



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

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

For the Period of: October 1, 2008 through September 30, 2009

Prepared by:
The United States Department of Labor
Occupational Safety and Health Administration
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Table of Contents

I. Executive Summary.....	1
A. Study Methodology.....	2
B. Findings.....	2
C. Recommendations.....	4
II. Iowa OSHA Overview.....	5
III. Summary of Recommendations and State Actions from the FY 2008 FAME.....	8
IV. Major New Issues.....	10
V. Assessment of State Performance.....	11
A. Assessment of State Performance.....	11
B. Assessment of State Performance on Mandated and Other Related Activities	13
Enforcement	13
<u>Complaints.....</u>	13
<u>Fatalities.....</u>	16
<u>Targeting/Inspections</u>	17
<u>Employee and Union Involvement</u>	20
<u>General Inspection Information</u>	20
<u>Citation and Penalties</u>	22
<u>Abatement</u>	23
<u>Review Procedures.....</u>	25
<u>Public Employee Program.....</u>	27
<u>Information Management.....</u>	27
<u>BLS Rates (Illness, Injury and Fatality).....</u>	28
Standards and Plan Changes.....	29
<u>Standards Adoption.....</u>	29
<u>Federal Program/State Initiated Changes.....</u>	30
Variances.....	31
Complaint About State Program Administration (CASPA).....	31
Voluntary Compliance Program.....	32
Program Administration.....	35
 APPENDIX A - FY 2009 Iowa State Plan (IOSH) Enhanced FAME Report, Summary of Findings and Recommendation.....	 38

APPENDIX B - Enforcement Comparison Data.....40
APPENDIX C - State Activity Mandated Measures.....41
APPENDIX D - State Interim Report.....43
**APPENDIX E. - FY-2009 IOSH Discrimination Program Audit,
Summary of Findings and Recommendation.....48**
APPENDIX F - FY-2009 IOSH Discrimination Program Audit.....49
APPENDIX G – FY 2009 STATE OSHA ANNUAL REPORT (SOAR) 64



**U.S. Department of Labor
Occupational Safety and Health Administration**

Iowa Enhanced FAME Report

I. Executive Summary

The state of Iowa, under an agreement with federal OSHA, operates an occupational safety and health program in accordance with Section 18 of the *Occupational Safety and Health Act of 1970*. The state of Iowa Occupational Safety and Health Administration (Iowa OSHA) received certification on September 14, 1976, for completing all developmental steps as specified in the plan. Iowa OSHA was granted final approval status under Section 18(e) on July 2, 1985 and is an integral part of Region VII.

Iowa's total 23(g) grant expenditures for FY 2009 were \$4,296,448.84. This included federal/state matching funds of \$1,608,900 and state overmatch funds of \$1,078,648.84. Iowa chose not to accept one time funds offered under the American Recovery and Reinvestment Act (ARRA) of 2009, although Iowa OSHA conducted inspections in facilities that affect ARRA activities.

Management changes took place in January 2009 when the long time IOSH Administrator who had managed the program since its inception retired. Staffing levels fluctuated throughout the year, and Iowa OSHA continues to fill vacancies that were created due to the loss of personnel. The Governor of Iowa implemented furloughs for state employees during FY 2010. The furloughs are staggered which allows Iowa OSHA to provide safety and health protections to workers in Iowa. The Governor is also recommending a state reorganization that could affect the Iowa OSHA program.

The Iowa OSHA program functions similarly to Federal OSHA. Iowa injury and illness rates remained above the national average, but continued to decrease. Iowa also works with Region VII to compare and improve enforcement and inspection statistics. In addition, Federal OSHA standards are normally adopted identically, except for maritime standards which are within Federal OSHA jurisdiction.

Two (2) Complaints About State Program Administration (CASPA) were filed with Federal OSHA in FY 2009, and both were related to the Iowa OSHA discrimination program. Precedence was set in Iowa case law that impacted the discrimination program. The Iowa Supreme Court stated the remedy for discrimination provided by IOSHA is not

exclusive and complainants may bring a common law action for wrongful discharge in the district court.

A. Study Methodology

The baseline special evaluation for Iowa OSHA was conducted in two segments during the periods of January 25 - February 4, 2010 and March 2-3, 2010. The audit team utilized a random number table to select cases that involved inspection and investigation conducted from October 1, 2008 through September 30, 2009. Categories included fatality investigations, complaint based inspections, and phone and fax complaint investigations. Additionally, the team randomly selected additional cases from the entire pool of remaining inspection and investigation cases for a total of fifty-four (54) cases. Interviews were conducted with Iowa OSHA personnel including management and supervisors, compliance officers, administrative support personnel, and an attorney.

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

Iowa data contained in the Integrated Management Information System (IMIS) was examined. The team also evaluated Iowa OSHA's achievement of annual performance goals, state performance on mandated measures, Complaints About State Program Administration (CASPA), voluntary compliance programs and overall program administration. An audit of the discrimination program was conducted and the report is included in Appendix E. Iowa OSHA was cooperative, shared information and ensured staff was available to discuss cases, policies, and procedures. In addition, Iowa OSHA staff members were eager to work with the evaluation team.

The annual audit of the IOSH discrimination program occurred during the week of March 1-5, 2010. The audit team utilized a random number table to select ten (10) whistleblower cases for review. Interviews were conducted with Iowa OSHA personnel including one (1) discrimination investigator and two (2) attorneys. The review of whistleblower cases focused on the organization of the case files, the methods used by the investigator to document evidence, and the manner in which the investigator summarized the evidence and applied the evidence to the elements of a whistleblower case. Other issues, such as jurisdiction, early resolution, and Complainant and Respondent notification, were also examined. The IOSH Discrimination Program Audit is contained in Appendix F. of this report. Appendix E provides a summary of the findings and recommendations in that report.

B. Findings

Evaluation Findings are as follows:

1. Iowa periodically sees a reduction in fatalities but the average number of fatalities for the past eleven (11) years is twenty (20). Seven (7) of eleven (11) years

- (64%) have experienced more than twenty (20) fatalities. Beginning in FY 2003 every year experienced more than 20 workplace fatalities.
2. Iowa OSHA did not ensure that adequate abatement was received for all phone and fax investigations.
 3. The IMMLANG policy is not consistently followed.
 4. Families of victims are not always contacted when a fatality investigation is initiated, citations are issued, a settlement conference is held or when the case is closed. There is limited additional communication with family members once the investigation has begun.
 5. LEP and NEP inspections were not coded properly in the IMIS system.
 6. Excessive and inappropriate grouping issues were identified.
 7. Fifty-three percent (53%) of the programmed safety inspections resulted in Serious/Willful/Repeat violations.
 8. In 35 percent of the cases reviewed, hazards that were identified during inspections were not addressed in citations or a letter to the employer.
 9. Employees are unclear what constitutes employer knowledge to document a prima facie case.
 10. Severity assessments are inaccurate which result in incorrect penalty assessments. Other than serious violations had injuries and illnesses described as eye injuries and hearing loss which should have been classified as serious. In addition machine guarding and fall protection violations were classified as other-than-serious and should have been classified as serious.
 11. The Open Inspection Report is not effectively utilized to track cases with incomplete abatement with twenty-three percent (23%) of the cases having abatement more than thirty (30) days past due.
 12. Abatement dates are not assigned in accordance with the FIRM.
 13. Iowa OSHA does not conduct follow-up inspections when they are indicated.
 14. The LEP table included inactive LEP codes for use by employees.
 15. The TRC and DART rates for public sector employers are higher than private sector employers and Iowa OSHA conducts approximately twenty (20) inspections in the public sector each year.
 16. Iowa has experienced a reduction in the TRC and DART rates for private sector employers, but the rates still remain above the national rates for employers.
 17. Notifications for Federal Program Changes were not provided by the specified dates.
 18. Yearly partnership evaluations were not completed and placed in the partnership files.
 19. Partnership employers were not required to provide notification to Iowa OSHA abatement information for hazards identified during non-enforcement on-site visits.
 20. Employers were not provided with formal notification of receipt of their VPP applications.
 21. Iowa OSHA did not utilize 90 day items to ensure uncontrolled hazards were corrected prior to the final on-site evaluation report.
 22. Iowa OSHA employees have not received all required training.
 23. No IDPs were developed for Iowa OSHA personnel.

C. Recommendations

The evaluation resulted in a number of recommendations for improvement. Highlights of these recommendations are listed below.

1. Review the previous ten (10) years of fatality data and compare this to the fatality rates for construction and general industry. After the evaluation, develop enforcement and compliance assistance programs to target industries or hazards associated with the fatalities which have occurred during the previous ten (10) years.
2. Review with employees, who review abatements for phone and fax complaints, the FOM and what is considered adequate abatement.
3. Review the IMMLANG policy with all employees and ensure that information is entered into the IMIS system.
4. We suggest communication with families when the investigation is initiated, when citations are issued, when informal settlement agreements are signed, when the case is contested and when the case is closed. Additionally, a tracking system should be developed and implemented to help ensure that required correspondence is sent to families of victims.
5. Provide refresher training to all employees on LEP and NEP program and IMIS requirements.
6. Iowa OSHA must review its current citation grouping policies and procedures and issue citations in accordance with its FOM.
7. (Repeat) Iowa OSHA must evaluate its safety targeting system and make modification to ensure that its limited resources are inspecting locations where serious hazards are present. Iowa OSHA must also ensure that violations are being classified in accordance with the FOM and other policy directives.
8. All hazards identified during inspections must be addressed. Case files must be reviewed more thoroughly including review of photographs for hazards not identified or addressed by CSHOs.
9. Iowa OSHA must work with the legal staff to provide training to employees to ensure violations are supportable and have all elements for a prima facie case.
10. Iowa OSHA must review the FOM requirements for severity assessments with employees and ensure that severity assessments are evaluated during case file reviews conducted by PSE2s.
11. Iowa OSHA must develop a procedure to analyze the Open Inspection Report, identify cases with past due abatement and obtain timely abatement.
12. Provide training to employees on the current FOM and other adopted directives to ensure that abatement dates are assigned in accordance with current policy.
13. Iowa OSHA must evaluate the Candidates for Follow-Up Inspection Report to identify inspections without adequate abatement and where follow-up inspections could be conducted.
14. Update the IMIS LEP tables to reflect active LEPs and ensure proper IMIS coding.
15. Iowa OSHA must identify a targeting measure to address the high incidence rates for public sector employers.

16. Iowa OSHA must identify enforcement activities that will reduce TRC and DART rates for private industry.
17. Iowa OSHA must implement a procedure to ensure that Federal Program Change notifications are provided by the specified date.
18. Complete the yearly evaluations in accordance IOSH Instruction CSP 03-02-002 and place in the partnership files.
19. Request that partnership employers submit documentation to Iowa OSHA of abatement actions taken for hazards identified during non-enforcement verification inspections.
20. Provide formal acknowledgement of receipt of the application within fifteen (15) days for receipt. This should be completed in accordance with CSP 03-01-003.
21. Implement the use of 90 day items to ensure uncontrolled hazards are corrected prior to the final on-site evaluation report.
22. Iowa OSHA must review their training directive IOSH Instruction TED 01-00-018 and ensure that employees receive the required training.
23. Iowa OSHA must work with compliance officers to develop initial IDPs and update them annually.

See Appendix E for the Findings and Recommendations resulting from the review of the State's Discrimination Program

II. Iowa OSHA Overview

The state of Iowa, under an agreement with federal OSHA, operates an occupational safety and health program in accordance with Section 18 of the *Occupational Safety and Health Act of 1970*. The state of Iowa Occupational Safety and Health Administration (Iowa OSHA) received certification on September 14, 1976, for completing all developmental steps as specified in the plan and was granted final approval status under Section 18(e) on July 2, 1985.

Iowa Workforce Development (IWD), Iowa Division of Labor, administers the Iowa State Plan. Ms. Elisabeth Buck is the new Director and Mr. Joseph Walsh is the Deputy Director for IWD. Mr. Dave Neil serves as the Commissioner of Labor and Mr. Stephen Slater has served as the Deputy Commissioner of Labor/Iowa Occupational Safety and Health (IOSH) Administrator since January 9, 2009. Additional management of the program includes three Public Service Executive 2 (PSE2) first line supervisors.

Staffing levels fluctuated throughout the year, but Iowa OSHA continues to work to fill vacancies that are created due to the loss of personnel. Iowa OSHA is benchmarked for sixteen (16) safety compliance officers and thirteen (13) health compliance officers. Position breakdown and funding submitted in the FY 2009 grant application is outlined in the table on the next page:

Number of Persons	Position	Percent of Funding Through 23(g) Grant
1	Commissioner	40%
1	PSE4 Deputy Commissioner/Program Manager Public Consultation/Training and Education	25%
1	PSE4 IOSH Administrator	100%
1	PSE4	25%
2	Attorneys	100%
1	Attorney	45%
3	PSE2 (Enforcement)	100%
16	Safety Compliance Officers	100%
13	Industrial Hygienists	100%
1	Compliance Assistance Specialist	100%
1	Public Safety Consultant	50%
1	Public Safety Consultant	100%
5	Public Industrial Hygiene Consultants	50%
1	Public Industrial Hygiene Consultant	100%
4	Administrative Personnel	100%
1	Administrative Personnel	95%
1	Administrative Personnel	35%
1	Administrative Personnel (Public Consultation Training and Education)	75%
1	Administrative Personnel (Public Consultation Training and Education)	25%

Management changes took place in January 2009 when the long time IOSH Administrator retired. She had managed the program since its inception. In an effort to maximize limited financial resources, a re-organization took place and the Deputy Commissioner also accepted the role of IOSH Administrator. To fill the Program Manager Public Consultation/Training and Education position the position was changed to a PSE2 position and was filled with the current Lead Worker senior industrial hygienist. The Commissioner elected to not refill the vacated Lead Worker position.

In FY 2009 Iowa OSHA filled several inspector positions for both Safety and Health Consultants and Senior Industrial Hygienists. The vacancies were created by transfers between Consultation and Education, Enforcement and Contractor Registration. An Industrial Hygienist and an Enforcement Safety and Health Consultant left for outside employment and it took approximately four (4) months to fill those vacancies.

Due to state budget shortfalls, the Governor considered mass layoffs. He offered concessions to the two unions representing employees working at Iowa OSHA. Safety and administrative personnel are represented by the American Federation of State County and Municipal Employees (AFSCME). AFSCME voted and employees agreed to accept the concession which has resulted in those employees being required to take five (5) Mandatory Unpaid Days (MUD) between November 30, 2009 and June 30, 2010. The Industrial Hygienists working at Iowa OSHA are represented by the Iowa United

Professional Union (IUP) and they voted to not accept the concessions offered. A consequence of not accepting the concessions was fifty-five (55) state employees represented by IUP were laid off; however, no Iowa OSHA Industrial Hygienists were affected by the layoff. In addition, management employees are required to take seven (7) furlough days between November 30, 2009 and June 30, 2010. Furloughs are staggered which allows Iowa OSHA to provide safety and health protections to workers in Iowa. Additionally, salary increases and cost of living increases have been frozen for non-contract employees through the state FY 2011.

For FY 2009, Iowa's total 23(g) grant expenditures were \$4,296,448.84 which included federal/state matching funds of \$1,608,900 and state overmatch funds of \$1,078,648.84. One time funds under the American Recovery and Reinvestment Act (ARRA) of 2009 were offered to the states; however, Iowa OSHA chose not to accept those funds. Iowa still supports ARRA activities by conducting inspections in facilities that affect ARRA activities. Iowa OSHA conducted one hundred and eighty (180) ARRA inspections between May 8, 2009 and September 30, 2009. These activities resulted in 2,159 hours used to support ARRA activities.

Each year Iowa OSHA partners with South Central Iowa Federation, AFL-CIO to honor those killed at work. In 2009, twenty-nine (29) workers were honored in a Worker Memorial Day ceremony including twenty-seven (27) workers who were killed in accidents which were outside Iowa OSHA's jurisdiction. There were twenty-nine (29) workplace fatalities investigated by Iowa OSHA. The Carpenter's Local #106 manufactures wooden crosses that signify the death of each worker which are displayed on the East lawn of the IWD building. Included with the crosses are name placards with each worker's name, age and town of residence at the time of their death. The American Federation of Musicians Union Local #75 provides a musician who plays Amazing Grace on the bag pipes. The Des Moines Police Department and the Des Moines Fire Department's honor guard presents colors, honors the fallen workers with a 21 gun salute and plays taps to conclude the ceremony. The United Steel Workers Local #310 provides tables, chairs and volunteers for the ceremony. Wellmark Blue Cross and Blue Shield of Iowa assists with providing lunches for the ceremony attendees. In addition, each family is given a handmade metal cross made by the Iron Workers Local #67 and a writing written by the International Safety Representative of the United Steel Workers union is inserted into the box with the cross. Each family is also presented with a glass paperweight with the April 28th date inscribed; these paperweights are provided by the Iron Workers Local #3450. The Governor presents the cross, paperweight and a copy of the proclamation for Worker Memorial Day.

Iowa recognizes lost lives each quarter in the Commissioner's newsletter. On the front of the newsletter they express their condolences to the families of workers who were killed that quarter. Other highlights of the newsletter are a message from the commissioner, counties where consultations and enforcement inspections took place, Voluntary Protection Program (VPP) ceremonies, recent wage related cases and anything else of high profile for IWD.

The Division of Labor Services has three (3) fluent Spanish speaking staff members. One staff member works for Public Consultation/Training and Education and the other individual works for Iowa OSHA enforcement. These individuals continue to reach out to the Latino immigrant population in Iowa. They also provide translation assistance when employees file complaints or non-Spanish speaking compliance officers need assistance communicating with the Latino workers on the jobsite.

It is the policy of Iowa OSHA to adopt all federal OSHA standards identically, with the exception of maritime standards. Maritime standards are not adopted because Federal OSHA has jurisdiction for all maritime activities in the state.

The State of Iowa Industry Distribution through September 2008, noted the Iowa OSHA program has jurisdiction over a total workforce of 1,492,426 employees (234,990 in the public sector) working for approximately 94,044 employers. Of these, approximately 87,999 employers are in the private sector and 6,046 are public sector employers. Public sector employees continue to be granted the same protections afforded employees in the private sector. Public and private sector employers are covered by the consultation programs in the state. Public sector consultation is funded through the 23(g) grant and private sector consultation is funded through the 21(d) On-site Consultation Cooperative Agreement.

Iowa OSHA is an integral part of Region VII. Iowa OSHA actively participates in the weekly conference calls with all Region VII offices. Their participation has improved communication and enhanced the sharing of pertinent safety and health information. Iowa OSHA also meets quarterly with Des Moines Area Office Staff and Regional Office staff to discuss Iowa OSHA's performance and goals. The Commissioner of Labor serves as the President of the National Association of Government Labor Officials. The Commissioner and the Deputy Commissioner have attended two OSHSPA meetings in FY 2010.

The Iowa OSHA program functions similarly to federal OSHA. They conduct programmed inspection from the University of Tennessee listings for Construction, Site Specific Targeting lists, and local emphasis inspection lists. Most federal OSHA Instructions are adopted identically, some with minor modifications. Instructions that are adopted with changes or state created instructions are posted on the Iowa OSHA webpage <http://www.iowaworkforce.org/labor/iosh/>. Iowa OSHA has one compliance assistance specialist who focuses on alliances and partnerships. IOSH Consultation and Education handles public 23(g) and private 21(d) consultation in addition to providing training and education services to employers and employees of Iowa.

III. Summary of Recommendations and State Actions from the FY 2008 FAME

FY 2008 Recommendation 1: Develop a process where cases are evaluated to ensure abatement is received in a timely fashion. Review the Iowa OSHA verification of abatement procedures to ensure abatements are received.

Iowa OSHA Response: IOSHA administrative support staff run the standard reports on the NCR for past due abatements. Two (2) of the reports showed ending dates of August 2008 so they never produced current data. This report is then given to the phone & fax industrial hygienist. The PSE2s and the CSHO lead worker provide back-up help for the phone & fax industrial hygienist as necessary.

The phone & fax industrial hygienist either reviews the abatement submitted or asks for back-up help. The phone & fax industrial hygienist, PSE2s and lead worker CSHO call employers if necessary for additional information for all citations have been verified the case file is returned to the IOSHA administrative support staff so that the IMIS may be updated to show abatement verified.

While this has been a problem in the past the IOSHA Administrator now feels that this improved internal process will avoid future lapses in abatement verification.

FY 2009 Findings: Reports are evaluated on a monthly basis and case files are manually pulled to determine what actions need to be taken. The IMIS reports are not effectively utilized to ensure timely abatement. This is a repeat recommendation in FY 2009.

FY 2008 Recommendation 2 & 3: (Repeat) Review programmed safety and health inspection information to ensure that targeting measures are focusing resources where serious hazards are occurring and take appropriate action to positively impact this measure. One area for consideration would be construction inspections and how OSHA 1s are entered for those activities. Review asbestos inspection activities.

Iowa OSHA Response: There is a new safety LEP that target employers in Iowa's high hazard industries. These LEPs have only become active in the last year. The current LEPs include amputations, and a construction program that targets construction employers based on zip code location. Both these LEPs are allowing Iowa's CSHOs to inspect worksites where serious hazards may occur. The inspection reports show that the current inspection assignments are far more effective than in the past.

Also IOSHA is handling inspections with multi-employer work sites differently now so that type of inspection does not generate a large number of OSHA 1's that are not associated with hazards.

In FY 2009, Iowa OSHA implemented a new LEP for hexavalent chromium. Iowa OSHA is also participating in the combustible dust and silica NEPs. Inspection reports also show that the current inspection assignments are far more effective than in the past.

IOSHA has expanded asbestos NEP inspections to include an additional industrial hygienist with extensive construction experience. Both the field inspectors working on asbestos projects are focusing on ensuring that employers on all these sites provide adequate respiratory protection, employee medical evaluation and have current safety and health programs to support these activities. This has increased the number of serious hazards identified during this type of inspection activity.

FY 2009 Findings: Iowa made changes to their targeting mechanisms for construction and asbestos inspections. In addition they developed two new LEPs which focus on hexavalent chromium and construction hazards. Based on the improvements shown in these areas, no recommendation for health targeting is included for this report. A recommendation for safety targeting is included in the report.

IV. Major New Issues

The State of Iowa is facing financial challenges which are impacting the Iowa OSHA program. Initially the Governor called for a ten percent (10%) budget cut. Iowa OSHA was able to make some changes staffing reassignments which save the program money and would allow them to meet the Governor's requirements. In the fall of 2009 the Governor needed to make budget cuts and he required all non-contract employees to take seven (7) furlough days before June 30, 2010. Contract employees were offered the option of taking MUD days or employees would be laid off. Contract employees are taking five (5) MUD days before June 30, 2010.

Additional budget cuts are being implemented. Early retirement has been offered to employees and Iowa OSHA has been notified by some long time employees that they will be retiring on or before June 23, 2010. The Governor has also discussed state reorganization and it is unclear at this time how that could affect Iowa OSHA.

In January 2009 the IOSH Administrator retired. She had served as the IOSH Administrator since the beginning of the program in 1972. Upon her retirement the Consultation Program Manager/Deputy Commissioner of Labor was appointed to the position of IOSH Administrator/Deputy Commissioner of Labor.

In May 2009, Iowa OSHA issued a notice of imminent danger on a construction site in West Des Moines, Iowa. The notice was for three (3) contractors working on a three story wood frame apartment building. Workers were standing on exterior deck areas while framing. Employees were exposed to a fall hazard of approximately twenty-five (25) to thirty (30) feet. The roofing contractor and a subcontractor had been cited for fall protection prior to this inspection and willful and repeat citations were issued with penalties totaling \$88,000. This inspection resulted in the prime contractor terminating the company's contract and forming a partnership with Iowa OSHA to ensure safe working conditions for all subcontractors on this jobsite. The notice of imminent danger was lifted and safe work resumed with employees using appropriate fall protection.

Iowa OSHA issued citations with penalties in excess of \$80,000 to four employers in FY 2009. One employer received citations and penalties totaling \$357,000 due to a workplace fatality. Another employer received citations and penalties totaling \$225,000 due to a contractor accident which occurred on their site. Other citations and penalties were issued to employers for \$93,200 and \$88,800 from a follow-up and complaint inspection, respectively.

During FY 2009 the IOSH Instruction CPL 2.103 Iowa Field Inspection Reference Manual was in effect; however, Iowa OSHA submitted their new Field Operations Manual and it became effective on September 17, 2009. This report will indicate that activities were not in accordance with the FIRM, but recommendations will be for compliance with the IOSH FOM.

V. Assessment of State Performance

A. Assessment of State Progress in Achieving Annual Performance Goals

During FY 2009 Iowa OSHA was in the first year of its current five (5) year strategic plan.

Performance Goal 1: Increase the percentage of employers participating in Iowa OSHA outreach programs and increasing staff trained in compliance assistance skills by 2013.

Findings: Iowa OSHA used several activity measures to evaluate their progress toward Performance Goal 1. They planned to increase Voluntary Protection Program (VPP) participants by four (4), Safety and Health Recognition Program (SHARP) participants by two (2), partnership participants by one (1) and alliance participants by one (1). By accomplishing these activity measures they would have eight (8) new participants in cooperative programs. During FY 2009 Iowa OSHA added twenty (20) new participants to their cooperative programs exceeding this portion of their activity measures. They also planned to increase the number of outreach programs to Latino workers and youth workers by fifteen (15). Iowa OSHA presented 390 outreach programs to Latino and youth workers. Iowa OSHA accomplished 17,514 of the 21,000 projected one-on-one compliance assistance contacts.

No specific training related to compliance assistance was provided to Iowa staff. The State OSHA Annual Report (SOAR) indicates that Iowa OSHA plans to include a compliance assistance focus during field staff meetings during FFY 2010. Iowa Consultation and Education staff members attended at least one safety or health class at the OSHA Training Institute (OTI) to enhance their technical skills which will improve their ability to provide effective compliance assistance. Iowa OSHA and Iowa Consultation and Education participate in Webinars offered by Federal OSHA. Iowa OSHA also coordinated with OTI and offered the OSHA #3010 Excavation, Trenching and Soil Mechanics course to the enforcement, consultation and education staff.

Performance Goal 2: Secure public confidence through excellence in the development and delivery of Iowa OSHA programs and services.

Findings: The Performance Goal 2 is a product of the 5-year Outcome Goal of the Strategic Plan. Performance Goal 2 has been in the Iowa OSHA strategic plan since FY 2004. The Outcome goal states, "Improve Iowa business participation in IOSHA cooperative programs and staff professional and technical development by 2013."

Iowa OSHA is using eight (8) performance measures to assess their progress toward the accomplishment of Performance Goal 2. They planned to increase compliance assistance outcomes by one (1), increase direct safety intervention outcomes by one (1) and increase health intervention outcomes by one (1). The only performance measure met of these three measures was compliance assistance outcomes. Additional measures included increasing safety local emphasis programs (LEPs) by one (1) and health LEPs by one (1). Both of these measures were met. They implemented a safety LEP for the construction industry and a health LEP to target industries where employees could be exposed to hexavalent chromium. The final measures for this performance goal are increase the number of internal and external public relations analysis projects by one (1) and also track the number of IOSHA staff participating and number of other employees attending. Neither of these measures were accomplished.

The Iowa OSHA leadership team participates in the Region VII weekly conference calls and conducts their own leadership meeting each Monday after the call. Participation in the Region VII weekly conference calls ensures that Iowa OSHA receives the same guidance and information as all other Region VII OSHA offices and helps ensure consistency across the Region.

The Iowa OSHA leadership team has quarterly meetings with the Safety and Industrial Hygiene staff and discussed hazards, current IOSH policy and areas where program improvements need to be made. Iowa OSHA also participates in OSHA webinars and brings OTI courses to Iowa if possible. They also fund independent classes to obtain cost effective training for their employees.

Iowa OSHA issued an imminent danger notice to a contractor in West Des Moines, Iowa who had employees exposed to fall hazards. After the issuance of the imminent danger notice, issuance of citations and completion of the enforcement case, the company entered into a partnership with Iowa OSHA in an effort to improve their overall safety and health program and reduce injuries and illnesses on the job site. The partnership has not been in effect for twelve (12) months so no injury and illness data has been reported.

Iowa OSHA's The Iowa OSHA program adopted OSHA Instruction TED 01-00-018 and the IOSH Instruction IA/TED 01-00-018 states, "Iowa OSHA will make every attempt to ensure that money is budgeted and available or that the courses will be scheduled in Iowa for new hires to complete the required training during their first three years as CSHOs." The IOSH Instruction also states, "Monitoring the CSHO's progress through the first three-year period is critical to ensure the success of the training program."

Performance Goal 3: Reduce injuries, illnesses and fatalities by five percent (5%) by 2013.

Findings: Iowa OSHA is utilizing nine (9) enforcement performance measures to evaluate achievement of Performance Goal 3. FY 2007 data is used as the baseline for all performance measures. Iowa OSHA had a baseline number of inspections of 736 and planned to increase this number by 420 inspections which would result in 1,156

inspections. Iowa OSHA conducted 1,013 inspections which was 143 inspections short of their goal. Iowa OSHA also planned to increase the number of hazards abated from 1,215 to 1,895. The program exceeded their goal by abating 2,190 hazards. The performance measure for recognition programs indicated Iowa OSHA planned to increase VPP sites by four (4) and SHARP sites by two (2). Three (3) companies acquired VPP status and two (2) companies entered the SHARP program.

In FY 2009, Iowa OSHA planned to reduce the total number of fatalities by three percent (3%), general industry fatalities by one and one half percent (1.5%) and construction fatalities by one and one half percent (1.5%). Iowa experienced twenty-one (21) workplace fatalities in FY 2009 compared to twenty-two (22) fatalities in FY 2007, resulting in a reduction of four and half percent (4.5%). There were fourteen (14) general industry fatalities compared to fifteen (15) fatalities in FY 2007, resulting in a reduction of 6.7%. There were seven (7) construction fatalities in FY 2007 and FY 2009 so there was no reduction in construction fatalities.

Non-fatal injury and illness rates are used to evaluate the accomplishment of Performance Goal 3. The outcome measures were to reduce total recordable cases (TRC) for all industries in Iowa by 3%, reduce the TRC for general industry by 1.5% and reduce the TRC for construction by 1.5%. The TRC for Iowa was 5.9 in FY 2007 compared to 5.0 in FY 2008, resulting in a reduction of 15.3%. The TRC for general industry was 8.7 in FY 2007 compared to 6.8 in FY 2008, resulting in a reduction of 21.8%. The TRC for construction was 7.9 in FY 2007 compared to 6.0 in FY 2008, resulting in a reduction of 24%. FY 2008 is the most current injury and illness data available. There has been a reduction in injury and illness rates over the past seven years.

Iowa met the performance goal for FY 2009; however, fatality rates in Iowa have fluctuated over the past six (6) years without any consistent reduction. Without additional changes Iowa OSHA may not meet the five year strategic goal of reducing fatalities in Iowa by five percent (5%). Iowa has implemented a new LEP for construction, but no reduction in construction fatalities has been experienced since the implementation of the program. The fatality totals for the previous 10 years are included in the table below.

FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
11	19	15	14	22	24	21	26	22	30

Conclusions and Recommendations:

1. Conclusion: Iowa periodically sees a reduction in fatalities but the average number of fatalities for the past eleven (11) years is twenty (20). Seven (7) of the past eleven (11) years (64%) have experienced more than twenty (20) fatalities. Beginning in FY 2003 every year experienced more than 20 workplace fatalities.

1. Recommendation: Review the previous ten (10) years of fatality data and compare this to the fatality rates for construction and general industry. After the evaluation,

develop enforcement and compliance assistance programs to target industries or hazards associated with the fatalities which have occurred during the previous ten (10) years.

B. Assessment of State Performance on Mandated and Other Related Activities.

Enforcement

Complaints:

Iowa OSHA adopted OSHA Instruction CPL 02-00-115, Complaint Policies and Procedures; however, it was not adopted identically. The modifications are contained in IOSH Instruction CPL 02-00-115, Complaint Policies and Procedures dated 5/11/2006. Iowa OSHA's complaint procedures are being modified to include information for electronic complaints and the handling of non-formal complaints to more closely match Federal OSHA policies.

Iowa OSHA has one (1) dedicated employee who receives all complaint calls, collects complaint information from the callers and processes the complaints. If the complaint is to be inspected the complaint officer will notify the PSE2s and an inspection will be scheduled. If the complaint is to be handled by phone and fax the complaint officer prepares the complaint, faxes it to the employer, receives the abatement information, evaluates the abatement information and updates the IMIS system accordingly. For complaints that are to be formalized, the complaint officer provides the complaint information to the administrative staff and the complaint is mailed to the complainant for signature.

Findings: During FY 2009 Iowa OSHA received 359 complaints. Of the 359 complaints 102 (28%) were formalized and handled by inspection. There were 257 complaints which were initially handled by phone and fax investigations, however, four (4) of those were ultimately handled by inspection. Ninety-nine percent (99%) of the complaints were closed in the system.

Four (4) of the ten (10) phone and fax files reviewed indicated that adequate abatement was received and the complaints were closed. In one (1) case the company indicated they would conduct air monitoring to address the complainant concerns and the complaint was closed prior to receiving the sampling results. In another instance, abatement for one complaint item, overloaded electrical outlets, was never received or requested after the initial abatement information was submitted. A third complaint alleged employees were over exposed to carbon monoxide. The company conducted an investigation and indicated that employees would be alerted to identify confined space(s)/air movement/ventilation requirements, but there was no signed training sheet indicating the employees were trained. The last complaint was for lack of guarding on presses and other machines. The company alleged that they were in compliance with the power press directive for small quantity runs; however, there was no documentation in the file to validate the small quantity run. IOSH Instruction CPL 02-00-115 Section I.5. states, "An

adequate response to a complaint letter is one in which the employer provides sufficient documentation to show the abatement of the alleged hazard and/or the lack of a hazard.”

There were eleven (11) formal complaint inspection files reviewed and two (2) inspection files from non-formal complaints that resulted in inspections. Of the thirteen (13) inspections six (6) of the inspections were safety inspections and seven (7) inspections were health inspections.

Iowa OSHA is currently in the process of updating their complaint procedures while updating their FOM. Once the complaint section of the FOM is updated employees will be trained on the proper complaint procedures during the quarterly CSHO/IH meeting.

State Activity Mandated Measure (SAMM) 1: Average number of days to initiate complaint inspections [Goal five (5) days]

Findings: Iowa OSHA utilizes one employee to serve as the complaint officer. This individual receives all question and complaint calls. The complaint officer takes the complaint information, enters the information into the Integrated Management Information System (IMIS), and gives the complaint to the PSE2 for assignment. The average number of days to initiate a complaint inspection during FY 2009 was three (3) days. One hundred percent (100%) of the complaint inspections were initiated within five (5) days, compared to 91.7% of Federal OSHA complaint inspections being initiated within five (5) days.

SAMM 2: Average number of days to initiate complaint investigations [Goal one (1) day]

Findings: As stated in Measure 1 Iowa OSHA utilizes a complaint officer to take all complaint calls. For complaints that will be handled by investigation the complaint officer takes the complaint, enters the information into the IMIS system, contacts the employer and faxes a copy of the complaint to the employer, receives and evaluates the abatement information from the employer, and updates the IMIS. The average number of days to initiate a complaint investigation for FY 2009 was less than one (1) day. One-hundred percent (100%) of the phone and fax investigations were initiated within one (1) day, compared to 96.4% of Federal OSHA complaint investigations being initiated within one (1) day.

SAMM 3: Percent of complaints where complainants were notified on time (Reference/Standard 100%)

Findings: Of the one hundred and two (102) formal complaints received the State Activity Mandated Measures (SAMM) report dated October 23, 2009, showed eighty-one (81) of the eighty-two (82) complainants (98.8%) were sent notification letters within the established timeframe. The Complaints Received Report dated January 7, 2010 showed eighteen (18) of one hundred and two (102) complainants did not receive notification letters notifying them of the complaint inspection findings. IOSH Instruction CPL 02-00-115 section H.4. states, “After an inspection, the complainant will be sent a letter along

with a copy of any citation or an explanation indicating that the findings did not result in a violation.”

SAMM 4: Percent of Complaints and Referrals responded to within 1 day – Imminent Danger (Reference/Standard 0)

Findings: The SAMM report shows that eight (8) of eight (8) or 100% of the imminent danger complaints were responded to within one (1) day.

Conclusions and Recommendations:

2. Conclusion: Iowa OSHA did not ensure that adequate abatement was received for all phone and fax investigations.

2. Recommendation: Review with employees, who review abatements for phone and fax complaints, the FOM and what is considered adequate abatement.

Fatalities:

There were twenty-one (21) workplace fatality investigations which occurred during FY 2009. Iowa OSHA plans to initiate 95% of the fatality investigations within one (1) day. Iowa OSHA’s fatality policies are identical to Federal OSHA policies.

Findings: Thirteen (13) of the twenty-one (21) case files (1 health, 21 safety) were reviewed during this baseline evaluation. Ninety-four percent (94%) of the Iowa OSHA fatality investigations were initiated within one (1) day. Ninety-six percent (96%) of the Federal OSHA fatality investigation were initiated within one (1) day.

Twelve (12) of the twenty-one (21) fatality files (57%) are coded with the “N 10 IMMLANG” IMIS code in optional information. Based on employee and management interviews all employees were not aware or unclear of the requirement to enter “N 10 IMMLANG” code in the optional information section in the IMIS system.

Of the twenty-one (21) fatality investigations conducted in Iowa, three (3) were found to be in-compliance (14%) with no citations issued. Iowa issued 3.6 violations per inspection on fatality investigations with 71% of the violations classified as Serious/Willful/Repeat.

Section B.2.c of the Iowa Field Inspection Reference Manual (FIRM) states, “The standard information letters should be sent by the Office to the family member(s) or the person(s) indicated on the victims’ employment records within 5 working days of the time their identities have been established.” The FIRM also states, “The victim’s family members shall be provided a copy of all citations issued as a result of the accident investigation within 5 working days of issuance.”

One (1) of the thirteen (13) fatality files reviewed did not include an initial notification letter to the family. Three (3) initial notification letters were sent within the required five (5) day timeframe and nine (9) files included initial notification letters with time frames ranging from ten (10) days to thirty (30) days.

Nine (9) of the thirteen (13) fatality files reviewed contained no letters transmitting copies of the citations to the victim's families. Four (4) of the thirteen (13) fatality files reviewed, contained letters transmitting copies of the citations to the victim's families. All letters were mailed to the victim's family within the five (5) day timeframe.

Conclusions and Recommendations:

3. Conclusion: The IMMLANG policy is not consistently followed.

3. Recommendation: Review the IMMLANG policy with all employees and ensure that information is entered into the IMIS system.

4. Conclusion: Families of victims are not always contacted when a fatality investigation is initiated, citations are issued, a settlement conference is held or when the case is closed. There is limited additional communication with family members once the investigation has begun.

4. Recommendation: Communication with families should be initiated when the investigation begins, when citations are issued, when informal settlement agreements are signed, when the case is contested and when the case is closed. Additionally, a tracking system should be developed and implemented to help ensure that required correspondence is sent to families of victims.

Targeting/Inspections

Iowa OSHA utilizes LEPs, NEPs, the Site Specific Targeting list and the University of Tennessee construction lists for targeting mechanisms. The current active LEPs in Iowa are IA/LEP 4 Inspection Targeting System to Reduce Injuries and Deaths on Worksite in the Construction Industry; IA/LEP 1 Inspection Targeting System to Reduce Injuries and Deaths Resulting From Falls in the Construction Industry; IA/LEP 3 Local Emphasis Program for Hexavalent Chromium in General Industry and Construction and IA/LEP 2 Local Emphasis Program on Amputations. Iowa OSHA is participating in the Combustible Dust and Silica NEPs.

During the development of the IA/LEP 4, Iowa reviewed fatality data between 1995 and 2004. This LEP was implemented March 16, 2009. Approximately fifty percent (50%) of the fatalities were occurring in businesses with 10 or fewer employees. Their data analysis also indicated that eighty-eight percent (88%) of the construction fatalities were occurring in less populated areas. Iowa OSHA is using census data to locate geographical area with a combined population of 3,200 or greater, then the towns are

randomized by zipcode and then inspections are scheduled in the area. This program has resulted in forty-four (44) inspections with 1.1 violations per inspection. Of the violations issued eighty-five percent (85%) were classified as Serious/Repeat. Forty-four percent (44%) of the inspections conducted were found to be in-compliance with no citations issued. After settlement, seventy-five percent (75%) of the violations were classified as serious, nine percent (9%) of the serious violations were reclassified as other-than-serious and the penalties were reduced by forty-nine percent (49%).

IA/LEP 1 was revised on September 4, 2008. This construction LEP focuses on scaffolds, elevated work surfaces including walkways and platforms. This program has resulted in 364 inspections with 2.3 violations per inspection issued. Of the violations issued eighty-four percent (84%) of the violations were classified as Serious/Willful/Repeat. After settlement there were 2.2 violations per inspections with sixty-eight percent (68%) of those violations classified as Serious/Willful/Repeat. Fifteen percent (15%) of the employers were offered Expedited Informal Settlement Agreements (EISA). The LEP states, "EISAs will not be offered for fall or scaffold high gravity serious." Thirteen percent (13%) of the cases had high gravity serious violations that were grouped with all paragraphs cited in a particular standard. Some were grouped with all standards that were in the subparagraph being cited. This grouping policy is not in accordance with the IOSH FIRM or IA/LEP 1. IA/LEP 1 states, "In most cases, any serious, high gravity violations will not be grouped for inspections conducted under this initiative. Severity assessments will be conducted in accordance with the FIRM."

IA/LEP 3 was implemented on February 24, 2009. This program affects worksites where exposures to hexavalent chromium are likely due to the work tasks performed. This LEP resulted in twenty-four (24) inspections with 3.3 violations per inspection. Of the violations issued ninety-eight percent (98%) were issued as Serious/Willful/Repeat. Forty-six percent (46%) of the inspections were in compliance. After settlement of the cases there were 3.2 violations per inspection with ninety-two percent (92%) of the violations classified as Serious/Willful/Repeat with penalties reduced twenty-three percent (23%). As part of this LEP Consultation and Education conducted outreach activities to employers who might have employees exposed to hexavalent chromium during the performance of their work.

IA/LEP 2 was revised on April 3, 2009. This program applies to general industry workplaces in specified Standard Industrial Classification (SIC) codes where any machinery and equipment are present that are likely to cause amputations. This program resulted in 209 inspections with 3.4 violations per inspection. Eighty percent (80%) of the violations issued were classified as Serious. After settlement there were 2.5 violations per inspection with seventy-four percent (74%) of the violations classified as serious. Six percent (6%) of the inspections coded as LEP "AMPUTATE" did not include the NEP code "AMPUTATE". Twenty-two percent (22%) of the LEP inspections did not include the Strategic Code of "AMPUTATE". The IMIS report for NEP "AMPUTATE" reports 222 inspections attempted and the report for LEP "AMPUTATE" reports 226 inspections attempted.

SAMM 10: Percent of programmed inspections with Serious/Willful/Repeat violations (Safety) (Reference/Standard 58.6%)

Findings: The SAMM report shows that 53.4% of the programmed safety inspections are resulting in Serious/Willful/Repeat violations.

SAMM 11: Percent of programmed inspections with Serious/Willful/Repeat violations (Health) (Reference/Standard 51.2%)

Findings: The SAMM report shows that 62.5% of the programmed health inspections are resulting in Serious/Willful/Repeat violations.

SIR Measure 1a: Private Sector Enforcement – Percent of Programmed Inspections - Safety.

Findings: During FY 2009 73.8% of Iowa OSHA's inspections were programmed safety inspections compared to 66.8% for Federal OSHA.

SIR Measure 1b: Private Sector Enforcement – Percent of Programmed Inspections – Health.

Findings: During FY 2009 50.0% of Iowa OSHA's inspections were programmed health inspections compared to 35.3% for Federal OSHA.

SIR Measure 2a: Private Sector Enforcement – Percent of Programmed Inspections with Violations – Safety.

Findings: During FY 2009 52.9% of Iowa OSHA's programmed safety inspections resulted in violations compared to 65.8% for Federal OSHA.

SIR Measure 2b: Private Sector Enforcement – Percent of Programmed Inspections with Violations – Health.

Findings: During FY 2009 52.7% of Iowa OSHA's programmed health inspections resulted in violations compared to 51.7% for Federal OSHA.

SIR Measure 3a: Private Sector Enforcement – Percent of Serious Violations - Safety.

Findings: During FY 2009 Iowa OSHA issued 67.4% of their violations as serious on safety inspections compared to 80% for Federal OSHA.

SIR Measure 3b: Private Sector Enforcement – Percent of Serious Violations – Health.

Findings: During FY 2009 Iowa OSHA issued 56.1% of their violations as serious on health inspections compared to 69.7% for Federal OSHA

Conclusions and Recommendations:

5. Conclusion: LEP and NEP inspections were not coded properly in the IMIS system.

5. Recommendation: Provide refresher training to all employees on LEP and NEP program and IMIS requirements.

6. Conclusion: Excessive and inappropriate grouping issues were identified.

6. Recommendation: Iowa OSHA must review its current citation grouping policies and procedures and issue citations in accordance with its FOM.

7. Conclusion: Fifty-three percent (53%) of the programmed safety inspections resulted in Serious/Willful/Repeat violations.

7. Recommendation: (Repeat) Iowa OSHA must evaluate its safety targeting system and make modification to ensure that its limited resources are inspecting locations where serious hazards are present. Iowa OSHA must also ensure that violations are being classified in accordance with the FOM and other policy directives.

Employee and Union Involvement

Findings: Iowa OSHA has clear guidance in their FIRM regarding union involvement during the inspection process. Of the forty-four (44) case files reviewed, twelve (12) files indicated employees were represented by a union. Union representatives were present for all informal conferences or were notified and chose not to attend. One union signed an informal settlement agreement along with Iowa OSHA and the employer.

General Inspection Information

Findings: Overall forty-four (44) inspection cases were reviewed. The case files were a wide variety of inspection types to include fatalities, complaints, referrals, programmed, programmed related and unprogrammed related inspections.

Case files reviewed contained very good narrative descriptions including opening, walk-around, closing, permission to inspect granted by whom, union information, description of hazards observed, etc. The photos sheets were also very good in that they were clear, identified the hazard and some CSHO's utilize arrows in the photos that point to the hazard observed for the ease of the reviewer.

Fourteen (14) of the forty-four (44) case files (32%) included documented hazards that were not addressed as citations or hazard alert letters. Some examples of the hazards identified included fall hazards due to the lack of fall protection, struck by forklift

hazards, struck by hazards due to lack of reflective vests or spotters, and a fall hazard due to a ladder being used improperly.

Twenty (20) of forty-four (44) case files (45%) did not contain adequate employer knowledge to establish a prima facie case. Two examples used for employer knowledge were: The employer knows about the OSHA website www.osha.gov and reasonable diligence.

Iowa OSHA's inspection files contained extremely detailed narratives that clearly stated what took place during the inspection. In addition, the documentation contained in the case files for some violations cited included photographs of the violation that were clear and had very descriptive explanations.

Twelve (12) stakeholders from employer associations, minority employer associations, labor organizations, public employer associations and public employee labor organizations were contacted to identify their views on Iowa OSHA's performance. Of the twelve (12) contact nine (9) were available to provide feedback. Some stakeholders had little or no interaction with Iowa OSHA but were interested in the program. Other stakeholders felt that the program was a good program and they do a good job with inspections. Four (4) of the nine (9) stakeholders indicated that Iowa OSHA needed more inspectors to ensure that all jobsites were visited more frequently.

SAMM 5: Number of Denials where entry was not obtained (Reference/Standard 0)

Findings: The SAMM report indicates there were no denials of entry where entry was not obtained. Thirty-nine (39) employers exercised their right to the compulsory process and Iowa OSHA obtained warrants in all cases to conduct those inspections.

SIR Measure 6a: Private Sector Enforcement – Safety Inspections Per 100 Hours

Findings: In FY 2009 Iowa OSHA conducted 5.7 safety inspections per 100 hours compared to Federal OSHA's 5.5 safety inspections per 100 hours.

SIR Measure 6b: Private Sector Enforcement – Health Inspections Per 100 Hours

Findings: In FY 2009 Iowa OSHA conducted 1.5 health inspections per 100 hours compared to Federal OSHA's 1.6 health inspections per 100 hours.

Conclusions and Recommendations:

8. Conclusion: All hazards identified in the case file were not addressed as citations or hazard alert letters.

8. Recommendation: All hazards identified during inspections must be addressed. Case files must be reviewed more thoroughly including review of photographs for hazards not identified or addressed by CSHOs.

9. Conclusion: Employees are unclear what constitutes employer knowledge to document a prima facie case.

9. Recommendation: Iowa OSHA must work with the legal staff to provide training to employees to ensure violations are supportable and have all elements for a prima facie case.

Citations and Penalties

Findings: Fourteen (14) of forty-four (44) cases (32%) included severity justifications that did not match the severity assigned to the citation. This directly affects the penalty assessed for citations.

SAMM 8: Average number of calendar days from opening conference to citation issuance (Safety) (Reference/Standard 43.8 days)

Findings: The SAMM report shows that the average number of days as 29.2 compared to the Reference/Standard of 43.8.

SAMM 9: Average number of calendar days from opening conference to citation issuance (Health) (Reference/Standard 57.4 days)

Findings: The SAMM report shows that the average number of days as 35.9 compared to the Reference Standard of 57.4.

SAMM 12: Average violations per inspection with violations (Serious/Willful/Repeat) (Reference/Standard 2.1)

Findings: The SAMM report shows this measure for FY 2009 as 2.4 which is better than the Reference/Standard.

SAMM 13: Average violations per inspection (Other) (Reference/Standard 1.2)

Findings: The SAMM report shows this measure as .74 for FY 2009.

SAMM 14: Average initial penalty per serious violation (Private Sector Only) (Reference/Standard \$1335.20)

Findings: Iowa OSHA's average initial penalty per serious violation is higher than the Reference/Standard. The average initial penalty per serious violation for FY 2009 was \$1412.35.

SIR Measure 5a: Private Sector Enforcement – Average Penalty for Safety Other-Than-Serious Violations

Findings: During FY 2009 Iowa OSHA issued an average penalty of \$576.00 for safety other-than-serious violations compared to Federal OSHA's penalty of \$1030.70.

SIR Measure 5b: Private Sector Enforcement – Average Penalty for Health Other-Than-Serious Violations

Findings: During FY 2009 Iowa OSHA issued an average penalty of \$786.50 for safety other-than-serious violations compared to Federal OSHA's penalty of \$855.30.

Conclusions and Recommendations:

10. Conclusion: Severity assessments are inaccurate which results in incorrect penalty assessments. Other than serious violations had injuries and illnesses described as eye injuries and hearing loss which should have been classified as serious. In addition machine guarding and fall protection violations were classified as other-than-serious and should have been classified as serious.

10. Recommendation: Iowa OSHA must review the FOM requirements for severity assessments with employees and ensure that severity assessments are evaluated during case file reviews conducted by PSE2s.

Abatement

Findings: A review of the Open Inspection Report identified fifty-five (55) of 242 cases (23%) with abatement past due more than 30 days. Two (2) cases were more than six (6) months past due. The internal Iowa OSHA report showing that abatement letters were sent only lists five (5) employers with abatement dates between July 2009 and November 2009. Iowa Code 875 – 3.19 states, “Within ten calendar days after the abatement date, the employer must certify to the division that each cited violation has been abated, except as provided in paragraph “b” of this subrule.” Abatement certification is not required if the CSHO observes the abatement.

Iowa OSHA conducted five (5) follow-up inspections during FY 2009. There are fifty-five (55) cases on the Open Inspection Report with past due abatements which is twenty-three percent (23%) of all open cases. Eighty percent (80%) of the follow-up inspections conducted were in-compliance with no violations issued.

SAMM 6: Percent of Serious/Willful/Repeat violations verified (Private)
(Reference/Standard 100%)

Findings: The SAMM report shows that 94% of the abatement for Serious/Willful/Repeat violations was verified. Due to some computer errors, manual corrections to the report have been made and the actual percentage of Serious/Willful/Repeat violations with abatement verified is 96%. Information on

violations which do not have abatement verified is provided to Iowa OSHA by Federal OSHA each month.

SIR Measure 4a: Private Sector Enforcement – Abatement Period for Safety Violations Percent Greater than 30 Days.

Findings: During FY 2009 Iowa OSHA afforded employers more than 30 days to abate the safety hazards 34.4% of the time. Federal OSHA afforded employers greater than 30 days to abate safety hazards 17.6% of the time. The IOSH FIRM IACPL 2.103 Section 8. Chapter IV. A. 2. states, “Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. When an initial date is granted that is in excess of 30 calendar days, the reason, if not self-evident, shall be documented in the case file.”

SIR Measure 4b: Private Sector Enforcement – Abatement Period for Health Violations Percent Greater than 60 Days.

Findings: During FY 2009 Iowa OSHA afforded employers more than 60 days to abate the health hazards 11.9% of the time. Federal OSHA afforded employers greater than 60 days to abate health hazards 10% of the time.

Conclusions and Recommendations:

11. Conclusion: The Open Inspection Report is not effectively utilized to track cases with incomplete abatement with twenty-three percent (23%) of the cases having abatement more than thirty (30) days past due.

11. Recommendation: Iowa OSHA must develop a procedure to analyze the Open Inspection Report, identify cases with past due abatement and obtain timely abatement.

12. Conclusion: Abatement dates are not assigned in accordance with the FIRM

12. Recommendation: Provide training to employees on the current FOM and other adopted directives to ensure that abatement dates are assigned in accordance with current policy.

13. Conclusion: Iowa OSHA does not conduct follow-up inspections when they are indicated.

13. Recommendations: Iowa OSHA must evaluate the Candidates for Follow-Up Inspection Report to identify inspections without adequate abatement and where follow-up inspections could be conducted.

Review procedures

A comprehensive review of information for informal conferences and formal settlements can be found below. In FY 2009, the total percent of penalty reduction for Iowa OSHA was 55.9% compared to Federal OSHA's 43.7%.

Informal Conferences

Findings: Seventeen (17) of forty-four (44) cases (39%) participated in informal conferences with Iowa OSHA. The average penalty reduction during information conferences for the files reviewed was fifty-seven percent (57%). The informal conferences were held by all three PSE2s. The average penalty reductions offered by the PSE2s for settlement were twenty-one percent (45%), twenty-five percent (56%) and seventy-four percent (64%)

SIR Measure 7: Private Sector Enforcement – Percent of Violations Vacated.

Findings: In FY 2009 Iowa OSHA vacated 3.7% of the violations during settlement negotiations compared to Federal OSHA's percentage of 5.1%.

SIR Measure 8: Private Sector Enforcement – Percent of Violations Reclassified.

Findings: In FY 2009 Iowa OSHA reclassified 9.3% of the violations during settlement negotiations compared to Federal OSHA's percentage of 4.8%.

SIR Measure 9: Private Sector Enforcement – Percent of Penalty Retention.

Findings: During FY 2009 Iowa OSHA retained 49.1% of the penalty during settlement negotiations compared to Federal OSHA penalty retention of 63.2%. .

Formal review of citations (Iowa Employment Appeals Board)

Findings: The Iowa Employment Appeal Board (EAB) is a three person body, independent from Iowa Workforce Development. The EAB is made up of one member from management of a company, one person from labor and one independent public member. The EAB members are appointed by the Governor with conformation by the Senate for six (6) year staggered terms. The duties of the EAB are identified in Iowa Code 10A.601 (2009) under the Department of Inspections and Appeals. They choose to hear the cases or refer them to an Administrative Law Judge (ALJ).

ALJs can take as long as they want to hear a case; however there are several new ALJs and they now try to clear their docket within thirty (30) days. On average Iowa OSHA takes less than five (5) cases each year to trial.

The EAB posted on their website their fiscal year 2008 report. The report showed that the EAB received thirty-three (33) appeals of OSHA rulings and issued thirty-eight (38)

decisions. The report also shows that one (1) OSHA case appealed to the District Court was affirmed.

Copies of the EAB reports are available under the Public Records and Fair Information Practices. Under the Fair Information Practices, the public can request copies of records by submitting a written request to the EAB.

SAMM 16: Average lapse time from receipt of contest to first level decision (Reference/Standard 246.1 days)

Findings: The average lapse time from receipt of contest to the first level decision Iowa OSHA is 198.9 days. In FY 2009, two new Administrative Law Judges were assigned to Iowa OSHA cases and they are processing cases faster and have no backlog of cases.

SIR Measure 14: Review Procedures – Percent of Violations Vacated.

Findings: Of the contested cases in Iowa in FY 2009 16.9% of the violations were vacated compared to 23.4% of the violations vacated for Federal OSHA.

SIR Measure 15: Review Procedures – Percent of Violations Reclassified.

Findings: During formal settlement negotiations 20.4% of the violations in Iowa were reclassified, compared to 15.1% reclassified for Federal OSHA.

SIR Measure 16: Review Procedures – Percent Penalty Retention.

Findings: During formal settlement negotiations 53.2% of the penalty was retained in Iowa compared to 58.5% for Federal OSHA.

Public employee program

SAMM 7: Percent of Serious/Willful/Repeat verified (Public) (Reference/Standard 100%)

Findings: The SAMM report shows that 100% of the abatement for Serious/Willful/Repeat violations in public sector are verified.

SAMM 10: Public Sector Enforcement – Percent of Programmed Safety Inspections.

Findings: In FY 2009 30% of the public sector safety inspections were programmed inspections.

SAMM 11: Public Sector Enforcement – Percent of Programmed Health Inspections.

Findings: In FY 2009 there were zero programmed health inspections conducted in the public sector. Iowa OSHA has no targeting mechanism for programmed inspections in the public sector.

SAMM 12: Public Sector Enforcement – Percent of Serious Safety Violations.

Findings: During FY 2009 88.9% of the public sector safety violations were classified as serious.

SAMM 13: Public Sector Enforcement – Percent of Serious Health Violations.

Findings: During FY 2009 37.5% of the public sector health violations were classified as serious.

SAMM 15: Percent of total inspection in public sector (Reference/Standard 2.5)

Findings: In FY 2009 Iowa OSHA conducted twenty (20) inspections in the public sector which translates to 2.0% of all inspections were in the public sector.

Information management

Findings: A review of the local IMIS system was conducted during the evaluation. Some items reviewed included: standard reports, LEP tables, draft forms, etc.

A review of the LEP table identified LEPs that were not marked as inactive; however, the Iowa OSHA program was not using the programs or no one could identify the program.

One LEP that was no longer used was IOSH Instruction IA 99-3 SAFER WORKPLACES 2000 Intervention Program for Employers with High Injury and Illness Rates. No inspections were conducted under this LEP; however, the Local Emphasis Table in IMIS system still showed the LEP as active.

The LEP code “BLOOD” was being used to identify inspections where bloodborne pathogens were evaluated or exposure to blood or other potentially infectious material was possible. Twenty-four (24) cases were coded as “BLOOD” but there is not Iowa LEP for blood borne pathogens.

Another LEP being utilized by the compliance staff is “ASBESTOS”. Inspections are codes with the LEP code “ASBESTOS” if the inspection involved the evaluation of employee potential exposure to asbestos. Eight-seven (87) inspections were coded as “ASBESTOS”, yet no asbestos LEP is in effect for Iowa.

The weekly enforcement reports are set up to run automatically on Friday night and print on a local printer. The reports are retrieved by the administrative support staff on Monday morning. The weekly reports consist of: Cases with Citations Pending,

Complaint NonFormal Response, Referral Tracking and Unsatisfied Activity Report. It was noted during the evaluation that the ending report for two of the weekly reports was 8/25/08. This information was conveyed to Iowa OSHA while on site.

The IMIS debt collection report is not utilized by the Iowa OSHA staff. They do not assess penalties and administrative fees on the same schedule as Federal OSHA so the report is not beneficial to them. They have developed an excel spreadsheet to track debt collection. After the first debt collection letter is sent to the employer, if no response is received, the file is transferred to the legal staff for debt collection. The legal staff sends out a second debt collection letter. If there is still no response, they enter information into the Offset Program at Department of Revenue and Finance. This allows Iowa OSHA to collect tax refunds for payment of assessed penalties. Iowa OSHA also has the option of locating a company's bank account and garnishing the bank account.

Conclusions and Recommendations:

14. Conclusion: The LEP table included inactive LEP codes for use by employees.

14. Recommendation: Update the IMIS LEP tables to reflect active LEPs and ensure proper IMIS coding.

BLS Rates (Illness, injury and fatality)

Findings: Iowa's Total Case Rate (TRC) injury and illness rates for government sector employers decreased from 2003 through 2006, but experienced a large increase in 2007. The Days Away Restricted or Transferred (DART) rate for Iowa government sector employers fluctuated between 2003 and 2006 but was at its highest rate in 2007.

Government Sector					
	2003	2004	2005	2006	2007
TRC	6.1	6.1	5.9	5.4	9.3
DART	2.4	2.7	2.3	2.1	3.9

Iowa's TRC injury and illness rates for private sector employers decreased from 2003 through 2007. The DART rate for Iowa private sector employers decreased from 2003 through 2007.

Private Sector					
	2003	2004	2005	2006	2007
IOWA TRC	6.7	6.4	6.5	6.0	5.5
NATL TRC	5.0	4.8	4.6	4.4	4.2
IOWA DART	3.4	3.1	3.0	3.0	2.8
NATL DART	2.6	2.5	2.4	2.3	2.1

In Iowa the TRC and DART rates for government sector employers is much higher than for private sector employers. Even though the Iowa TRC and DART rates for private sector employers have decreased, the Iowa rate remains higher than the national rate.

Conclusions and Recommendations:

15. Conclusion: The TRC and DART rates for public sector employer is higher than private sector employers and Iowa OSHA conducts approximately twenty (20) inspections in public sector each year.

15. Recommendation: Iowa OSHA must identify a targeting measure to address the high incidence rates for public sector employers.

16. Conclusion: Iowa has experienced a reduction in the TRC and DART rates for private sector employers, but the rates still remain above the national rates for employers.

16. Recommendation: Iowa OSHA must identify enforcement activities that will reduce TRC and DART rates for private industry.

Standards and Plan Changes

Standards Adoption

SAMM 22: Percent of permanent standards adopted within 6 months; emergency temporary standards adopted within 30 days (Reference/Standard 100%)

Findings: There were two (2) standards that were to be adopted during FY 2009. One notice of intent was beyond the response due date.

Standard Number	Subject	Response Due Date	Date Response Received	Date Promulgated	Effective Date
1910, 1915, 1917, 1926	Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee	2/17/2009	12/30/2008	3/19/2009	5/13/2009
1917, 1918	Long shoring and Marine Terminal; Vertical Tandem Lifts	2/17/2009	2/18/2009	Not Adopted Federal Jurisdiction	
1910.178	Powered Industrial Trucks; technical amendment	5/4/2004	4/25/2006	7/1/2009	10/14/2009

Federal Program/State Initiated Changes

SAMM 20: Percent of required Federal program changes adopted within established time frame (Reference/Standard 100%)

Findings: There were six (6) federal program changes that required notices of intent in FY 2009. Four (4) of the six (6) or 67% of the notices of intent from Iowa were late. Iowa adopted four (4) of the six (6) federal program changes. The four (4) that were adopted were adopted within the established time frame.

Directive Number	Directive Title	Response Due	Date Response Received	Adoption Date
TED 01-00-018	Training Program for OSHA Compliance Personnel	11/3/2008	12/10/2008	1/1/2009
CPL 03-00-009	National Emphasis Program (NEP) Lead	11/3/2008	12/10/2008	Not Adopted
CPL 02-01-045	Tree Care and Tree Removal	11/3/2008	9/4/2008	9/4/2008
CPL 02-00-148	Field Operations Manual	6/1/2009	6/1/2009	9/17/2009
CPL 2(09-05)	Site-Specific Targeting 2009 (SST09)	9/21/2009	11/23/2009	9/14/2009
CPL 02(09-06)	NEP-Process Safety Management (PSM) Covered Chemical Facilities	9/28/2009	12/1/2009	Not Adopted

SAMM 21: Percent of State-initiated changes submitted within established time frame (Reference/Standard 100%)

Findings: Iowa OSHA implemented two (2) state initiated changes during FY 2009. Iowa OSHA notified the Des Moines Area Office in writing within 30 days of their initial action on both state initiated changes. .

Title	Adoption Date	Effective Date	Submission Date
LEP for Hexavalent Chromium in General Industry and Construction	2/24/2009	2/24/2009	2/24/2009
LEP Inspection Targeting System to Reduce Injuries and Deaths on Worksites in the Construction Industry	3/16/2009	3/16/2009	3/13/2009

The revised Iowa FOM was provided to Federal OSHA on September 17, 2009. The document contained a detailed comparison identifying different State policies. Chapter 5, Section 10 was modified to include case file organization and was finalized before January 17, 2010.

Conclusions and Recommendations:

17. Conclusion: All notifications for Federal Program Changes were not provided by the specified dates.

17. Recommendation: Iowa OSHA must implement a procedure to ensure that Federal Program Change notifications are provided by the specified date.

Variances

SAMM 23: Number of permanent variance granted (Reference/Standard 0)

Findings: Iowa granted no permanent variances during FY 2009.

SAMM 24: Number of temporary variances granted (Reference/Standard 0)

Findings: Iowa granted no temporary variances during FY 2009.

Complaints About State Program Administration (CASPA)

Federal OSHA received two (2) Complaints About State Program Administration (CASPA) during FY 2009 regarding issues with the Iowa OSHA Whistleblower

Program. Iowa OSHA has had no whistleblower-related Congressional inquiries during FY 2009. One hundred percent (100%) of the CASPAs were found to have valid allegations.

CASPA #2009-7 was filed with Federal OSHA on February 10, 2009 regarding a whistleblower investigation which was conducted by Iowa OSHA in May 2007. The whistleblower investigation resulted in a determination of "Dismissed" on October 8, 2007. The results of the investigation were appealed by the Complainant on October 21, 2007 and the appeal was denied on January 28, 2009. Federal OSHA was asked to determine whether appropriate Iowa OSHA whistleblower procedures were followed during the initial investigation and subsequent appeal of the whistleblower complaint. The review identified procedural deficiencies in the initial complaint investigation. The appeal investigation was more thorough and in accordance with the procedures that govern a whistleblower investigation. However, the appeal investigation occurred over a period of fifteen (15) months. The time delay was due to a combination of lost investigation records and flooding that occurred in Iowa during the summer of 2008.

Iowa OSHA's initial response indicated that the letter and CASPA concerns were shared with the whistleblower staff and legal staff and provided information about their investigation. The response to the findings stated that the IOSH Administrator would be ever vigilant of the requirements of the office and would strive to accomplish the recommendations outlined by the CASPA investigation findings.

CASPA #2009-8 was filed with Federal OSHA on August 10, 2009 regarding a whistleblower investigation which was conducted by Iowa OSHA in March 2007. The whistleblower investigation resulted in a determination of "Dismissed/Non-merit" on April 4, 2007. The results of the investigation were appealed by the Complainant on April 26, 2007 and the appeal was denied on May 1, 2007. Federal OSHA was asked to determine if an appropriate investigation of the Complainant's appeal was conducted by Iowa OSHA. The review showed evidence was not obtained during the original Iowa OSHA whistleblower investigation and was not subsequently requested following the Complainant's appeal.

Prior to filing the CASPA, the Complainant had filed private litigation in district court in 2007 which contained his retaliation claim. The district court dismissed his claim and the court of appeals upheld that decision. However, the Iowa Supreme Court ruled on March 13, 2009 that the remedy set forth in Iowa Code section 88.9(3) does not preclude an employee from bringing a common law action for wrongful discharge. The Supreme Court remanded the case back to district court stating, "Further, the remedy provided in IOSHA is not exclusive, and Complainant may bring a common law action for wrongful discharge in the district court." This was a precedent setting decision for whistleblower case law in Iowa.

In conclusion, in one (1) CASPA case it was determined that Iowa OSHA followed their appeal procedures, however, those were found to be inadequate since the case was not

remanded back to the field for further collection of evidence prior to denying the appeal. To evaluate follow-up action, a review was conducted of the two (2) FY 2009 whistleblower cases which were appealed and no deficiencies were found in the appeal process. In both CASPA cases the initial whistleblower investigation did not follow Iowa OSHA whistleblower investigation procedures. Other recommendations made for the 2009-7 and 2009-8 CASPAs were not instituted in the Iowa OSHA whistleblower program. All Iowa OSHA responses to CASPAs were within the specified time frames.

Voluntary Compliance Programs

Iowa OSHA adopted OSHA Instruction CSP 03-01-003 Voluntary Protection Program (VPP): Policies and Procedures Manual identical. Iowa OSHA adopted OSHA Instruction CSP 03-02-002 Strategic Partnership Program for Worker Safety and Health, but did not adopt the instruction identical. The IOSH Instruction CSP 03-02-002 IOSH Strategic Partnership Program for Worker Safety and Health can be found on the Iowa OSHA website <http://www.iowaworkforce.org/labor/iosh/>. Iowa OSHA also participates in the alliance program.

Findings: There are thirteen (13) active partnerships in Iowa. Twelve (12) partnership files were reviewed. The compliance assistance specialist or another Iowa OSHA Consultation/Training and Education representative visits each partnership site each month. All partnership documents are contained in files for each partnership. Documents include a brief year end progress report, non-enforcement on-site visit documentation, the signed partnership document, foreman meeting minutes. The non-enforcement on-site visit documents include documentation of hazards noted during the walk-around. There is no documentation in the files of corrective actions taken by the employer. The partnership files do not include the comprehensive yearly evaluations required by IOSH Instruction CSP 03-02-002. Yearly enforcement verification inspections are conducted. Iowa OSHA began inserting the IMIS code “N 20 YEARLY PARTNERSHIP INSPECTION” on on-site enforcement OSHA 1s on March 2 2010.

Iowa OSHA has two (2) alliances in effect. One alliance is a joint alliance with the Des Moines Area Office. The second alliance is with the renewable fuels industry. Both alliances include goals and have impact measures. The PSE2 for Consultation/Training and Education is the primary contact for the two alliance programs.

Iowa OSHA continued to work with their construction partnership employers and a construction employer association. Through the quarterly contacts with the employer association, Iowa OSHA was able to expand their outreach to the construction trades. Participation in the association Annual Trade Show/Expo with an emphasis in fall protection and general construction safety and health helped increase attendance for the trade show.

There are currently forty-two (42) VPP sites in Iowa. Iowa OSHA adopted OSHA Instruction CSP 03-01-003 identical. Iowa OSHA has a VPP Coordinator who reviews

applications, conducts on-site evaluations, re-certifications and completes the VPP reports. He or another Consultation/Training and Education representative visits each VPP site annually. All re-certification evaluations are on-time. Eleven (11) VPP files were reviewed during this evaluation.

During the evaluation Iowa OSHA indicated they received no incomplete applications during FY 2009. Iowa OSHA works closely with enforcement to complete a review of the applicant's enforcement history for the previous three (3) years.

Iowa OSHA does not remove employers from the programmed inspection list 75 days prior to the scheduled on-site evaluation. They remove employers from the programmed inspection list once the employer has been accepted into the VPP program. Iowa OSHA does not utilize the use of medical access orders during VPP evaluations. They look at injury and illness records but no medical records. VPP evaluations are completed using a team of two (2) to four (4) people. The size of the team is determined by size and number of employees in the establishment.

Three (3) employees who participate in VPP evaluations have attended 100 training courses or seminars each. The fourth employee of the VPP evaluation team has attended 30 training courses or seminars. Three (3) VPP evaluation employees have been trained in Process Safety Management (PSM) and are scheduled to attend the advanced PSM course. The training courses and seminars cover a wide variety of topics.

Iowa OSHA is attempting to complete the draft report while on-site and leave a copy with the employer. If the draft report isn't completed at the end of the on-site visit, the team leader provides the employer with a projected date they will receive the draft report. Iowa OSHA has their own internal goal of providing a draft to the employer within 30 days of completing the on-site visit if it isn't completed while on-site.

Iowa OSHA provides recommendations for items to be corrected in their reports to the employer; however, they do not include 90-day items in their reports. Per CSP 03-01-003 employers applying for VPP may be given a maximum of 90 days to correct uncontrolled hazards, as long as interim protection is provided. The "90-day items" must be corrected before the final on-site evaluation report can be processed.

The Iowa OSHA VPP coordinator serves on the Region VII Voluntary Protection Program Participant's Association (VPPPA) board. Iowa OSHA is improving their communication with Region VII VPPPA. They submit quarterly articles for inclusion in the VPPPA Leader, a newsletter for VPP participants.

Conclusions and Recommendations:

18. Conclusion: Yearly partnership evaluations were not completed and placed in the partnership files.

18. Recommendation: Complete the yearly evaluations in accordance IOSH Instruction CSP 03-02-002 and place in the partnership files.

19. Conclusion: Partnership employers were not required to provide notification to Iowa OSHA abatement information for hazards identified during non-enforcement on-site visits.

19. Recommendation: Request that partnership employers submit documentation to Iowa OSHA of abatement actions taken for hazards identified during non-enforcement verification inspections.

20. Conclusion: Employers were not provided with formal notification of receipt of their VPP applications.

20. Recommendation: Provide formal acknowledgement of receipt of the application within fifteen (15) days for receipt. This should be completed in accordance with CSP 03-01-003.

21. Conclusion: Iowa OSHA did not utilize 90 day items to ensure uncontrolled hazards were corrected prior to the final on-site evaluation report.

21. Recommendation: Implement the use of 90 day items to ensure uncontrolled hazards are corrected prior to the final on-site evaluation report.

Program Administration

Findings: Iowa OSHA's code that is equivalent to Federal OSHA's general duty clause is Iowa code 88.4. This code is used to issue citations to address hazards not covered by a specific standard. Iowa OSHA issued thirty-five (35) 88.4 violations on twenty-seven (27) inspections.

Iowa OSHA has ten (10) industrial hygienists on staff. One hundred and eighty (180) health inspections were conducted between October 1, 2008 and September 30, 2010. Sampling was conducted on fifty-six (56) of the cases resulting in thirty-one percent (31%) of the cases where sampling occurred. Of the fifty-six (56) cases sampled, eight (8) showed over-exposures (14%). Seventy-four percent (74%) of the cases had health related citations and fifty percent (50%) of all of the citations issued were health related citations. The industrial hygienists sampled for forty-seven (47) different contaminants. Sampling was conducted in forty (40) different SIC codes. Eighteen (18) health inspections were in the construction industry, thirty-seven (37) in general industry and one (1) in agriculture.

Iowa OSHA adopted TED 01-00-018 Initial Training Program for OSHA Compliance Personnel with modification. The IOSH Instruction TED 01-00-018 Initial Training Program for Iowa OSHA Compliance Personnel can be found on the Iowa OSHA

website. Training records for fourteen (14) safety compliance officers and thirteen (13) industrial hygienists were reviewed. PSE2 were included as safety and industrial hygienists for this portion of the evaluation. Iowa OSHA requires that #1000 Initial Compliance, Iowa OSHA's In House Training and #1050 Introduction to Safety Standards for Safety Officers or #1250 Introduction to Health Standards for Industrial Hygienists or #2000 Construction Standards be completed within the first year of employment. All safety compliance personnel have completed the #1000 course. All but one (1) industrial hygienist has completed the initial compliance and that industrial hygienist has been employed with Iowa OSHA since 2008. Three (3) of fourteen (14) safety officer have not completed the second required course. Five (5) of thirteen (13) industrial hygienists have not completed the second required course.

IOSH Instruction TED 01-00-018 states, "An Individual Development Plan (IDP) is an active plan to help the CSHO achieve organizational and career goals. IDPs must be updated annually and serve as a tool to provide documentation for each CSHO to chart and monitor his/her own progress toward developmental goals." No IDPs were available for review.

Overall forty-four (44) case files were reviewed during this evaluation. Of the forty-four (44) files reviewed zero (0) contained a diary sheet which could be used as a chronological listing of the case file activity. Iowa OSHA implemented the use of diary sheets in case files in October 2009.

In August 2006 the Iowa OSHA legal staff provided legal aspects training to their employees. New employees have been hired since this training was provided and new employees are not sent to OTI for the training. The legal staff has also developed a willful documentation worksheet which all CSHOs have to assist them with the development of willful violations. Twelve (12) of twenty-three (23) compliance personnel (52%) currently on staff have not attended the OIT legal aspects training or had any equally sufficient legal sufficiency training. Iowa OSHA did not request legal aspects training from FY 2006 through FY 2009.

Since 2006, Iowa OSHA has been comparing their enforcement and inspection data to Federal OSHA data. This comparison has resulted in changes in inspection and enforcement statistics.

The number of inspections conducted has increased. In FY 2006 Iowa OSHA conducted 706 inspections and in FY 2009 Iowa OSHA conducted 1013 inspections. Another factor which impacted this was the hiring of seven new compliance officers in FY 2008 to bring Iowa OSHA to their benchmark levels for compliance staff.

In FY 2009, Iowa OSHA issued 3.1 violations per inspections compared to 1.8 in FY 2006. Federal OSHA issued 3.1 violations per inspection in FY 2009. Iowa OSHA has issued a larger percentage of violations as serious over the past four years. In FY 2006 Iowa OSHA issued fifty-seven percent (57%) of the violations as serious, compared to sixty-five percent (65%) in FY 2009. Federal OSHA issued seventy-seven (77%) of their

violations as serious during FY 2009. Iowa has an in-compliance rate of thirty-four percent (34%) compared to Federal OSHA's thirty percent (30%).

Iowa OSHA's percent of violations issued Serious/Willful/Repeat in FY 2009 was sixty-nine percent (69%) compared to Federal OSHA's eighty-one percent (81%). Iowa OSHA's penalty per serious violation in FY 2009 was \$1017.80 compared to Federal OSHA's \$970.20.

Conclusions and Recommendations:

22. Conclusion: Iowa OSHA employees have not received all required training.

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

23. Conclusion: No IDPs were developed for Iowa OSHA personnel.

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

APPENDIX A
FY 2009 Iowa State Plan (IOSH) Enhanced FAME Report
Summary of Findings and Recommendations

	Findings	Recommendations
1	Iowa periodically sees a reduction in fatalities but the average number of fatalities for the past eleven (11) years is twenty (20). Seven (7) of eleven (11) years (64%) have experienced more than twenty (20) fatalities. Beginning in FY 2003 every year experienced more than 20 workplace fatalities.	Review the previous ten (10) years of fatality data and compare this to the fatality rates for construction and general industry. After the evaluation, develop enforcement and compliance assistance programs to target industries or hazards associated with the fatalities which have occurred during the previous ten (10) years.
2	Iowa OSHA did not ensure that adequate abatement was received for all phone and fax investigations.	Review with employees, who review abatements for phone and fax complaints, the FOM and what is considered adequate abatement.
3	The IMMLANG policy is not consistently followed.	Review the IMMLANG policy with all employees and ensure that information is entered into the IMIS system.
4	Families of victims are not always contacted when a fatality investigation is initiated, citations are issued, a settlement conference is held or when the case is closed. There is limited additional communication with family members once the investigation has begun.	We suggest communication with families when the investigation is initiated, when citations are issued, when informal settlement agreements are signed, when the case is contested and when the case is closed. Additionally, a tracking system should be developed and implemented to help ensure that required correspondence is sent to families of victims.
5	LEP and NEP inspections were not coded properly in the IMIS system.	Provide refresher training to all employees on LEP and NEP program and IMIS requirements.
6	Excessive and inappropriate grouping issues were identified.	Iowa OSHA must review its current citation grouping policies and procedures and issue citations in accordance with its FOM.
7	Fifty-three percent (53%) of the programmed safety inspections resulted in Serious/Willful/Repeat violations.	(Repeat) Iowa OSHA must evaluate its safety targeting system and make modification to ensure that its limited resources are inspecting locations where serious hazards are present. Iowa OSHA must also ensure that violations are being classified in accordance with the FOM and other policy directives.
8	[In 35 percent of the cases reviewed], hazards that were identified during inspections were not addressed in citations or a letter to the employer.	All hazards identified during inspections must be addressed. Case files must be reviewed more thoroughly including review of photographs for hazards not identified or addressed by CSHOs.
9	Employees are unclear what constitutes employer knowledge to document a prima facie case.	Iowa OSHA must work with the legal staff to provide training to employees to ensure violations are supportable and have all elements for a prima facie case.
10	Severity assessments are inaccurate which result in incorrect penalty assessments. Other than serious violations had injuries and illnesses described as eye injuries and hearing loss which should have been classified as serious. In addition machine guarding and fall protection violations were classified as other-than-serious and should have been classified as serious.	Iowa OSHA must review the FOM requirements for severity assessments with employees and ensure that severity assessments are evaluated during case file reviews conducted by PSE2s.
11	The Open Inspection Report is not effectively utilized to track cases with incomplete abatement with twenty-three percent (23%) of the cases having abatement more than thirty (30) days past due.	Iowa OSHA must develop a procedure to analyze the Open Inspection Report, identify cases with past due abatement and obtain timely abatement.
12	Abatement dates are not assigned in accordance with the FIRM.	Provide training to employees on the current FOM and other adopted directives to ensure that abatement dates are

	Findings	Recommendations
		assigned in accordance with current policy.
13	Iowa OSHA does not conduct follow-up inspections when they are indicated.	Iowa OSHA must evaluate the Candidates for Follow-Up Inspection Report to identify inspections without adequate abatement and where follow-up inspections could be conducted.
14	The LEP table included inactive LEP codes for use by employees.	Update the IMIS LEP tables to reflect active LEPs and ensure proper IMIS coding.
15	The TRC and DART rates for public sector employers are higher than private sector employers and Iowa OSHA conducts approximately twenty (20) inspections in the public sector each year.	Iowa OSHA must identify a targeting measure to address the high incidence rates for public sector employers.
16	Iowa has experienced a reduction in the TRC and DART rates for private sector employers, but the rates still remain above the national rates for employers.	Iowa OSHA must identify enforcement activities that will reduce TRC and DART rates for private industry.
17	Notifications for Federal Program Changes were not provided by the specified dates.	Iowa OSHA must implement a procedure to ensure that Federal Program Change notifications are provided by the specified date.
18	Yearly partnership evaluations were not completed and placed in the partnership files.	Complete the yearly evaluations in accordance IOSH Instruction CSP 03-02-002 and place in the partnership files.
19	Partnership employers were not required to provide notification to Iowa OSHA abatement information for hazards identified during non-enforcement on-site visits.	Request that partnership employers submit documentation to Iowa OSHA of abatement actions taken for hazards identified during non-enforcement verification inspections.
20	Employers were not provided with formal notification of receipt of their VPP applications.	Provide formal acknowledgement of receipt of the application within fifteen (15) days for receipt. This should be completed in accordance with CSP 03-01-003.
21	Iowa OSHA did not utilize 90 day items to ensure uncontrolled hazards were corrected prior to the final on-site evaluation report.	Implement the use of 90 day items to ensure uncontrolled hazards are corrected prior to the final on-site evaluation report.
22	Iowa OSHA employees have not received all required training.	Iowa OSHA must review their training directive IOSH Instruction TED 01-00-018 and ensure that employees receive the required training.
23	No IDPs were developed for Iowa OSHA personnel.	Iowa OSHA must work with compliance officers to develop initial IDPs and update them annually.

APPENDIX B
Iowa State Plan (IOSHA)
FY 2009 Enforcement Activity

	Iowa	State Plan Total	Federal OSHA
Total Inspections	1,013	61,016	39,004
Safety	833	48,002	33,221
<i>% Safety</i>	82%	79%	85%
Health	180	13,014	5,783
<i>% Health</i>	18%	21%	15%
Construction	600	26,103	23,935
<i>% Construction</i>	59%	43%	61%
Public Sector	20	7,749	N/A
<i>% Public Sector</i>	2%	13%	N/A
Programmed	696	39,538	24,316
<i>% Programmed</i>	69%	65%	62%
Complaint	79	8,573	6,661
<i>% Complaint</i>	8%	14%	17%
Accident	21	3,098	836
Insp w/ Viols Cited	672	37,978	27,165
<i>% Insp w/ Viols Cited (NIC)</i>	66%	62%	70%
<i>% NIC w/ Serious Violations</i>	80%	62%	87%
Total Violations	2,114	129,363	87,663
Serious	1,370	55,309	67,668
<i>% Serious</i>	65%	43%	77%
Willful	11	171	401
Repeat	41	2,040	2,762
Serious/Willful/Repeat	1,422	57,520	70,831
<i>% S/W/R</i>	69%	44%	81%
Failure to Abate	1	494	207
Other than Serious	691	71,336	16,615
<i>% Other</i>	33%	55%	19%
Avg # Violations/ Initial Inspection	3.1	3.3	3.1
Total Penalties	\$ 1,908,952	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 1,017.80	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 1,011.10	\$ 934.70	\$ 977.50
% Penalty Reduced	55.9%	51.9%	43.7%
% Insp w/ Contested Viols	3.6%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	21.9	15.7	17.7
Avg Case Hrs/Insp- Health	32.8	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	21.3	31.6	34.3
Lapse Days Insp to Citation Issued- Health	26.3	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	25	2,010	2,234

Source: DOL-OSHA. State Plan INSP & ENFC Reports, 11-19-2009. Federal INSP & ENFC Reports, 11-9-2009. Private Sector ENFC- State Plans 12.4.09 & Federal 12.14.09

APPENDIX C
State Activity Mandated Measures

OCT 23, 2009

PAGE 1 OF 2

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

RID: 0751900

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	240 3.00 80	4 4.00 1	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	4 .02 179	0 .00 5	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	81 98.78 82	2 100.00 2	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	8 100.00 8	0 0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	1088 94.12 1156	29 36.25 80	100%
Public	24 100.00 24	3 100.00 3	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	16609 29.24 568	562 25.54 22	2489573 43.8 56880
Health	4673 35.94 130	122 30.50 4	692926 57.4 12071
			National Data (1 year)
			National Data (1 year)

*FY09IA

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

OCT 23, 2009

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

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PAGE 2 OF 2

STATE ACTIVITY MANDATED MEASURES (SAMMs)

State: IOWA

RID: 0751900

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	330	16	92328
Safety	53.40	84.21	58.6
	618	19	157566
	50	1	11007
Health	62.50	50.00	51.2
	80	2	21510
9. Average Violations per Inspection with Vioations			
	1679	72	420601
S/W/R	2.40	2.76	2.1
	698	26	201241
	522	17	243346
Other	.74	.65	1.2
	698	26	201241
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2203275	78475	492362261
	1412.35	1189.01	1335.2
	1560	66	368756
11. Percent of Total Inspections in Public Sector	20	2	68
	1.98	7.69	2.5
	1008	26	2750
12. Average lapse time from receipt of Contest to first level decision	6366	0	4382038
	198.93		246.1
	32	0	17807
13. Percent of 11c Investigations Completed within 90 days	11	0	100%
	47.83		
	23	0	
14. Percent of 11c Complaints that are Meritorious	7	0	1466
	30.43		20.8
	23	0	7052
15. Percent of Meritorious 11c Complaints that are Settled	5	0	1263
	71.43		86.2
	7	0	1466

*FY09IA

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

\$\$EOF SPXREC

APPENDIX D – State Interim Report

091029

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

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = IOWA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	6212	163	11892	324	21855	603	42572	1142
	67.3	74.1	67.5	77.0	66.8	73.8	65.2	69.3
	9230	220	17617	421	32713	817	65304	1647
B. HEALTH	508	33	1004	57	1963	85	3678	141
	34.5	68.8	34.1	62.6	35.3	50.0	34.0	44.1
	1471	48	2946	91	5559	170	10829	320
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4645	111	8997	210	16745	380	32019	673
	67.7	61.0	65.9	58.3	65.8	52.9	65.9	49.3
	6860	182	13654	360	25453	719	48603	1366
B. HEALTH	368	24	746	39	1486	59	2884	95
	52.2	52.2	50.8	54.9	51.7	52.7	55.6	49.7
	705	46	1468	71	2873	112	5187	191
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	15510	310	29490	594	56535	1083	111717	1847
	81.8	68.4	81.1	69.4	80.0	67.4	79.4	62.8
	18952	453	36371	856	70692	1607	140747	2943
B. HEALTH	2802	77	5343	136	10035	263	19393	499
	70.1	56.6	69.9	56.2	69.7	56.1	67.7	59.3
	4000	136	7645	242	14395	469	28659	842

4. ABATEMENT PERIOD FOR VIOLS

	2938	209	5782	370	12109	543	25516	853
A. SAFETY PERCENT >30 DAYS	15.9	48.0	16.2	40.8	17.6	34.4	18.7	33.6
	18492	435	35597	906	68607	1578	136812	2539
	256	7	577	20	1452	49	3111	112
B. HEALTH PERCENT >60 DAYS	6.3	5.6	7.5	9.1	10.0	11.9	10.9	14.5
	4078	126	7720	219	14561	412	28488	770

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = IOWA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	280876	11800	628826	20850	1303857	42050	2663433	74325
OTHER-THAN-SERIOUS	923.9	786.7	998.1	651.6	1030.7	576.0	1049.4	530.9
	304	15	630	32	1265	73	2538	140
B. HEALTH								
	83100	2150	142950	8100	294225	18875	654830	26625
OTHER-THAN-SERIOUS	799.0	716.7	803.1	810.0	855.3	786.5	867.3	719.6
	104	3	178	10	344	24	755	37
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	10459	244	19991	466	37160	930	73338	1882
	6.1	5.2	5.7	4.8	5.5	5.7	5.3	6.4
	1722	47	3533	97	6727	163	13759	295
B. HEALTH								
	1764	62	3581	114	6701	214	12705	392
	1.8	1.6	1.7	1.4	1.6	1.5	1.5	1.6
	994	40	2112	80	4125	139	8503	240
7. VIOLATIONS VACATED %								
	1278	25	2561	40	5139	106	10097	225
	4.9	3.1	5.0	2.5	5.1	3.7	5.0	4.6
	26336	803	51387	1583	100187	2840	201495	4864
8. VIOLATIONS RECLASSIFIED %								
	1130	70	2440	135	4798	265	9539	479
	4.3	8.7	4.7	8.5	4.8	9.3	4.7	9.8
	26336	803	51387	1583	100187	2840	201495	4864
9. PENALTY RETENTION %								
	13523966	166785	27149245	411385	54889469	1128033	111585445	1951768
	63.4	48.3	62.9	46.2	63.2	49.1	62.9	48.6
	21315664	345575	43130384	890050	86796382	2299050	177346966	4017117

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 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

PAGE 3

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT

STATE = IOWA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	163	2	324	2	603	3	1142	5
	74.1	66.7	77.0	40.0	73.8	30.0	69.3	26.3
	220	3	421	5	817	10	1647	19
B. HEALTH	33	0	57	0	85	0	141	0
	68.8	.0	62.6	.0	50.0	.0	44.1	.0
	48	0	91	6	170	9	320	21
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	310	7	594	18	1083	24	1847	36
	68.4	87.5	69.4	94.7	67.4	88.9	62.8	90.0
	453	8	856	19	1607	27	2943	40
B. HEALTH	77	0	136	0	263	3	499	15
	56.6	.0	56.2	.0	56.1	37.5	59.3	60.0
	136	0	242	3	469	8	842	25

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = IOWA

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	446 22.8 1956	4 21.1 19	875 24.2 3609	14 14.7 95	1756 23.4 7506	38 16.9 225	3749 24.1 15528	59 14.9 395
2. VIOLATIONS RECLASSIFIED %	282 14.4 1956	7 36.8 19	563 15.6 3609	24 25.3 95	1133 15.1 7506	46 20.4 225	2274 14.6 15528	64 16.2 395
3. PENALTY RETENTION %	2319074 54.1 4286744	9080 53.5 16980	4080249 51.5 7922126	74730 44.2 169080	10792902 58.5 18457526	148575 53.2 279400	20045599 55.9 35865959	291222 49.2 592125

APPENDIX E
FY 2009 Iowa State Plan (IOSH) Enhanced FAME Report
Discrimination Program Review
Summary of Findings and Recommendations

	Findings	Recommendations
1	A copy of the closing letter to the Complainant was not provided to federal OSHA upon completion of the dual filed complaint investigation.	Provide federal OSHA with a copy of the closing letter to the Complainant upon completion of the dual filed complaint investigation.
2	[47 percent] of 11(c) investigations were not completed within the 90 day goal.	Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within 90 days.
3	Adequate allegation summary statements were not entered into IMIS for all 11(c) cases and IMIS updates were not recorded to track all actions taken on each 11(c) case.	Draft adequate allegation summary statements for entry into IMIS which clearly convey Complainant's alleged protected activity and adverse action. Update IMIS entries for whistleblower cases as each new action occurs throughout the investigative and appeal stages until final case closure.
4	Adequate and timely opening letters were not provided to all Complainants and Respondents for notification purposes that a whistleblower case had been opened for investigation.	Draft adequate opening letters and send or deliver them to the parties in a timely manner.
5	Face-to-face interviews were not conducted by the investigator with all Complainants in a timely manner to obtain signed statements documenting detailed information as evidence in 11(c) cases.	Schedule a meeting of the investigator with the Complainant as soon as possible after a prima facie allegation has been presented in order to conduct a face-to-face interview and obtain a signed statement.
6	Adequate case file organization was not accomplished in all 11(c) case files.	Utilize adequate case file organization techniques to aid review of investigations.
7	Face-to-face interviews were not conducted by the investigator with all relevant witnesses to obtain signed statements documenting detailed information as evidence in 11(c) cases. Documentation was not present on interview forms to verify that confidentiality was offered to non-management witnesses.	Schedule a meeting of the investigator with all relevant witnesses during the whistleblower investigation in order to conduct face-to-face interviews and obtain signed statements. Include a confidentiality statement on all non-management witness interview statement forms.
8	Settlement agreements were not negotiated and documented per established policies and procedures.	Accomplish early resolution of 11(c) complaints through implementation of established settlement agreement policies and procedures.
9	Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint.	Conduct a thorough evaluation of all the elements of a work refusal in order to determine if a valid work refusal complaint has been filed.
10	Adequate Final Investigation Reports for 11(c) case files were not prepared per established policies and procedures.	Draft Final Investigation Reports that effectively communicate results of investigations as required by established policies and procedures.
11	Adequate documentary evidence was not gathered in all 11(c) cases to determine if a violation had occurred.	Seek and obtain all necessary documentary evidence to reach a conclusion.
12	IOSH Discrimination Program investigators and supervisors have not attended the most current 11(c) training provided by federal OSHA.	Accomplish training for all IOSH Discrimination Program investigators and supervisors by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations - 11(c) in FY 10 or FY 11.

APPENDIX F
FY-2009 IOSH Discrimination Program Audit

April 29, 2010

MEMORANDUM FOR: Steve Carmichael
Assistant Regional Administrator, Enforcement
Programs

FROM: Christine Stewart
Regional Supervisory Investigator

SUBJECT: Federal Fiscal Year 2009 Audit of the Iowa
Occupational Safety and Health (IOSH)
Discrimination Program

During the week of March 1-5, 2010, Regional Supervisory Investigator Christine Stewart and Regional Investigator Dennis Wilson performed the annual audit of the IOSH Discrimination Program. The opening conference was conducted on Monday, March 1, 2010. In attendance were Ms. Stewart and Mr. Wilson along with Deputy Labor Commissioner/IOSH Administrator Stephen Slater and IOSH Discrimination Investigator Leah Schade. The closing conference was conducted on Friday, March 5. In attendance were Ms. Stewart and Mr. Wilson, along with Mr. Slater and Ms. Schade.

STUDY METHODOLOGY

The audit team utilized the random number table from "OSHA Instruction CPL 02-00-025, Scheduling System for Programmed Inspections" to select ten (10) whistleblower cases for review. In addition to case file reviews, interviews were conducted with various Iowa OSHA personnel. The evaluation team interviewed one (1) discrimination investigator and two (2) attorneys.

The review of whistleblower cases focused on the organization of the case files, the methods used by the investigator to document evidence, and the manner in which the investigator summarized the evidence and applied the evidence to the elements of a whistleblower case. Other issues, such as jurisdiction, early resolution, and Complainant and Respondent notification, were also examined. The audit was conducted within the context of the current IOSH Discrimination Investigation Manual, IOSH Instruction DIS 0-0.9, which was adopted on November 6, 2006. Guidance was also provided within the context of the current OSHA Whistleblower Investigations Manual, OSHA Instruction CPL 02-03-002 (formerly DIS 0-0.9), with an effective date of August 22, 2003.

FINDINGS

- Iowa OSHA completes 53 percent of their 11(c) investigations within 90 days.
- Deficiencies in the Iowa OSHA 11(c) program have been documented in the past two evaluations and were also found in the evaluation of FY 2009. Some examples of deficiencies include: inadequate IMIS documentation; opening letters to complainants and respondents not sent timely; interviews not completed by phone or in person; improperly organized files; improper settlement agreements; improper evaluation of work refusals; improper Final Investigation Reports (FIR); and inadequate collection of documentary evidence.

KEY RECOMMENDATIONS

- Review the 11(c) investigation process and identify process improvements to ensure 11(c) investigations are completed within 90 days.
- Iowa OSHA must ensure that 11(c) investigations are completed and documented in accordance with IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual.

Summary of Recommendations and State Actions from the FY 2008 FAME

FY 2008 Recommendation 4: (Repeat) Review the process and look for process improvements to ensure 11(c) investigations are completed within 90 days. There were twenty-four (24) 11(c) complaints docketed for investigation during this evaluation period.

Iowa OSHA Response: The IOSHA 11(c) CSHO is working with the IOSHA Administrator on process improvement that will address this issue. A detailed response has already been sent to the Region VII 11(c) investigation section that gives more specific information.

FY 2009 Findings: REPEAT from FY 2007 & FY 2008 - Iowa OSHA did not identify or implement a process improvement strategy to ensure 11(c) investigations are completed within 90 days.

FY 2008 Recommendation 5: When entering information on a new case in the allegation section of the IMIS database, the investigator should provide a brief description of the Complainant's alleged protected activity and adverse action. For example, an allegation statement could read, "Complainant alleges that she was fired in retaliation for filing a complaint with OSHA." This would give a reader who is unfamiliar with the case a better overview of what the Complainant is alleging. In addition, when a case is appealed, the IMIS entry needs to be updated to reflect the status of the case.

Iowa OSHA Response: You mentioned this point during your on-site closing conference with us on Friday, February 27, 2009. My notes reflect the allegation box (IMIS) should include a brief detail of the allegation. Include adverse action (what is adverse action and why complaining). The investigator additionally notes in the past we were told there was not enough information on the IMIS allegation section. Your suggestion of a simple statement will certainly make it easier. Since we do not have a case file number, we are not sure which case was not updated on appeal.

FY 2009 Findings: REPEAT from FY 2008 – Adequate allegation summary statements were not entered into IMIS for all 11(c) cases. IMIS entries were not updated to reflect all actions taken concerning each 11(c) case.

FY 2008 Recommendation 6: As brought up in the 2007 audit, the investigator should be more consistent in sending Respondent and Complainant their opening letters in a timely manner. The opening letter should contain a brief description of the Complainant's allegation. This will allow the Respondent to formulate a defense to the Complainant's allegation. In one case, there was no record of the investigator sending an opening letter to either party. In three other cases, the opening letters to Respondents were hand delivered more than a month after Complainant had filed the complaint. As for the Complainant's opening letter, the investigator should notify Complainant of his or her right to also file with Federal OSHA.

Iowa OSHA Response: We will follow procedures for sending opening letters as recommended and as listed in the Discrimination Manual under Chapter 2-2E.1 and Chapter 3-7E for contacting Respondent. This was also noted during your on-site closing conference, sending respondent notification letter in a timely manner, complainant opening letter sent with questionnaire and we are also adding their right to file with Federal OSHA.

Since assuming the responsibilities of Iowa OSHA Administrator this audit year is new to me. We will endeavor to learn and improve in the areas you have recommended under your on-site audit.

FY 2009 Findings: REPEAT from FY 2007 & FY 2008 – Adequate and timely opening letters were not provided to all Complainants and Respondents notifying them that a whistleblower case had been opened for investigation.

Correction was noted regarding dual filing notification. Opening letters sent to Complainants after the conclusion of the FY 2008 audit included notification of their rights to also file with federal OSHA. This was a positive step and was recognized during the closing conference of the FY 2009 audit visit.

FY 2008 Recommendation 7: The investigator should schedule a face-to-face interview with the Complainant as soon as possible rather than sending Complainant a generic questionnaire. Information contained in the questionnaire could be gathered during the

screening process. This will allow the investigator to begin the investigation in a timely manner.

Iowa OSHA Response: As we discussed by telephone, on March 2, 2009, we understand that the complaint process does not stop if the Complainant does not fill out the questionnaire. The investigator has said face to face interviews are done in most cases as soon as possible per Chapter 3-5D. A questionnaire has been sent to the complainant in the past to ensure they are serious about filing, if they do not send it back nothing further has been done as per Chapter 2-1, II.A. The questionnaire has also been sent in the past if the investigator is unavailable to do the screening.

Once again we will make every effort to schedule a “face-to-face interview” with the complainant as soon as possible rather than relying on a generic questionnaire.

FY 2009 Findings: REPEAT from FY 2007 & FY 2008 – Fact-to-face interviews were not conducted by the investigator with all Complainants in a timely manner to obtain signed statements documenting detailed information as evidence in 11(c) cases.

FY 2008 Recommendation 8: The investigator should organize the table of contents in the case file in a more logical manner. It is difficult for the reader to follow the table of contents when multiple documents, many of which are unrelated, are included under the same tab. The table of contents should also be typed, which was also recommended in the 2007 audit. In particular, a table of contents for one case file was handwritten. In addition, the investigator should follow page 3-1 of the Investigator’s Manual by placing administrative material, such as opening letters and miscellaneous correspondence with either party, on the left side of the case file, while placing substantive evidence on the right side. The investigator should also keep activity logs under one tab. It is difficult for the reader to follow the investigator’s steps when the activity logs are scattered throughout the file.

Iowa OSHA Response: We will follow page 3-1 of the Investigator’s Manual for references in placement of documents within the case file. The table of contents will be typed and activity log will be included under one tab.

FY 2009 Findings: REPEAT from FY 2007 & FY 2008 - Adequate case file organization was not accomplished in all 11(c) case files.

FY 2008 Recommendation 9: As stated in the 2007 audit, the investigator should make an effort to obtain statements from all relevant witnesses. If the investigator is not able to obtain a statement, the investigator should draft a memo to file that details the content of the conversation. According to page 3-9 of the Investigator’s Manual, "The investigator must attempt to obtain a signed statement from each relevant witness. Witnesses will be interviewed separately and privately to avoid confusion and biased testimony, and to maintain confidentiality." A template for a statement is provided on page 3-19 of the Investigator’s Manual. A signed statement is important for litigation purposes. If a whistleblower case is litigated, it is often important to have a signed statement in case a

witness changes his testimony at a later date. In addition, the investigator should make it a point to notify non-management witnesses that the agency will keep their testimony confidential to the extent allowed by law. Information gathered from a confidential witness should be clearly marked confidential.

Iowa OSHA Response: We will follow guidance as outlined in the Investigator's Manual per your reference to page 3-9. We will insure non-management witnesses are notified their testimony will be kept confidential to the extent allowed by Iowa Law. Similarly, we will utilize a template for statements as provided on page 3-19 of the Investigator's Manual.

FY 2009 Findings: REPEAT from FY 2008 – Face-to-face interviews were not conducted by the investigator with all relevant witnesses to obtain signed statements documenting detailed information as evidence in 11(c) cases. Documentation was not present on interview forms to verify that confidentiality was offered to non-management witnesses.

FY 2008 Recommendation 10: As for settlements, the investigator should ensure that all parties to the agreement sign it and that no handwriting appears over the terms of the agreement. In one case, for example, the investigator closed the case without obtaining Complainant's signature. Furthermore, the investigator should include a copy of the agreement when sending the closing letters. The investigator should also ensure that the Complainant's remedy is clearly set out in the agreement. In one case, the investigator referenced a letter that indicated that Respondent agreed to rehire Complainant. The investigator should include the remedy in the agreement so that there are no questions about whether it is enforceable. Last, when drafting settlement agreements, the investigator should consider including a provision, such as a posting requirement, in order to reduce the possibility of a "chilling effect" at the workplace. Please refer to page 6-2 of the Investigator's Manual for further guidance on drafting settlement agreements.

Iowa OSHA Response: Although not identified by a specific case file, we acknowledge that one of the settlements reviewed during this annual review audit did have hand writing on it by the employer. This settlement was accepted by Iowa OSHA. We always send a copy of the settlement to both the Respondent and Complainant. We will ensure a remedy is in the agreement to eliminate any questions of enforceability. The Investigator's Manual will be consulted for additional guidance on preparing settlement agreements.

FY 2009 Findings: REPEAT from FY 2008 - Settlement agreements were not negotiated and documented per established policies and procedures.

FY 2008 Recommendation 11: When a Complainant refuses to perform a work task because they believe the conditions to be unsafe, the investigator should examine the elements of a work refusal to determine whether Complainant engaged in protected activity. This was also recommended in the 2007 audit.

Iowa OSHA Response: It is difficult to access this point without specific reference to the file reviewed. I have gone back to Mary Bryant's files for your 2007 Federal Fiscal Year Audit and noted a point concerning a work refusal. You recommended that the Final Investigative Report (FIR) on all work refusals assess the work refusal in the analysis section using all mandatory factors to determine if it was a valid work refusal or constructive discharge. We will follow this per 2007 FFY Audit.

FY 2009 Findings: REPEAT from FY 2007 & FY 2008 - Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint.

FY 2008 Recommendation 12: The "Investigative Findings" section of the Final Investigative Report should not just be an account of what each witness told the investigator. Rather, the investigator should write the findings section in a narrative format, with the goal of telling the reader a story. When citing exhibits with multiple pages, the investigator should provide page numbers to assist the reader with locating the evidence. As in last year's audit, we recommend that in the "Analysis" section the investigator explain why or why not a prima facie element is present. As for the prima facie element of nexus, the investigator should consider temporal proximity and disparate treatment, not just animus.

Iowa OSHA Response: Your initial on-site closing conference identified the finding section should be in a more narrative format, more story like and not just witness accounts. We will consult Section 5-8 for guidance on this. Page number references and tabs will be listed for easier reference to materials and has also been requested by our legal staff. Our attorneys have counseled us for pertinent information such as dates, interview times and other factual information to support a case. We will continue to use the elements of "temporal proximity and disparate treatment" when analyzing for prima facie elements of nexus.

FY 2009 Findings: REPEAT from FY 2007 & FY 2008 - Adequate Final Investigation Reports for 11(c) case files were not prepared per established policies and procedures.

Major New Issues

Early years of the Iowa OSHA program saw several OSHA inspectors assigned to conduct 11(c) discrimination investigations as they became available. In the late 1980's, the Iowa OSHA Administrator and the Federal OSHA Area Office established the need to focus on one inspector being assigned full-time to perform 11(c) discrimination duties. This individual has held the position as the sole discrimination investigator up to today.

The State of Iowa is offering a State Employee Retirement Incentive Program (SERIP) from April 15, 2010 until June 30, 2010. The Iowa Division of Labor and Iowa OSHA have seen several individuals elect to capitalize on this program. During the week of March 1-5, 2010, the IOSH Administrator shared information about this retirement

program with Ms. Stewart and Mr. Wilson. The current IOSH Discrimination Investigator has announced her retirement and will be leaving by June 23, 2010.

The Labor Commissioner and Deputy Labor Commissioner/IOSH Administrator have contacted the Regional Administrator, Charles E. Adkins, CIH, to discuss a plan of action concerning future possibilities and opportunities with the 11(c) program in order to rectify issues which have been identified. The IOSH Administrator and Federal OSHA Whistleblower Protection Program audit team spent time discussing methods to improve the IOSH Discrimination Program during the FY 2009 annual audit. Region VII Whistleblower Protection Program staff members will assist with providing on-the-job field training for the new 11(c) discrimination investigator. This new individual will also be sent to attend formal whistleblower training at OTI as it becomes available. Finally, Iowa OSHA will seek a bi-lingual candidate to fill the discrimination investigator vacancy.

Whistleblower Program

Twenty-six (26) whistleblower cases were documented as being filed with the Iowa OSHA Discrimination Program, seven (7) of which were not investigated. These seven (7) were not investigated because five (5) were screened out and two (2) did not fall within the program's jurisdiction. Of the nineteen (19) cases that were investigated, fifteen (15) were dismissed, one (1) was withdrawn, and three (3) were merit/settled. Two (2) of the merit settled cases were settled by Iowa OSHA and one (1) was submitted to the Iowa OSHA legal staff for litigation but was later withdrawn by the complainant in order to pursue private litigation. Two (2) of the fifteen (15) dismissed cases were appealed. Three (3) cases were meritorious, giving the program a merit rate of 15.8 percent.

The Iowa OSHA Discrimination Program received two (2) Complaints About State Program Administration (CASPA) during fiscal year 2009. These are discussed in the CASPA section of the FY 2009 FAME report. Findings of the CASPAs were also findings during the FY 2007, FY 2008, and FY 2009 Iowa OSHA Discrimination Program evaluations.

Iowa OSHA had no discrimination-related Congressional inquiries during fiscal year 2009.

Findings: During FY 2009, Iowa OSHA facilitated early resolution settlement in two (2) of nineteen (19) cases. According to the IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual, “[A]lthough IOSH will not, itself, seek settlement of cases in which a merit finding has not been reached, IOSH will make every effort to accommodate an early resolution of complaints in which both parties seek resolution prior to the completion of the investigation.” (Chapter 6, pg. 6-1)

Iowa OSHA also developed one (1) merit case which was referred to Iowa OSHA legal staff for possible litigation. Before a decision could be made about proceeding with

litigation, the Complainant's attorney submitted a complaint withdrawal request which was approved.

Opening letters to Complainants were improved by adding language that explains dual rights of filing which gives a Complainant the right to file with federal OSHA as well as filing with Iowa OSHA. Furthermore, closing letters to Complainants were also updated to include information about a recent Iowa Supreme Court decision (Jeffery George vs. DW Zinser, No. 07-1495, 3-13-09) which ruled that an employee can now file a private cause of action in district court for wrongful discharge based upon retaliation.

Iowa OSHA has moved from a generic dismissal letter to a letter that provides more detail as to why the complaint was found to have no merit. These new letters, which are similar to federal OSHA's Secretary Findings, give the Complainant insight into the investigative process, the investigator's reasoning and assist the Complainant with making informed decisions regarding appeal.

Two (2) dual filed 11(c) complaints were included in the ten (10) cases which were reviewed. The dual filed complaints were initially filed with federal OSHA and then forwarded to the state for investigation because the alleged retaliation took place within the jurisdiction of the state of Iowa. A copy of the closing letter to the Complainant was not provided to federal OSHA upon completion of the investigation as requested in the federal letter of referral.

There were nineteen (19) 11(c) complaints docketed for investigation during FY 2009. Ten (10) of nineteen (19) investigations (53%) were completed in 90 days compared to the Reference/Standard of 100%. This was up slightly from 50% in FY 2008 and 52% in FY 2007. The Discrimination Questionnaire/Statement form should be used to gather critical information concerning a prima facie allegation immediately when first contacted by the Complainant rather than sending the document by mail to the Complainant and waiting for a response. This will allow Iowa OSHA to begin the investigation in a timely manner. According to page 3-5 of the IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual, "If, after the initial telephone contact with

the Complainant, it appears that the Complainant has presented a prima facie allegation, Iowa OSHA will proceed with a field investigation."

Iowa OSHA should provide a brief description of the Complainant's alleged protected activity and adverse action when entering information on a new case in the allegation section of the IMIS database. For example, an allegation statement could read, "Complainant alleges that he/she was fired on a specific date in retaliation for filing a complaint with OSHA." Deficient allegation summary statements were found entered in IMIS during the FY 2009 audit. Examples included: "Terminated for violating co. S & H."; "C taken to hospital for dehydration due to heat."; and "Was told not to punch out when went to Doc. Termed." These allegation summaries did not provide enough information to allow a reviewer to understand the basis for docketing the case.

Case appeal information was not entered in IMIS. IMIS entries in some instances were not updated to reflect the actual determination rendered in the case or an accurate date of case closure. Case information entered into IMIS must be accurate and complete in order to track the history of actions taken from the time of initial docketing of the complaint through final disposition of the case.

Opening letters to Respondents were not sent timely in four (4) of the ten (10) cases reviewed since Respondents received opening letters ranging from three (3) weeks to eight (8) weeks after Complainants had filed their complaints. Per page 2-3 of the OSHA Instruction CPL 02-03-002 Whistleblower Investigations Manual, "Failure to promptly forward the Respondent letter could adversely impact the Respondent's due process rights and the timely completion of the investigation." In other cases, there was no evidence that opening letters were ever delivered to Respondents and/or Complainants via mail or hand delivery methods. Timeframes for issuance of opening letters to both parties are not specified in IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual, but the OSHA Instruction CPL 02-03-002 Whistleblower Investigations Manual calls for opening letters for Complainants and Respondents to be prepared at the time of docketing the complaint. (Page 2-3) In addition, not all opening letters to Respondents reviewed during this audit contained a description of the complaint allegation. The OSHA Instruction CPL 02-03-002 Whistleblower Investigations Manual calls for a copy of the complaint to be enclosed with the opening letters to Respondents. (Page 2-11)

Deficiencies were found where face-to-face interviews of the Complainants conducted by Iowa OSHA could only be verified in two (2) cases of the ten (10) which were reviewed. In addition, signed statements from Complainants were only found in three (3) of the ten (10) case files reviewed. Signed statements were not prepared in a first person narrative format in order to be accurate and to use the Complainant's own words/phrases. If a face-to-face interview with the Complainant is not practical, Iowa OSHA should conduct a thorough interview by phone with the Complainant and prepare a word-processed Memo to File or official statement form containing the testimony for transmittal to the Complainant for review, correction, signature, and return to the investigator. Signed statements are necessary for litigation purposes to help assure credibility of the testimony. The Discrimination Questionnaire/Statement form was sent to most Complainants which they usually filled out and returned as a signed or unsigned document to Iowa OSHA. Often these questionnaires comprised the only information provided by the Complainant. In one (1) case, only hand written notes of telephone conversations held between Iowa OSHA and the Complainant were present with even the questionnaire being absent. In two (2) cases, no documentation was found in the case file to document any attempt by Iowa OSHA to interview the Complainant. It is imperative to assure that the complaint process not stop if the Complainant does not fill out the questionnaire and return it to Iowa OSHA, since an oral complaint may be filed in 11(c) cases. Details about conducting Complainant interviews are specified on pages 3-5, 3-6, and 3-7 in IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual including the need to meet with the Complainant as soon as possible to conduct a face-to-face interview and obtain a signed statement. A template for a statement is provided on page 3-19 of the IOSH Investigation Manual.

Iowa OSHA should organize the evidence and the corresponding Table of Contents in the case file in a more logical manner. It is difficult for the reader to follow the Table of Contents when multiple documents, many of which are unrelated, are included under the same tab. The Table of Contents should also be typed. Two (2) cases contained handwritten documents and one (1) case contained no such document. Deficiencies regarding case file organization were noted with several files containing voluminous exhibits located under the same tab which were not adequately described or characterized in the Table of Contents, since a brief general description was listed on the index document. Case file review was further hindered by the fact that opening and closing letters to the parties were not placed in the file in logical locations for ease of access. Nine (9) of ten (10) cases were not organized in accordance with IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual. Guidance on case file organization is described in IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual on pages 5-1 and 5-2 for arrangement of tabbed exhibits of material and indexing in an associated Table of Contents.

Iowa OSHA did not keep running activity logs/phone logs that identified each contact with the Complainant and Respondent as well as witnesses under one tab. A running phone log could also be filed under a specific tab for each of the parties, witnesses, and grouped miscellaneous callers. It was difficult for the reader to follow the investigative steps when phone notes, recorded on individual pink and yellow sheets of paper, were scattered throughout the file. Telephonic notes should be retained and collectively placed under the appropriate running activity logs/phone logs. The use of telephone logs is discussed on page 3-4 of IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual.

Review of case files during the FY 2009 audit revealed numerous inconsistencies involving the way in which witness interviews were conducted and resulting testimony was documented by Iowa OSHA. Deficiencies were found in that face-to-face interviews of management and non-management witnesses conducted by Iowa OSHA could only be verified in two (2) cases of the ten (10) which were reviewed. In one (1) of these instances, management selected both non-management witnesses who were interviewed by Iowa OSHA. Hand written notes taken by Iowa OSHA during the witness interview and sometimes signed by the witness were most often found in case files where such interviews were conducted. In addition, an occasional statement form containing a hand written statement or a blank statement form with a questionnaire attached were found with and without the signature of the witness. Hand written Iowa OSHA notes from telephonic witness interviews were found in two (2) case files with no resulting preparation of a Memo to File. Signed statements are important for litigation purposes in case a witness changes his/her testimony at a later date. In four (4) instances, no documentation was found in the case file to document any attempt by Iowa OSHA to interview witnesses. Furthermore, no documentation was found to verify that confidentiality was offered to non-management witnesses during the interview process. Most interview forms with notes from non-management interviews were not marked confidential. Details about conducting witness interviews are specified on pages 3-5, 3-7, 3-8, 3-9, and 3-10 in IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual

including the need to meet with all relevant witnesses to conduct a face-to-face interview and obtain a signed statement, offering confidentiality to non-management witnesses during this process. According to page 3-9 of the IOSH Investigation Manual, “The investigator must attempt to obtain a signed statement from each relevant witness. Witnesses will be interviewed separately and privately to avoid confusion and biased testimony, and to maintain confidentiality.” A template for a statement is provided on page 3-19 of the IOSH Investigation Manual.

Iowa OSHA did not ensure that a settlement agreement be put in writing and that all parties to the settlement agreement sign it. A deficiency was discovered when case file review revealed a case which was listed as “Settled” in IMIS but contained no written settlement agreement. Iowa OSHA negotiated only a verbal agreement between the parties which was not enforceable. Closing letters to Respondent and Complainant did not specify a final determination reached in the investigation but simply directed the Complainant to show up at the workplace and Respondent would put him to work if the work load warranted it. The closing letter to the Complainant offered appeal rights even though a settlement determination closes out action on a complaint. This case was closed prematurely without a written settlement agreement being achieved for actual voluntary resolution of the matter. Review of another settled case revealed that Complainant had received a remedy

involving back pay for lost wages but a copy of the check was not maintained in the case file for verification purposes. In addition, Iowa OSHA did not document all elements of the settlement in the FIR since reinstatement was not addressed. A final settlement deficiency was noted when review of an 11(c) case entered in IMIS as a dismissal involved a settlement which was reached through a grievance arbitration process. A determination letter could possibly have been issued deferring to the outcome reached among the parties and the case would have been recorded in IMIS as a “Settled Other” determination. Chapter 6 of the IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual includes guidance on drafting settlement agreements.

When a Complainant refuses to perform a work task because they believe the conditions to be unsafe, Iowa OSHA should examine the elements of a work refusal to determine whether the Complainant engaged in protected activity. One (1) case reviewed during the audit involved a work refusal scenario and the elements contained in 29 CFR 1977.12(b)(2) were not fully evaluated by the investigator to determine if it was a valid work refusal.

The FIR is the document of record of the whistleblower investigation and must contain everything that is relevant to the determination that is reached for the case yet the FIR was not found to be present in every case file. Three (3) cases reviewed during the FY 2009 audit were treated as screenings even though prima facie allegations were provided by the Complainants. The cases were not fully investigated with no documentation found to verify face-to-face interviews with Complainants to gather primary evidence. These cases were screened out with appeal rights being offered to the Complainants after being open for twenty-three (23) days, forty-three (43) days, and ninety-seven (97) days respectively. Unlike routine screened-out complaints, the cases were docketed in the

IMIS system and documented as investigations which resulted in a determination of “Dismissed/Non-merit”. One (1) case contained no FIR and two (2) cases contained incomplete FIRs.

Case file review demonstrated several FIR deficiencies since a majority of the “Investigative Findings” sections contained an incomplete chronology if present at all and then briefly summarized the results of interviews without telling the story of the facts relating to the elements. Voluminous exhibits were referenced in the “Investigative Findings” section with no page numbers for quick reference to the evidence. The “Analysis” sections were almost nonexistent using one word responses of “Yes” or “No” to address the prima facie elements instead of taking each element in turn and weighing the evidence to determine whether a preponderance of the evidence shows that the element is met. When addressing the nexus element, temporal proximity and disparate treatment were not evaluated when appropriate. Finally, documentation of closing conferences was found in about half of the cases reviewed. Please refer to pages 5-2, 5-3, and 5-4 of IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual for further guidance on drafting effective FIRs and pages 3-2, 3-3, and 3-4 in the same manual for a discussion on Burden of Proof.

Case file review revealed deficiencies in Iowa OSHA’s attempt to seek and obtain all necessary documentary evidence to reach a conclusion. Some of the records missing from over half of the case files reviewed included administrative, training, termination, disciplinary, medical, union grievance, and weather information. It is also important to remember that assertions made in the Respondent’s position statement do not constitute evidence. It was established during the audit review that Iowa OSHA did not always further test the Respondent’s defense. Per page 3-9 of IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual, “It is the investigator’s responsibility to fairly pursue all appropriate investigative leads which develop during the course of the investigation, with respect to both the Complainant’s and Respondent’s positions. Contact must be made whenever possible with all relevant witnesses, and every attempt must be made to gather all pertinent data and materials from all available sources.” Page 3-10 of IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual continues, “After having gathered all relevant evidence available, the investigator must evaluate the evidence and draw conclusions.”

Adequate review of whistleblower case files is critical to assure that quality investigations are being conducted per established policies and procedures. The Sample Final Investigation Report present on pages 5-6 and 5-7 of IOSH Instruction DIS 0-0.9 Discrimination Investigation Manual indicates that the reviewer should sign the bottom of the report to document approval. Many case files reviewed during the audit did not contain the signature of the preparer of the report or the reviewer of the report. Individuals supervising Discrimination Investigators must be familiar with whistleblower investigation techniques and procedures as well as legal guidance. Supervisory competence in the whistleblower field can be obtained through a combination of education and experience. Federal OSHA offers a newly revised OSHA Training Institute Course #1420 Basic Whistleblower Investigations - 11(c) at least once

each fiscal year which is open for attendance by state employees. This is a mandatory training course for all federal whistleblower investigators and should be attended by the Iowa OSHA Discrimination Investigator and his/her supervisor. Finally, it is suggested that management develop and implement self monitoring procedures for the Iowa Discrimination Program for quality control purposes.

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

Findings: Iowa OSHA did not meet this Reference/Standard with only 53% of the 11(c) investigations completed within 90 days. This was up slightly from 50% in FY 2008. There were nineteen (19) 11(c) complaints docketed for investigation during this evaluation period.

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

Findings: Iowa OSHA did not meet the Reference/Standard with 15.8% of their 11(c) complaints meritorious. In FY 2008, 30.4% of the 11c cases were meritorious.

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

Findings: Iowa OSHA did not meet the Reference/Standard with 66.7% of their meritorious cases settled. There were two (2) 11(c) complaints that were settled along with one (1) 11(c) complaint which was submitted to Iowa Workforce Development attorneys for litigation but was later withdrawn by the complainant in order to pursue private litigation.

Discrimination Program Review: Conclusions and Recommendations:

01. Conclusion: A copy of the closing letter to the Complainant was not provided to federal OSHA upon completion of the dual filed complaint investigation.

01. Recommendation: Provide federal OSHA with a copy of the closing letter to the Complainant upon completion of the dual filed complaint investigation.

02. Conclusion: 100% of 11(c) investigations were not completed within the 90 day goal.

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

03. Conclusion: Adequate allegation summary statements were not entered into IMIS for all 11(c) cases and IMIS updates were not recorded to track all actions taken on each 11(c) case.

03. Recommendation: Draft adequate allegation summary statements for entry into IMIS which clearly convey Complainant's alleged protected activity and adverse action. Update IMIS entries for whistleblower cases as each new action occurs throughout the investigative and appeal stages until final case closure.

04. Conclusion: Adequate and timely opening letters were not provided to all Complainants and Respondents for notification purposes that a whistleblower case had been opened for investigation.

04. Recommendation: Draft adequate opening letters and send or deliver them to the parties in a timely manner.

05. Conclusion: Face-to-face interviews were not conducted by the investigator with all Complainants in a timely manner to obtain signed statements documenting detailed information as evidence in 11(c) cases.

05. Recommendation: Schedule a meeting of the investigator with the Complainant as soon as possible after a prima facie allegation has been presented in order to conduct a face-to-face interview and obtain a signed statement.

06. Conclusion: Adequate case file organization was not accomplished in all 11(c) case files.

06. Recommendation: Utilize adequate case file organization techniques to aid review of investigations.

07. Conclusion: Face-to-face interviews were not conducted by the investigator with all relevant witnesses to obtain signed statements documenting detailed information as evidence in 11(c) cases. Documentation was not present on interview forms to verify that confidentiality was offered to non-management witnesses.

07. Recommendation: Schedule a meeting of the investigator with all relevant witnesses during the whistleblower investigation in order to conduct face-to-face interviews and obtain signed statements. Include a confidentiality statement on all non-management witness interview statement forms.

08. Conclusion: Settlement agreements were not negotiated and documented per established policies and procedures.

08. Recommendation: Accomplish early resolution of 11(c) complaints through implementation of established settlement agreement policies and procedures.

09. Conclusion: Adequate evaluation of the elements of a work refusal was not performed during the investigation of a whistleblower complaint.

09. Recommendation: 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.

10. Conclusion: Adequate Final Investigation Reports for 11(c) case files were not prepared per established policies and procedures.

10. Recommendation: Draft Final Investigation Reports that effectively communicate results of investigations as required by established policies and procedures.

11. Conclusion: Adequate documentary evidence was not gathered in all 11(c) cases to determine if a violation had occurred.

11. Recommendation: Seek and obtain all necessary documentary evidence to reach a conclusion.

12. Conclusion: IOSH Discrimination Program investigators and supervisors have not attended the most current 11(c) training provided by federal OSHA.

12. Recommendation: Accomplish training for all IOSH Discrimination Program investigators and supervisors by enrolling in the OSHA Training Institute Course #1420 Basic Whistleblower Investigations - 11(c) in FY 10 or FY 11.

APPENDIX G
FY 2009 STATE OSHA ANNUAL REPORT (SOAR)

(Available separately)