded to a total of 353 complaints; 286 were on-site inspections. The average time to respond with an on-site inspection during this period was 9.24 days, which is 5.76 days fewer than the negotiated goal of 15 days, and 2.26 days fewer than in FY 2012. The State Plan maintains an effective system to ensure that complainants are notified timely.

The State Plan responded to 67 complaints or referrals by the phone/fax procedure with an average response time of 6.68 days, which is 1.68 days above the goal of five days according to the FY 2012 SAMM. The State Plan's timeliness for initiating a phone/fax complaint resulted in a finding in FY 2011. Washington appropriately addressed OSHA's recommendation for this item although data through the end of FY 2012 continued to show the average phone/fax complaint response time to be greater than the negotiated goal of five days (SAMM 2012). Upon further research, it was determined through the use of the federal and state Fatality/Catastrophe and Complaint Response Data Report [IMIS CMPAC] that the State Plan did meet this goal with the resulting average of 2.4 response days, or 2.6 days fewer than the five day goal. See Table 1.

Additionally, DOSH responded timely to 13 imminent danger complaints/referrals in FY 2013. For the last six years DOSH has consistently met this goal with 100% performance.

**Table 1**  
**Complaints (SAMM 1, 2, 3)**

	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>Goal</b>
Days to Initiate Inspection (SAMM 1)	9.24 days	11.5 days	8.65 days	15 days
*Days to Initiate Investigation (SAMM 2)	6.68 days	7.17 days	8 days	5 days
Complainants Notified Timely (SAMM 3) Note: Included for informational purposes only	97.88%	95.36%	95.54%	100%

\*Note: When IMIS CMPAC data was evaluated it was determined that the SAMM Measure 2 data was incorrect for Washington and should be 2.4 days for FY 2013

**b) Fatalities/Catastrophes**

There were 74 fatalities reported in FY 2013 (IMIS Micro-to-Host Report); 54 of these fatalities were considered to not be work-related (i.e., natural causes) or were cases where DOSH deferred jurisdiction to a law enforcement investigation (such as traffic collisions). The remaining 20 fatalities were investigated. Sixteen of the 20 fatalities (80%) were inspected within one day. The four fatalities not

inspected within one day were all justified based on reasonable delays. For instance, one was a fatality where the victim died of Legionellosis; this investigation was delayed while the medical examiner tried to determine the cause of death. Once the State Plan determined the cause of death may be work related, an inspection was opened. Another fatality included an automobile accident; this inspection was delayed while the Washington State Patrol first completed their investigation. The State Plan chose to open an inspection of this fatality based on the work the victim was conducting at the time of death. A third fatality was delayed because the victim was a corporate officer, but an inspection ensued once it was determined other workers were still working at the site. The final fatality case which was delayed was due to a data error with coding; the fatality was listed as “natural causes” and should have been correctly coded as “no inspection” because of this reason.

The FY 2013 review of fatality inspection case files revealed well-documented investigations that clearly explained the events leading to the incident. The documentation supported the findings and citations where appropriate. The State Plan actively includes family members in the fatality investigation process by providing an initial letter to the family and a follow-up letter when the investigation is closed. However, during the review, there was one fatality case which was found to have been closed prematurely and not fully investigated.

This fatality case is of concern because the fatality involved the owner (president) of the company as the fatality victim with an additional worker injured at the time of the accident. The establishment was a small corporation. Evidence in the case file documents a series of email communications to DOSH from a consultant that had worked with the employer. The consultant’s emails explained that because the victim was deceased, there would not be anyone to represent the company and incur a possible citation. The State Plan made an assessment based on these emails, that the deceased president of the corporation was not considered a worker of the corporation, and therefore the investigation was closed. It was noted that at the time of the FY 2013 case file review, the corporation was still listed as active. In this instance it seems that DOSH did not consider the difference between a statutory worker and a sole proprietorship or partnership when the State Plan chose to prematurely close the investigation.

**Recommendation 13-1:** Review and revise the DOSH Compliance Manual for clarity of the issue of worker classification and ensure all enforcement staff receive training on worker classification related to corporations, sole proprietorships, and partnerships.

### **Bureau of Labor Statistics (BLS) Rates.**

An overview of Washington’s private industry TCIR<sup>1</sup> and DART<sup>2</sup> rates for calendar years 2008 through 2012, as well as for select industries, is provided in the table that follows. At the close of this monitoring period, 2012 was the most recent year for which data was available.

(Data source: [www.bls.gov](http://www.bls.gov))

	CY 2008	CY 2009	CY 2010	CY 2011	CY 2012	% Change, 08-12	% Change, 10-12
<b>Private Industry</b>							
TCIR	5.6	5.1	4.8	4.9	4.8	-15%	0%
DART	2.7	2.5	2.4	2.5	2.5	-8%	+4%
<b>Construction, NAICS<sup>3</sup> 23</b>							
TCIR	9.0	8.2	7.2	8.7	6.5	-28%	-10%
DART	4.3	3.9	3.4	4.4	3.4	-21%	0%
<b>Manufacturing, NAICS 31-33</b>							
TCIR	7.0	6.4	6.0	6.0	6.1	-13%	+2%
DART	3.8	3.6	3.5	3.4	3.6	-5%	+3%
<b>State and Local Government</b>							
TCIR	6.4	6.7	6.4	6.1	6.3	-2%	-2%
DART	2.7	2.9	2.8	2.8	2.9	+7%	+3%

The State Plan achieved a downward trend for TCIR data for all categories from FY 2008 through FY 2012. For the period FY 2010 through 2012, the TCIR for Private Industry has remained constant, decreased in Construction and State and Local Government, and slightly increased in Manufacturing. The DART rate between FY 2008 through FY 2012 trended downward for all categories with the exception of State and Local Government, which increased marginally during the period. The change in DART for the period FY 2010 through FY 2012 remained nominally the same. The State Plan’s targeting system appears to be effectively identifying high hazard employers for inspections which contributed to overall a decrease in TCIR and DART rates. The State Plan should continue to refine their inspection targeting lists using the resources that they have available:

Washington workers’ compensation data, safety and health inspection and consultation data, DOSH Safety and Health Lab analysis data, fatality data, Safety

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

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

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

and Health Assessment & Research for Prevention (SHARP) data, and Bureau of Labor Statistics data.

**c) Targeting and Programmed Inspections**

In FY 2012, DOSH requested an adjustment of its total inspection goal from 7,000 to 5,600 inspections, in consideration of the State Plan’s ongoing staffing and training challenges. At the end of that year, DOSH had conducted a total of 5,161 inspections, which was still 7.9% below the reestablished goal. In light of this, in August 2013, DOSH again reduced its inspection goal in its grant application for FY 2013. DOSH achieved 90% of the annual goal for this period. Of these inspections, DOSH conducted 3,668 safety inspections and 987 health inspections for a total of 4,655 inspections of which 2,620 were programmed inspection (SAMM 8).

During quarterly monitoring meetings, DOSH has provided OSHA with updates and current data for progress toward meeting inspection performance goals. These conversations are important for reassessing resources and enforcement staff capabilities periodically throughout the year, and provide opportunity to consider possible goal adjustments as necessary.

The following table reflects DOSH performance in this area over the last three years.

**Table 2  
Inspections Conducted FY 2011 – 2013 (SAMM 17)**

<b>Inspections</b>	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>
Goal	5,200	5,600	7,000
Conducted	4,655	5,161	5,402
Difference	(545)	(439)	(1,598)

**d) Citations and Penalties**

The State Plan continues to successfully manage the issuance of citations in a timely manner. The following table represents DOSH’s three-year performance history for both industrial hygiene and safety citation lapse times. See Appendix D for details (SAMM 23A and 23B).

**Table 3  
Citation Lapse Time (SAMM 7)\***

	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>FY 2013 National Data</b>
Safety	49.1 days	45.6 days	38.2 days	53.7 days
Health	64.7 days	57.1 days	56.6 days	65.5 days

\*Due to recent mandated activity policy revisions during FY 2012, lapse time calculations during FY 2013 are now being monitored using SAMM 23 rather than SAMM 7 used during previous years. The SAMM information above is provided for informational purposes only.

Table 4 provides SAMM 23 data in accordance with OSHA’s mandated measure for this item:

**Table 4  
Citation Lapse Time (SAMM 23)\***

	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>FY 2013 National Data</b>
Safety	39.5 days	37.15 days	29.28 days	43.4 days
Health	50.73 days	45.18 days	47.39 days	53.1 days

In FY 2013, of the total number of inspections conducted, 2,330 were programmed safety inspections and 290 were programmed health inspections. The State Plan cited serious, willful, or repeated violations in 48.15% of the programmed safety inspections and 53.45% of the programmed health inspections. The percentages for safety are lower than the three-year national rate for State Plans of 57%. Percentages for health were nominally lower than the national rate for State Plans of 53.7%. DOSH’s performance shows a marked increase of citations with Serious/Willful/Repeat (S/W/R) violations in programmed inspections for the past three years.

**Table 5  
Percent of Programmed Inspections with S/W/R Violations (SAMM 8)**

	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>FY 2013 National Data</b>
Safety	48.15%	42%	40%	57%
Health	53.45%	45%	37%	53.7%

DOSH's rate of all inspections with S/W/R violations has continued to increase over the past three years. The State Plan's rate of classifying violations as general, or "other-than-serious" remains higher than the national State Plan average of 1.3, although the rate is slightly lower than the previous two years. See Table 6 below:

**Table 6  
Average Violations per Inspection with Violations (SAMM 9)**

	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>FY 2013 National Data</b>
S/W/R	1.61	1.55	1.29	2.0
Other	2.12	2.39	2.22	1.3

In FY 2013, Washington continued the trend of ensuring a similar or better in-compliance rate as the national State Plan average. The State Plan remains consistent in this performance.

**Table 7  
Field Compliance Measure, Percent In-Compliance (SAMM 20)**

	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>FY 2013 National Data</b>
Safety	29%	31%	29%	29%
Health	27%	24%	34%	34%

DOSH's average initial penalty assessed per serious violation in the private sector in FY 2013 was \$866, which is far below the federal average of \$2,244 by \$1,378 or 62% of the federal average (SAMM 10). Washington's penalty structure is written in rule and can only be changed by following the Washington Administrative Procedures Act. DOSH has been working with the statutory WISHA Advisory Committee to develop proposed changes to the penalty rules, and plans to file a pre-proposal inquiry in April of 2014 as a first step in the rulemaking process.

From FY 2009 to FY 2013, the State Plan has increased its average initial serious penalty from \$530 to \$866, resulting in an overall increase of \$336, or 39%. However, DOSH's average current penalty per serious violation in the private sector in FY 2013 for employers with less than 250 workers remains far below the acceptable range of +/- 25% of the national State Plan average (see SAMM 18).

The following table represents DOSH's five-year average serious penalty issuance history (SAMM 10):

**Table 8**  
**Average Initial Penalty per Serious Violations (SAMM 10)\***

Average penalty assessed per serious violation	FY 2013	FY 2012	FY 2011	FY 2010	FY 2009
	\$866	\$863	\$787	\$642	\$530

\*This measure is for information purposes only. Measure 18 is the official mandated measure for penalties. See Appendix D for more details.

**e) Abatement**

DOSH requires that each hazard be abated and that adequate verification of the correction be maintained in the case file. For FY 2013, the timely abatement verification of serious, willful and repeat violations was 96.6% (Source SOAR), which exceeded DOSH's goal of 95%. DOSH's performance in this element is acceptable.

**Table 9**  
**S/W/R Violations Verified (SAMM 6)**

Percent of S/W/R Violations verified For Informational Purposes Only	FY 2013	FY 2012	FY 2011	Goal
Private Sector	95.5%	96%	96%	100%
Public Sector	100%	97%	91%	100%

**f) Worker and Union Involvement**

During DOSH inspections, workers are given the opportunity to participate either through interviews or by having worker representatives accompany inspectors. Workers 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 Plan's policy is identical to the federal policy for the allowance of worker participation in inspection activities.

**2. REVIEW PROCEDURES**

**a) Informal Conferences**

DOSH's procedures for informal and formal review of appealed Citation and Notices (C&N) are known as the Reassumptions Program. The outcomes of the

Reassumptions Program are similar to OSHA's informal conference process, although the time frames are different. Once a citation is delivered to an employer, the employer has 15 working days to file an appeal with the State Plan. If the department decides to reassume jurisdiction, the State Plan has 30 working days (45 working days with agreement of both parties) to issue the Corrective Notice of Redetermination (CNR). If the department decides to reassume, the State Plan holds an informal conference with the employer, and modifications to the Citation and Notice are made in the Corrective Notice of Redetermination issued to the employer.

During reassumption, the State Plan's data reflect that nearly 100% of violations were affirmed, no violations were reclassified or vacated during the period of FY 2013. Penalty retention during reassumption (not appealed to the BIIA) was 99.93%, which exceeds OSHA's penalty retention of 66% (SAMM 24). OSHA finds this performance acceptable.

When a reassumption hearing is held, the proceedings are documented in a written narrative. The narrative explains the hearings officer's decision and supports any changes that the hearing officer made to the citations. During the case file review, five (16.7%) inspections were found to result in a reassumptions hearing, with no case files found as appealed to the BIIA. In three of the five case files where a reassumptions hearing occurred, the penalty was reduced appropriately and the reasons were well documented in the narrative of the reassumption hearing officer's findings. One instance was found where a citation was dismissed. This entailed a programmatic violation where the employer was able to produce the program at the time of the hearing and verify that it was on site at the time of the inspection.

#### **b) Formal Review of Citations**

DOSH'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 workers and their representatives the opportunity to participate in review proceedings and to contest citation abatement dates.

If the State Plan determines that they will not reassume a Citation and Notice during reassumption, the appeal is sent directly to the Board of Industrial Insurance Appeals (BIIA). Employers can also file a second level appeal of the CNR to the Board. The BIIA is a separate state agency that hears the contested cases of the department. The department is represented by the Attorney General's Office. If a settlement agreement is not reached during mediation, the case will be assigned to an Industrial Appeals Judge (IAJ) who will hear the case and issue

a decision on contested issues. Approximately 54% of DOSH's violations are appealed to the BIA.

In the area of post-contest violation reclassification, the State Information Report reflect that 82.8% (9,161/11,066) of violations were affirmed, 7% (779/11,066) were modified and 17.3% (1,905/11,066) were vacated during the period of FY 2013. The State Plan Plan's penalty retention post-contest was 49% (SIR E1-3). OSHA finds this performance acceptable.

### **3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCS) ADOPTION**

The State Plan is required to notify OSHA of its intent to adopt standards and federal program changes within 60 days of OSHA's issuance of the direct final rule or issuance of an automated notice to the State Plan, when required. The State Plan then has up to 6 months to adopt a standard or federal program change with submission of such to OSHA within 60 days of adoption.

#### **a. Standards Adoption**

DOSH has acceptable procedures for promulgating standards that are at least as effective as those issued by OSHA. During this evaluation period, OSHA issued one final rule that was required to be adopted by State Plans and one OSHA update which encouraged State Plan adoption. Action was required by the State Plan to respond to OSHA's notices regarding these two standards.

Washington notified OSHA it will not adopt the Cranes and Derricks in Construction – Underground Construction and Demolition standard because the State Plan Plan's existing rule covers these changes. Although State Plan Plans were not required to adopt the OSHA Head Protection Standard, DOSH anticipated filing an expedited proposal of the rule by September 5, 2013, with an adoption date of November 18, 2013, and subsequent submission of the State Plan Plan's alternative approach by December 20, 2013. DOSH adopted its Administrative Order amendments related to head protection on January 7, 2014, which became effective on February 10, 2014. See Table 10.

During FY 2013, OSHA issued five additional final rules. State Plans were not required to take any action or respond to OSHA regarding these five standards; however, Washington adopted changes and corrections regarding the Hazard Communication Standard in March of 2014. DOSH's timely response rate for both notification of intent regarding adoption of standards and ensuring timely adoption continues to be acceptable.

**Table 10  
Status of 2012 Federal Standards Adopted**

<b>Standard:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Adoption Date:</b>
Cranes and Derricks in Construction: Underground Construction and Demolition (4/23/2013) Adoption Required	6/20/2013	No	No	11/23/2013	DOSH has current equivalent rules
Updating OSHA Standards based on National Consensus Standards; Head Protection (11/16/2012) Adoption Not Required	1/31/2013	Yes	No	7/16/2013	DOSH requested extension 7/30/2013

**b) OSHA/State Plan-Initiated Changes**

A total of five federal program changes (FPCs) required a response in FY 2013. There were two remaining FPCs issued by OSHA in FY 2013 that will carry over into FY 2014. DOSH's response to those will be evaluated during the next FAME cycle. Washington's timely response rate for notification of intent regarding adoption of federal program changes is 100%. DOSH's adoption and submission was 100% timely. Table 11 below lists FPCs from FY 2012 and FY 2013 which required a response from DOSH in this FAME period and the outcome:

**Table 11  
Status of Federal Program Changes (FPCs) Adoption**

<b>FPC Directive/Subject:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Submission Date:</b>
CPL 02-00-154 Longshoring and Marine Terminals "Tool Shed" (issued 7/31/2012) Equivalency Required	10/2/2012	Yes	Yes	N/A – adoption not required	1/31/2013
CPL 02-03-004 2012 544 Section 11(c) Appeals (issued 9/12/2012) Equivalency Required	11/6/2012	Yes	No	N/A – adoption not required	3/5/2013 Under Review
CPL 02-01-054 Inspection & Citation Guidance for Roadway and Highway Construction Work Zones (issued 10/16/2012) Equivalency Required	12/17/2012	Yes	No	4/17/2013	6/4/2013 Under Review
CPL 02-13-01 Site-Specific Targeting 2012 (SST-12) (issued 1/04/2013) Equivalency Required	2/21/2013	No	No	N/A – adoption not required	2/21/2013 Equivalent Procedure

<b>FPC Directive/Subject:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Submission Date:</b>
CPL 03-00-017 National Emphasis Program Occupational Exposure to Isocyanates (issued 6/20/2013)	7/23/2013	Yes	Yes	12/20/2013	12/19/2013
<b>STATE PLAN RESPONSE DUE IN FY 2014</b>					
CPL 02-00-155 Inspection Scheduling for Construction (issued 9/06/2013)	10/31/2013	No	No	N/A – adoption not required	10/31/2013 Equivalent Procedure
CPL 02-01-055 Maritime Cargo Gear Standards & CFR Part 1919 Certifications (issued 9/30/2013) Equivalency Required	12/30/2013	No	No	N/A – adoption not required	12/30/2013 Equivalent Procedure

DOSH submitted 10 state-initiated changes this period. All state -initiated changes were submitted timely.

#### **4. VARIANCES**

DOSH granted 12 permanent variances during this evaluation period, two more than the number of variances granted during the previous period. During the previous three years of reporting, DOSH granted an average of twenty permanent variances a year. No interim variances were granted during this period. During the previous three years of reporting, DOSH granted an average of one interim variance a year. Other variance actions included twelve variances being revoked or denied and four were amended. DOSH did not grant any temporary variances during the previous period.

The variance applications were handled properly and the decision to grant the variance was justified.

#### **5. PUBLIC WORKER PROGRAM**

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. In FY 2013, DOSH conducted 4.6% (214/4655) of its inspections in the public sector (SAMM 11). Of the total public inspections, 159 were safety, and 55 were health. Washington conducted more inspections in this period in the public sector (4.6% per SAMM 11) than in the previous year (3.6%).

The State Plan issued a significant case to the Washington State Department of Natural Resources (DNR) for 15 worker-safety violations following an investigation into the drowning death of a DNR diver. The citation carried an assessed penalty of \$172,900 and included two willful violations, eight serious violations, and five general (other-than-serious) violations.

## 6. DISCRIMINATION PROGRAM

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

DOSH's timeliness of completed cases in FY 2013 is 78% which has dropped significantly over the past three years since FY 2011 and continues to be less than the national reference standard of 100%. DOSH's merit rate dropped from 42% in FY 2011 to 34% in FY 2012 and was 24% at the end of this period. Although the number of DOSH's meritorious cases decreased in this evaluation period, the current rate of 24% is consistent with the three-year national average for meritorious cases.

DOSH's ability to settle has been directly impacted by the Supreme Court of Washington decision in *Cudney v. AlSCO Inc.* 2011, which states in part; complainants must first file a Discrimination Complaint with the Department of Labor and Industries prior to being allowed to seek a private right of action. Thus DOSH is receiving more complaints and the ability to settle is diminished. Although the number of merit cases is slightly lower than the previous two years, the number is considered acceptable in comparison to the national average. DOSH's overall management of Whistleblower complaints continues to be acceptable.

Table 12 is a summary of discrimination activity during FY 2013:

**Table 12**  
**11(c) Investigations (SAMM 13, 14, 15)**

	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>	<b>FY 2013 National Average</b>
Completed Within 90 Days (SAMM 13)	78%	91%	99%	100%*
Merit Cases (SAMM 14)	24%	34%	42 %	25%
Merit Cases Settled (SAMM 15)	81%	91%	86%	89%

\*The SAMM 13 national State Plan reference standard is to complete 100% cases within 90 days.

OSHA conducted an on-site monitoring review of DOSH's discrimination program in FY 2013. The purpose of the case file review was to determine if the State Plan had taken corrective action with regard to the previous year's findings as well as to gauge DOSH's current implementation of policies and procedures of whistleblower cases. During this year's case file review of DOSH's discrimination program, eighteen discrimination case files and ten screened complaints were reviewed by OSHA. In FY 2012, OSHA made three

recommendations for program improvement. The status of the FY 2012 findings and recommendations and a discussion of the State Plan's corrective action is provided below as well as any new findings and observations found in the FY 2013 case file review.

**Finding 12-1:**

Whistleblower settlement agreements did not always comply with current policy and/or were not maintained in the case file.

**Recommendation12-1:** Ensure implementation of a process for supervisory review and acceptance of 11(c) discrimination case files and settlement agreements.

Status: The State Plan responded to this recommendation by updating administrative policies and processes in the DOSH Discrimination Investigation Manual. These processes now reflect that all discrimination case files and settlement agreements must be reviewed and approved by the Discrimination Supervisor before finalization. Additionally, DOSH has implemented a process where the Discrimination Supervisor must conduct a case file review prior to signature on the settlement agreement before the complainant and employer review the agreement. During the FY 2013 whistleblower case file review, OSHA found the State Plan's corrective action to this item was mostly resolved; DOSH has implemented a procedure to include a form in the case file for the supervisor's signature and approval. However, the supervisor's signature was absent on the review/approval form in four of the eighteen (22%) case files reviewed. DOSH should ensure supervisory review and approval is implemented and documented in all cases prior to closure. OSHA considers this item complete for purposes of this evaluation.

**Finding 12-2:**

Respondents were not always timely notified of a whistleblower complaint and/or not provided a copy of the whistleblower complaint.

**Recommendation12-2:** Ensure timely notification of respondents, including the substance of the 11(c) discrimination complaint, when a case has been docketed.

Status: DOSH responded to this recommendation by providing discrimination investigators training to ensure contact is made with the respondent within 15 days of case assignment. This training occurred in the second quarter of FY 2013. Additionally, DOSH sends the employer a copy of the letter which is mailed to the complainant; this letter notifies the employer that a complaint has been filed and has been assigned to an investigator for investigation of the alleged retaliation. DOSH stated the employer is also sent a second letter containing a summary of the allegations along with a request for information. In order to

ensure the integrity of the investigation, DOSH does not provide advance notice of the details of the allegations in these letters. When the investigator meets with the respondent in person, the details of the complaint are shared. These meetings are recorded (with the respondent's permission) and maintained in the case file. To further understand DOSH's process of notifying the respondent of the complaint, OSHA has participated in several discussions regarding this issue with key staff at the State Plan. OSHA considers this item complete for purposes of this evaluation.

**Finding 12-3:**

In 14 of 23 (61%) 11(c) discrimination case files reviewed, closure dates were not consistent and contradicted documentation in the case files. Several files reviewed had complaint filing dates which were inconsistent with the Integrated Management Information System (IMIS) data.

**Recommendation 12-3:** Ensure consistent entry of 11 (c) discrimination complaint filing and closing dates into IMIS.

Status: DOSH responded to this recommendation by implementing a review policy and process to ensure filing dates and the dates entered into IMIS are consistent. The date on the final action letter is the date that is now entered into IMIS as the closing date. This is also the date the final action letter is postmarked. During the FY 2013 case file review, OSHA found five of eighteen cases (28%) with inconsistencies in IMIS filing/closing dates and actual filing and closure dates which were documented in the case file. OSHA recognizes that DOSH has implemented a corrective action plan and has improved its instances of inconsistencies from the previous year. OSHA has reclassified this item to Observation FY13-OB-1 for this period. Region X will monitor discrimination cases to ensure improvements seen in FY 2013 continue in the future.

**Observation FY13-OB-1:** OSHA found case closure dates were not consistent and contradicted documentation in 11(c) discrimination case files. Several discrimination case files reviewed had complaint filing dates which were inconsistent with IMIS data. This occurred in 14 of 23 (61%) FY 2012 discrimination case files reviewed; and 5 of 18 (28%) FY 2013 discrimination case files reviewed.

It was not apparent during the case file review if DOSH discrimination investigators can consider damages beyond a "make whole" (i.e., "all appropriate relief") type remedy when settling merit whistleblower cases, or cases where DOSH has determined a violation exists. Under RCW 49.17.160 of the WISH Act, DOSH is authorized to ask for "other appropriate relief" if a merit case is filed in superior court. This action is similar to Section 11(c)(2) of the OSH Act. DOSH planned to inquire to the Washington Attorney General about legal

parameters of “all appropriate relief” and similar damages. It was shared with DOSH that OSHA’s whistleblower investigators are able to seek compensatory and punitive damages for merit cases in accordance with OSHA’s policy (Chapter 6 of the Whistleblower Investigation Manual), and per a district court case *Reich v. Cambridgeport Air Systems, Inc.* 26 F.3d 1187 (1994). OSHA’s policy and the *Cambridgeport* decision both determined that “all appropriate relief” includes reinstatement, back wages, compensatory and punitive damages. OSHA’s policy allows OSHA to seek these types of remedies if there is a merit determination and before the merit case is filed in district court. OSHA will continue the discussions with DOSH into the next monitoring period to determine DOSH’s limitations and abilities concerning this issue.

The findings and new or continued recommendations are included in Appendix A for this period. Reclassified recommendations and new observations made during this period are included in Appendix B. OSHA will further address these items with DOSH through additional monitoring of the discrimination program in FY 2014.

## **7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS**

The State Plan of Washington has effective targeting systems for General Industry and Construction which is considered at least as effective as OSHA. The State Plan’s targeting system is based on data sets derived from various sources, such as but not limited to, OSHA directives, special studies, or former inspection results within an industry. The key element of the DOSH targeting program is the use of worker injury and illness data (I&I) derived from State Plan workers' compensation data. The L&I data is used to refine targeting list and weighs heavily in lists ranking criteria.

The State Plan’s targeting criteria can be found in rule, WAC 296-900-12005. Using the criteria contained in this document along with various data sources, the State Plan identifies the high hazard industries and rank orders them for programmed inspections. The high hazard targeting list for DOSH includes the following industries:

- Agriculture
- Asbestos renovation and demolition
- Construction
- Electrical utilities and communications
- Logging
- Maritime

The State Plan did not adopt CPL-04-00-001, Procedures for Approval of Local Emphasis Programs. However, Washington’s alternative approach in Directive

2.20 has been approved by OSHA as effective as OSHA's policy. DOSH's directive was most recently updated and approved by OSHA in January 2012. The State Plan currently has only one Local Emphasis Program (LEP), implemented region-wide, for auto industries.

The State Plan ensures neutral selection of employers for targeting programs by the use of an automated system based on the North American Industrial Classification System (NAICS). No employers are manually selected for a targeting list. In the development of targeting programs DOSH utilizes Washington workers' compensation data, safety and health inspection and consultation data, DOSH Safety and Health Lab analysis data, fatality data, Safety and Health Assessment & Research for Prevention (SHARP) data, and Bureau of Labor Statistics data. The State Plan provides an outreach component and depending on the list or industry, and discussions might be held with advisory groups. Employers and industry groups also receive targeted mailings of hazard alerts as warranted.

DOSH continuously evaluates inspection scheduling lists criteria and results to further refine effectiveness of identifying establishments most likely to have serious hazards present. DOSH uses research studies and advice from L&I's Safety and Health Assessment and Research for Prevention (SHARP) program, the WISHA Advisory Committee, Construction Advisory Committee and other similar groups in identifying emerging safety and health issues. An example is the LEP DOSH developed for hotel/motel establishments which have unusually large numbers of violations cited. They developed a focused approach to conducting these specific inspections. The outcome was so successful that the LEP was cancelled and instead implemented statewide.

The State Plan has an Annual Performance Goal to assess the effectiveness of its targeting program. The goal reads "*Our proactively assigned high hazard scheduling list inspections result in finding serious hazards at least 50% of the time.*" The State Plan does not set a goal for planned number of programmed inspections within a fiscal year.

The Assistant Director and Deputy Assistant Director for DOSH, Statewide Compliance and Regional Compliance Managers, central office Data Analysis and Operations staff, WIN technical staff, SHARP staff, and CSOs all participate in the development of targeting programs. The Assistant Director for DOSH approves the targeting program and seeks legal review as necessary. The State Plan does not use public input in the development of LEPs, but does hold discussions with advisory groups as appropriate and considers their input.

Tracking and monitoring of targeting results occurs with monthly and quarterly analysis and review. Criteria for targeted inspections are typically updated on an

annual basis. A scheduling system is used to work with the target lists. To the extent reasonable and practical, regional supervisors make assignments to staff, working from the top (highest rank) down. All targeted inspections are conducted per the Washington State Safety and Health Compliance Manual. Targeted inspections are normally comprehensive. Inspections from target lists are tracked both in the IMIS and in the State Plan system, WIN. The data point sent to IMIS is the Local Emphasis Program name in box 25c of the IMIS. In WIN, the data points tracked are the List Name, Rank, and Local Emphasis Program Name. WIN also records a data point indicating unprogrammed inspections of employers on target lists. Records of all inspections, including any conducted from a target list, are retained in the WIN system, and the physical inspection reports are stored in the central office Records Center according to the records retention schedule.

#### **8. COMPLAINTS ABOUT STATE PROGRAM ADMINISTRATION (CASPA)s**

No new CASPA's were filed in FY 2013. One CASPA (W-366) filed in FY 2012 found that five of the fourteen allegations were valid or partially valid, and six recommendations were provided to the State Plan. DOSH's response to OSHA was considered satisfactory, and the CASPA was closed in the first quarter of FY 2013.

#### **9. VOLUNTARY COMPLIANCE PROGRAM**

At the end of FY 2012, there were 28 approved Voluntary Protection Program (VPP) sites in DOSH jurisdiction. DOSH continued to implement a provision instituted from the previous year requiring quality assurance audits (QA) be conducted on approximately 20% of VPP participants annually. The QA audits are scheduled based on a review of the participants' annual self-audits and are in addition to the scheduled three to five year renewal audits. They are limited in scope and focus on injury and illness records, changes reported by a VPP participant, or general site safety and health management practices. Four reapprovals were conducted as planned in DOSH's annual performance plan for FY 2013.

#### **10. PUBLIC AND PRIVATE SECTOR 23(G) ON-SITE CONSULTATION PROGRAM**

The State Plan of Washington covers both public and private sector for on-site consultation through its grant under the 23(g) funding program and through additional 100% State Plan funding. DOSH conducted a total of 2,336 consultation visits in FY 2013 (public and private), which was slightly above DOSH's goal of 2,250 visits. Based on this information, DOSH met its goal of 2,250 consultation visits in FY 2013. See Table 13 below.

**Table 13  
Consultation Activities (MARC)**

<b>DOSH Consultation Activities</b>	<b>FY 2013</b>	<b>FY 2012</b>	<b>FY 2011</b>
Total Goal	2250	2300	2300
Conducted	2336	2350	2428
Difference	164	50	128

In FY 2013, 93% (1,866 of 2,011) of Washington’s private sector initial consultation visits occurred at high-hazard establishments (Private Mandated Activities Report on Consultation -MARC 1). During the same period, 91% (111 of 122) of DOSH’s public sector initial consultation visits occurred at high-hazard establishments (Public MARC 1). Both of these metrics are above the MARC reference standard of 90%. All of Washington’s initial consultation visits were to smaller businesses which OSHA defines as having 250 or fewer workers.

For the same period, 98% (6,379 of 6,528) of the serious hazards identified by consultants in the private sector and 99% (274 of 278) 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 2013 annual performance plan goal was 95% or better, so this performance exceeded the State’s performance plan goal. No employers were referred to enforcement for failing to correct hazards.

## **11. STATE PLAN ADMINISTRATION**

The State Plan of Washington continues to maintain a well-developed internal training program that is as effective as OSHA. Both compliance and consultation staff are given training opportunities to increase their knowledge and keep them current in standards, guidelines and policies. DOSH has also taken the lead on supporting OSHA Training Institute courses at the HAMMER training facility in Richland, Washington, by committing resources to allow attendance at scheduled offerings.

At the end of the year, the State Plan’s on-board staffing was at 93% of the authorized enforcement positions and at 93% 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 79 positions authorized and 74 of those filled.

- For health enforcement, the benchmark is 74 with 36 positions authorized and 33 filled.
- The State Plan's consultation program has 45 consultant positions (28 safety and 17 health). As of September 30, 2013, 42 consultant positions were filled (25 safety and 17 health).

DOSH operates its own laboratory for analyzing industrial hygiene samples. The laboratory is accredited by the American Industrial Hygiene Association and is a participant in the Proficiency Analytical Testing (PAT) Program. The laboratory was rated as proficient for all contaminant categories of the PAT program and passed all fields of testing for Rounds 192 through 194 covering the past year. The State Plan has also been rated proficient for the BAPAT (Bulk Asbestos) program and has passed the previous four rounds of the program. (Rounds A92-312, A93-412, A94-113, and A95-213.)

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

DOSH established a five-year Strategic Plan for the period from October 1, 2010 (FY 2011) through September 30, 2015 (FY 2015). These goals included short- and long-range objectives aimed at improving safety and health for Washington's workers. Each year DOSH develops and submits its annual performance plan as part of its application for federal funds.

The DOSH Annual Performance Plan is divided into three goal categories – (A) strategic, (B) direct service and (C) operational. In support of the five-year Strategic Plan, DOSH developed five goals in its Annual Performance Plan for FY 2013, along with seven direct services goals, and four operational goals. The following is OSHA's assessment of DOSH's performance compared to its FY 2013 annual goals:

##### **Strategic Goal 1**

Identify and act on the highest safety risks.

**Performance Goal A1:** Increase the percentage of scheduled list DOSH inspections where serious hazards are found from the baseline of 30% to at least 50% by September 2013.

**Results** – DOSH continues evaluation and ongoing analysis of inspection scheduling list criteria and results to further increase the effectiveness of identifying establishments most likely to have serious hazards present. Their efforts resulted in a 3% increase of

scheduled list DOSH inspections where serious hazards are found from 35% to 38% from FY 2012 to FY 2013.

**OSHA's Assessment** – The State Plan did not meet this goal. The State Plan should continue to refine their targeting process to achieve the goal of 50%.

**Performance Goal A2 :** Conduct a feasibility study to identify what would be needed to overcome long-standing obstacles that prevent us from making needed enhancements to the DOSH targeting system, and create a work plan identifying next steps.

**Results** – A comprehensive feasibility study was conducted during May to September 2012. The study identified the need for both an updated targeting system and also an Entity Management System (EMS) to improve the handling of employer, worker, and medical provider identity and account information.

**OSHA's Assessment** – The State Plan met this goal. It is suggested DOSH continue its efforts with existing resources, to monitor and refine targeting practices and processes.

**Performance Goal A3:** By September 30, 2013, 58% of all Consultation visits are conducted at small businesses (25 or fewer FTE statewide).

**Results** – DOSH exceeded the target of 58% in three of the four quarters and in the annual average, with an overall average of 60.4%.

**OSHA's Assessment** – The State Plan met this goal. OSHA concurs with the State Plan's assessment of this goal and should continue their current program without change.

## **Strategic Goal 2**

Prevent and reduce workplace injuries, illness and disability.

**Performance Goal A4:** Analyze data and establish baseline for number of inspections and consultations when languages other than English are needed during an inspection or consultation.

**Results** – The data gathered during the FY 2013 performance year will allow DOSH to better understand the geographic areas where languages other than English are more prevalent. During FY 2013, the State Plan collected data on 890 compliance inspections and 414 consultations where languages other than English are needed.

**OSHA's Assessment** – The State Plan met this goal. Case file reviews during this period demonstrate the State Plan is collecting this information and has the ability to capture it in the WIN system.

**Performance Goal A5:** Translate into Spanish at least six inspector narrated or animated fatality/serious injury stories.

**Results** – Six inspector-narrated or animated fatality/serious injury stories were successfully created and distributed before September 30, 2013.

**OSHA’s Assessment** – The State Plan met this goal. The State Plan should continue to produce and distribute these highly effective outreach tools.

**Performance Goal B1:** 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.

**Results** – Work-related fatalities in 2013 are at a record low with a total of 20 (SAMM Measure 21), which is a decrease of 18 from the previous year’s total of 38.

**OSHA’s Assessment:** The State Plan met this goal. OSHA anticipates improvement of the fatality rate as the trend continues to improve.

**2013 Performance Goal B2:** Reduce workplace injuries and illnesses by at least 10% as measured by the average time loss claims rate for employers with WISHA enforcement or consultation visits.

**Results** – A 2011- 2012 study and analysis continues to support the findings of the 10-year retrospective study reflecting that when enforcement inspections at fixed-site businesses are conducted, they are followed by an 18.7% greater decline in compensable claims rates than at non-visited businesses. In non-fixed sites, such as construction, there was an 11% greater decline in compensable claims rates than at non-visited businesses. DOSH consultation visits were also associated with a greater decrease in compensable claims rates for fixed industry businesses with a decline of 10.6%.

**OSHA’s Assessment:** The State Plan met this goal. The State Plan should continue to focus on the effects that post inspection/consultation visits have on average time loss claims rates.

**2013 Performance Goal B3:** Conduct at least 2,250 on-site consultations.

**Results** – A total of 2,405 consultations were conducted, which was 155 more consultations than projected.

**OSHA’s Assessment:** The State Plan met this goal. OSHA concurs with the State Plan's assessment and achievement of this goal.

**Performance Goal B4:** Conduct at least 5,200 compliance inspections.

**Results** – DOSH completed 90% of its compliance inspections for FY 2013 (4,655 of 5,200). DOSH continues to experience retention issues as staff leave for higher paying positions. We have been tracking turnover and working with L&I's Office of Human Resources on strategies to address retention over the long term. During FY 2013, 40 CSHOs participated in New Hire Training, which represents nearly 35% of the compliance inspectors. The impact is significant to the numbers of inspections conducted, as fewer experienced inspectors are available to conduct complex inspections and are needed to further train and mentor less experienced inspectors.

**OSHA's Assessment:** Although the State Plan did not meet this goal, OSHA agrees with DOSH's assessment that staffing issues negatively impacted the State Plan's ability to reach 100% of the inspection goal for FY 2013. However, DOSH did accomplish most of its annual projected inspections and came within 10% of the goal. OSHA has discussed DOSH's enforcement performance in FY 2013 during monitoring meetings, and DOSH's inspection performance is on track for FY 2014.

**Performance Goal B5:** Ensure that 100% of serious hazards are corrected and that 95% are verified by consultants within 14 days of the abatement date.

**Results** – DOSH ensured that correction of serious hazards was verified 97.4% of the time within 14 days for FY 2013 which is slightly better than the FY 2012 rate of 97%.

**OSHA's Assessment:** This goal was met. The State Plan has an effective system to ensure that serious hazards are abated and verified by consultants within 14 days.

**Performance Goal B6:** Ensure that 100% of serious violations are corrected and that 95% are verified by inspectors within 14 days of the abatement date.

**Results** – DOSH ensured that correction of serious violations was verified 96.6% of the time within 14 days for FY 2013, which is less than the FY 2012 rate of 97.5%.

**OSHA's Assessment:** This goal was met. The State Plan has an effective system to ensure that serious hazards are abated and verified by inspectors within 14 days.

**Performance Goal B7:** Maintain hygiene citation lapse time at or below the current national average of 64.9 calendar days (for citations with violations, from opening conference to issuance date).

**Performance Goal B8:** Maintain safety citation lapse time at or below the current national average of 51.9 calendar days (for citations with violations from opening conference to issuance date).

**Results** – DOSH achieved safety lapse time of 39.5 workdays which is 5.1 workdays less than the national average of 43.4 workdays. This is slightly higher than the FY 2012 average of 37.5 workdays which can be attributed to high staff turnover in the DOSH program. DOSH achieved health lapse time of 50.7 workdays which is 2.4 workdays less than the national average of 53.1 workdays. This is higher than the FY 2012 average of 45.2 workdays which can be attributed to high staff turnover in the DOSH program.

**OSHA’s Assessment** – The State Plan met this goal. The State Plan’s efforts to recruit and train new CSHOs should ensure that these numbers will continue to improve.

### **Strategic Goal 3**

#### **Increase effective safety communications to the public.**

**Performance Goal C1:** Ensure that phone/fax complaints are sent to employers within five working days as required in the DOSH Compliance Manual.

**Results** – The State Plan reports it conducted training with staff to ensure accurate recording of phone/fax complaints into its WIN system program. The State Plan data show phone/fax complaints were sent to employers within an average of 2.4 days, which is within the State Plan’s goal of five working days.

**OSHA’s Assessment** – The State Plan met this goal. SAMM 2 shows 6.7 average days to respond to a phone/fax complaint. This data was different in the State Plan’s SOAR so an additional report was run to identify the difference. The Fatality/Catastrophe and Complaint Response Data Report [IMIS CMPAC] provided by the National Office and run on September 30, 2013, for October 2012, through September 2013, lists 57 complaint investigations with a total of 139 response workdays. The resulting average of 2.4 response days is in line with that listed in DOSH’s SOAR 2.4 average days.

**Performance Goal C2:** Ensure adequate information is provided in referral case files to document the origination and determination that a referral exists.

**Results** – DOSH conducted training of staff in August 2012 regarding ensuring adequate information is provided in referral case files to document the origination and determination that a referral exists. DOSH will continue to monitor the use of the “other” designation regarding referrals.

**OSHA’s Assessment** – The State Plan met this goal. Case files reviewed during this evaluation determined that the State Plan is adequately documenting the origination and determination of referral cases.

**Performance Goal C3:** Initiate project to rewrite variance processing features into WIN system during FY 2013.

**Results** – The variance rewrite was added to the 2013 WIN project update calendar and is underway. DOSH anticipates the variance rewrite to be completed by the end of CY 2014; however, there may be some delays due to the conversion to OIS.

**OSHA’s Assessment** – The State Plan met this goal. The State Plan has informed OSHA it will continue to monitor this project throughout FY 2014 and will implement the project by the end of CY 2014, if possible based on the higher priority of converting to OIS.

**Performance Goal C4:** Significantly increase the number of close calls reported by DOSH staff in SHIRTS (Safety and Health Incident Report Training System) by September 30, 2013.

**Results** – In FY 2013, thirteen close calls were reported by DOSH staff, which is an increase of 160% over the five close calls that were reported in FY 2012. The DOSH senior management team reviews reports weekly to identify any corrective actions needed as well as trends before determining next steps. The responsible manager also reviews the incident to implement corrective actions and ensure all hazards are fully abated.

**OSHA’s Assessment** – The State Plan met this goal. OSHA concurs with the State Plan's assessment of this goal.

The State Plan continues to make overall improvements in achieving its annual performance goals. OSHA will continue to monitor in the areas listed above where the State Plan did not meet its goals or where the goals were unable to be assessed.

## **V. Other Special Measures of Effectiveness and Areas of Note**

Enforcement case files reviewed by OSHA during FY 2013 were found to be well organized and documented to support citations and complaint findings. The narratives are well written and appropriate to the complexity of the inspection. The case files include written worker interviews that demonstrate CSHOs are validating the employer's safety and health programs.

Appendix A – New and Continued Findings and Recommendations  
 FY 2013 DOSH State Plan Comprehensive FAME Report

Rec #	Findings	Recommendations	FY 12
13-1	A fatality inspection, where one worker was fatally injured, and another worker was seriously injured, was improperly and prematurely closed where DOSH did not consider the fatality victim to be a worker of the corporation. Upon review of the case file, it was determined the victim was a statutory worker of the corporation.	Review and revise the DOSH Compliance Manual for clarity of the issue of worker classification and ensure all enforcement staff receives training on worker classification related to corporations, sole proprietorships, and partnerships.	

Appendix B – Observations Subject to Continued Monitoring  
 FY 2013 DOSH State Plan Comprehensive FAME Report

Observation# [FY13-OB-X]	Observation# [FY12-OB-X]	Observation	Federal Monitoring Plan	Current Status
FY13-OB-1	n/a	OSHA found case closure dates were not consistent and contradicted documentation in 11(c) discrimination case files. Several discrimination case files reviewed had complaint filing dates which were inconsistent with IMIS data. This occurred in 14 of 23 (61%) FY 2012 discrimination case files reviewed; and 5 of 18 (28%) FY 2013 discrimination case files reviewed.	Ensure consistent entry of 11(c) discrimination complaint filing and closing dates into the Integrated Management Information System (IMIS). Region X will monitor discrimination cases to ensure improvements seen in FY 2013 continue in the future.	Reclassified to an observation from previous Recommendation 12-3
FY13-OB-2	n/a	DOSH's standards and enforcement program for fall protection in residential construction may not be at least as effective as OSHA's. OSHA and DOSH have been in dialogue about this issue and it is currently under review by OSHA.	Region X will work with OSHA National Office to determine if DOSH is at least as effective as OSHA with respect to fall protection in residential construction. The next step will be based on results and outcome of this evaluation.	

Appendix C – Status of FY 2012 Findings and Recommendations  
 FY 2013 DOSH State Plan Comprehensive FAME Report

Rec #	Findings	Recommendations	State Plan Response/ Corrective Action Plan	State Plan Action Taken	Status
12-1	Whistleblower settlement agreements did not always comply with current policy and/or were not maintained in the case file.	Ensure implementation of a process for supervisory review and acceptance of case files and settlement agreements in whistleblower cases.	Administrative policies and processes have been updated in the DOSH Discrimination Investigation Manual to reflect that all discrimination case files and settlement agreements must be reviewed and approved by the Discrimination Supervisor before finalization. The Discrimination Supervisor must conduct a case file review prior to signature on the settlement agreement before the complainant and employer review the approval. These actions were taken on 3/1/2013.	During the FY 2013 case file review, OSHA found the State Plan’s corrective action to this item was partially resolved. DOSH has implemented a procedure to include a form in the case file for the supervisor’s signature and approval. However, the supervisor’s signature was absent on the review/approval form in four of eighteen (22%) of the case files reviewed. DOSH should ensure supervisory review and approval in all cases prior to closure. OSHA considers this item complete for purposes of this evaluation.	Complete

Appendix C – Status of FY 2012 Findings and Recommendations  
 FY 2013 DOSH State Plan Comprehensive FAME Report

12-2	<p>Respondents were not always timely notified of an 11(c) discrimination complaint and/or not provided a copy of the 11(c) discrimination complaint.</p>	<p>Ensure timely notification of respondents in 11(c) discrimination cases, including the substance of the complaint, when a case has been docketed.</p>	<p>In agreement with the DOSH Discrimination Investigation Manual, Sec. G Investigation Process, Item 9, Initial Contact with the respondent; staff were provided training on 3/7/2013 to make contact within 15 days of receipt of the case assignment. The employer is sent a copy of the letter mailed to the complainant informing them a complaint has been filed and has been assigned for investigation. The employer is also sent a letter containing a summary of the allegations along with a request for information. In order to ensure the integrity of the investigation, DOSH does not provide advance notice of the details of the allegations in these letters. When the investigator meets with the respondent in person, the details of the complaint are shared. These meetings are recorded (with the respondent's permission) and maintained in the case file.</p>	<p>To further understand DOSH's process of notifying the respondent of the complaint, OSHA has participated in several discussions regarding this issue with key staff in the State Plan. OSHA considers this item complete for purposes of this evaluation.</p>	Complete
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Appendix C – Status of FY 2012 Findings and Recommendations  
 FY 2013 DOSH State Plan Comprehensive FAME Report

12-3	In 14 of 23, or (61%) of 11(c) discrimination case files reviewed, closure dates were not consistent and contradicted documentation in the case files. Several files reviewed had complaint filing dates which were inconsistent with the Integrated Management Information System (IMIS) data.	Ensure consistent entry of 11(c) discrimination complaint filing and closing dates into IMIS.	Review policy and processes have been put into place to ensure filing dates and the dates entered into IMIS are consistent. The date on the final action letter is the date that is now entered into IMIS as the closing date. This is also the date the final action letter is postmarked. These actions were taken on 3/1/2013.	During the FY13 case file review, OSHA found five of eighteen cases (28%) with inconsistencies in IMIS filing/closing dates and actual filing and closure dates documented in the case file. A corrective action plan has been implemented which improved instances of inconsistencies from FY12.	Reclassified as New OB 13-1 for this period.

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report  
 FY 2013 DOSH State Plan Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to National Averages (the collective experience of state and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (Collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

<b>U.S. Department of Labor</b>				
<b>Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)</b>				
State Plan: Washington			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	9.24	(Negotiated fixed number for each State Plan) - 15 days for serious; 30 days for other than serious	State Plan data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	6.68	(Negotiated fixed number for each State Plan Plan) - 5	State Plan data taken directly from SAMM report generated through IMIS.

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report  
 FY 2013 DOSH State Plan Comprehensive FAME Report

<b>4</b>	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State Plan data taken directly from SAMM report generated through IMIS.
<b>5</b>	Number of denials where entry not obtained	4	0	State Plan data taken directly from SAMM report generated through IMIS.
<b>9a</b>	Average number of violations per inspection with violations by violation type	1.61	SWR: 2.04	State Plan data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
<b>9b</b>	Average number of violations per inspection with violations by violation type	2.12	Other: .88	
<b>11</b>	Percent of total inspections in the public sector	4.6	(Negotiated fixed number for each State Plan Plan) - 4%	State Plan data taken directly from SAMM report generated through IMIS.
<b>13</b>	Percent of 11c Investigations completed within 90 calendar days	77.91	100%	State Plan data taken directly from SAMM report generated through IMIS.
<b>14</b>	Percent of 11c complaints that are meritorious	24.42	24.8% meritorious	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
<b>16</b>	Average number of calendar days to complete an 11c investigation	81.51	90 Days	State Plan data taken directly from SAMM report generated through IMIS.
<b>17</b>	Planned vs. actual inspections - safety/health	3668/987	(Negotiated fixed number for each State Plan Plan) - 4004/1196	State Plan data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report  
 FY 2013 DOSH State Plan Comprehensive FAME Report

<b>18a</b>	Average current serious penalty - 1 -25 Workers	a. 529.04		State Plan data taken directly from SAMM report generated through IMIS; national data is not available.
<b>18b</b>	Average current serious penalty - 26-100 Workers	b. 818.59		
<b>18c</b>	Average current serious penalty - 101-250 Workers	c. 1294.66		
<b>18d</b>	Average current serious penalty - 251+ Workers	d. 2054.61		
<b>18e</b>	Average current serious penalty - Total 1 - 250+ Workers	e. 760.72		
<b>19</b>	Percent of enforcement presence	3.70%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
<b>20a</b>	20a) Percent In Compliance – Safety	Safety - 29	Safety - 29.1	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
<b>20b</b>	20b) Percent In Compliance – Health	Health - 27.25	Health - 34.1	

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report  
 FY 2013 DOSH State Plan Comprehensive FAME Report

<b>21</b>	Percent of fatalities responded to in 1 work day	80%	100%	State Plan data is manually pulled directly from IMIS for FY 2013
<b>22</b>	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
<b>23a</b>	Average Lapse Time - Safety	39.5	43.4	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
<b>23b</b>	Average Lapse Time - Health	50.73	57.05	
<b>24</b>	Percent penalty retained	99.93	66	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and OSHA for FY 2009-2011.
<b>25</b>	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State Plan data taken directly from SAMM report generated through IMIS.