

# **FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

State of Washington  
Division of Occupational Safety and Health (DOSH)



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## I. Executive Summary

The purpose of this report is to assess the Washington State Plan's performance for Fiscal Year (FY) 2017 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports. As part of this comprehensive evaluation, the Occupational Safety and Health Administration (OSHA) conducted a review of The State of Washington, Division of Occupational Safety and Health's (DOSH) enforcement inspection files, and whistleblower case files to verify corrective actions of FY 2016 recommendations.

DOSH's performance with respect to activities that are mandated by the Occupational Safety and Health Act of 1970 (OSH Act) and its implementing policies and regulations continues to be acceptable with exceptions as noted in detail below. The State Plan continues to perform at a high level, overall, and program management continues to be committed to resolving identified issues.

One primary issue DOSH faces is high turnover of staff. This is a significant contributing factor to DOSH's steady decline in the number of inspections conducted in the last four years, as well as its high safety in-compliance rate. In fact, this is the fourth year in a row that DOSH has not met its compliance inspection goal. DOSH has cited a salary disparity between its staff and the private industry as one of the primary causes of high turnover. In FY 2017, DOSH requested a more than 25% pay increase for staff, but it was only partially successful as it secured a 10% pay increase for its safety and health specialists and industrial hygienists. The related findings and observations from FY 2016 have been continued, as DOSH continues to fall below its inspection goals and has a safety in-compliance rate that is higher than the further review level.

DOSH is proactively addressing emerging regulatory issues faced by workers in the state and successfully updated its telecommunications standards during the review period. In FY 2016 and FY 2017, the State Plan started the rulemaking process in order to amend its current rules on pesticides in agriculture, lead, and the process safety management standard for refineries. DOSH initiated rulemaking in FY 2016 and FY 2017 in order to respond to all federal rule updates with the exception of the walking-working surfaces standard.

Throughout the last four evaluation periods, OSHA worked with DOSH and encouraged it to update its standards related to fall protection in residential construction to be at least as effective as OSHA's. In 2016 DOSH began the rulemaking process, but then decided to incorporate updates to its residential construction fall protection rules as part of a unified fall protection standard that is in the preliminary stages of rulemaking. DOSH anticipates that the first draft of the unified fall protection standard will be available in September 2018. This issue will remain a finding in FY 2017.

DOSH has not completed all corrective actions for the two findings identified in the FY 2016 FAME Report. Three new findings and eight observations were identified during the on-site case file reviews of the DOSH enforcement, consultation, and retaliation programs. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C provides the status of previous findings with associated completed corrective actions.

## II. State Plan Background

### A. Background

The State of Washington, under an agreement with OSHA, operates an occupational safety and health program through its Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH). The Washington Industrial Safety and Health Act (WISHA, Chapter 49.17 RCW) was established in accordance with Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act). The State Plan's enabling legislation, WISHA, took effect in 1973, and the Secretary of Labor certified in 1982 that the State Plan had completed all of the required developmental steps in the plan.

The director of the Washington State Department of Labor and Industries is appointed by the governor, and serves as the State Plan designee. An L&I assistant director who by statute is designated as the Supervisor of Industrial Safety and Health (RCW 43.22.040) is appointed by the director and is in charge of DOSH. The assistant director has authority and responsibility for administration of Washington's occupational safety and health program and directs both central office and regional operations. The current director is Joel Sacks; the assistant director is Anne Soiza.

DOSH establishes policy, provides technical guidance, writes standards, develops internal and external training, monitors and evaluates programs, conducts inspections, and provides consultation services. All on-site consultation (both public and private) in the State of Washington is provided through either the funding provided by section 23(g) of the OSH Act or 100% state funding. There is no section 21(d) grant consultation component.

DOSH exercises jurisdiction over state and local government workplaces and private sector employers not covered by OSHA. OSHA's inspection authority is limited to private employers at national parks and military installations, maritime activities on the navigable waters, and federal government employers. OSHA also covers establishments on Indian lands that are tribally-owned, as well as employers who are enrolled tribal members working on reservations or on trust lands.

Over the years, the State of Washington has adopted a number of safety and health standards which differ from its federal counterpart. Examples include Washington's rules for crane safety, respiratory protection, aerial lifts, and agriculture. DOSH has also adopted a number of State Plan-initiated rules for which there are no federal counterparts, including requirements for written safety and health programs, safety committees, and heat-related illnesses.

During FY 2017, the State Plan was staffed with 391 positions, which included 126 compliance officers and 44 consultants. The program covers approximately 3.14 million workers employed in about 239,880 establishments statewide<sup>1</sup>. Washington's federally-approved state OSHA

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<sup>1</sup> Data from WA State Employment Security Department's Quarterly Census of Employment and Wages (QCEW) 2016 Annual Averages, All Establishment Sizes, provided in DOSH's FY2018 23(g) grant application.

program was funded at \$45,344,494, of which \$7,163,425 were federal funds. There were 230 DOSH positions funded entirely by the state.

## **B. Major New Issues**

None.

# **III. Assessment of State Plan Progress and Performance**

## **A. Data and Methodology**

OSHA has established a two-year cycle for the FAME process. This is the comprehensive year, and, as such, OSHA performed on-site case file reviews. OSHA conducted on-site reviews of the State Plan's enforcement, whistleblower, and consultation programs. The consultation program review was conducted from September 25-28, 2017, by two OSHA Region X safety and health managers. The enforcement case file reviews were conducted from October 23-25, 2017, by the Bellevue area director and a federal compliance officer. The whistleblower case file reviews were conducted from December 18-22, 2017, by the manager of whistleblower programs and a federal retaliation investigator. All case file reviews were conducted on-site at DOSH's Tumwater, Washington, headquarters. All reviewed files were randomly selected from closed consultations, inspections, and retaliation investigations conducted during the evaluation period (October 1, 2016, through September 30, 2017). The selected population included:

- Thirteen (13) fatality case files
- Forty (40) complaint inspection files
- Sixty (60) programmed inspection files
- Twenty-six (26) consultation files
- Six (6) VPP files
- Eleven (11) Safety Through Achieving Recognition Together (START) files (safety and health)
- Thirty-four (34) closed whistleblower case files

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

- Analysis and monitoring by OSHA of the FY 2016 DOSH Corrective Action Plan which provides the State Plan's status and response to the FY 2016 FAME Report (Appendix C)
- Statistical reports comparing State Plan performance to federal performance
- State Activity Mandated Measures (SAMM) Report data (Appendix D)
- State Information Report (SIR) data
- State OSHA Annual Report (SOAR) (Appendix E)
- FY 2017 Mandated Activities Report for Consultation (MARC)
- Grant Assurances
- Quarterly monitoring meetings between OSHA and the State Plan

- Full case file review
- Interviews with DOSH consultants, managers, and whistleblower investigators

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL) which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2017 State Activity Mandated Measures Report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

The State of Washington continues to maintain a well-developed internal training program. Both compliance and consultation staff were given training opportunities to increase their knowledge and keep them current in standards, guidelines, and policies. DOSH has supported the OSHA Training Institute (OTI) at the Hazardous Materials Management and Emergency Response (HAMMER) Training Facility in Richland, Washington, by coordinating classes and sending staff to attend them.

DOSH does not use the OSHA Information System (OIS), but has its own data collection system called the WISHA Information Network (WIN), which is set-up to interface with and transfer data to OIS.

The State Plan provides quarterly performance goal updates and provides the final SOAR self-evaluation report to OSHA at the end of the fiscal year. The SOAR tracks DOSH's progress towards meeting its annual performance plan goals, and is attached to this document as Appendix E.

As of July 1<sup>st</sup>, 2017, the State Plan's on-board staffing was at 85% of the authorized compliance positions and at 95% of consultation positions. The details were as follows:

- The DOSH enforcement program had 89 safety enforcement positions authorized, of which 76 were filled, and 37 health enforcement positions authorized, of which 30 were filled.
- The DOSH consultation program had 28 safety consultant positions authorized, of which 26 were filled, and 16 health consultant positions authorized, of which 16 were filled.

As discussed above, the State Plan continues to experience a high turnover rate of inspectors and consultants. The high turnover rate has been most noticeable in relationship to DOSH's enforcement program, and is a significant contributing factor to its steady decline in the number of inspections as well as its high safety in-compliance rate. To better understand the turnover rate, in 2012, the State Plan began conducting exit

interviews of employees leaving the program; of the 66 inspectors or consultants leaving DOSH, 41 (or 62%) reported salary disparity as the primary factor. The reported disparity between DOSH and the private sector has been as much as 75%. Due to extensive efforts by the State Plan, effective July 1, 2017, all safety and health specialists and industrial hygienists received a 10% salary increase. Supervisory and senior technical industrial hygienists received an additional 2.5% salary increase. DOSH's next focus will be on addressing locality pay issues, pursuing the use of existing job classifications or developing a package to propose new classifications.

**Finding FY 2017-01 (FY 2016-OB-01):** The State Plan continues to experience a high turnover rate of inspectors which directly contributes to the State Plan struggling to meet its enforcement goals. The rate of turnover has been an issue for three years in a row; therefore, this observation was converted to a finding in FY 2017.

**Recommendation FY 2017-01:** The State Plan should continue efforts to understand and address its high turnover rate and fill staff vacancies.

## **2. ENFORCEMENT**

### **a) Complaints**

FY 2017 data from the end-of-year SAMM Report showed that 15.3% (613 of 3,986) of the State Plan's inspections were in response to complaints. This relatively low rate is attributable to how DOSH classified complaints and referrals during the period covered by this review. The State Plan's definition of a formal complaint is virtually identical to OSHA's definition. However, there are differences in the definitions for non-formal complaints and for what is classified as a referral. These differences result in DOSH handling allegations from some sources as referrals, where under OSHA's process, allegations from that type of source would be handled as non-formal complaints.

DOSH has a four-tiered criterion for measuring complaint responsiveness: imminent danger complaint inspections must be initiated within one workday; serious complaint inspections must be initiated within fifteen working days; other-than-serious complaint inspections must be initiated within thirty working days; and phone/fax response must be initiated within five working days. For complaint inspections, the OSHA SAMM Report averages the values together for inspections of serious and other-than-serious hazards.

The State Plan's results were as follows:

- 100% (11/11) of imminent danger referrals were responded to within one working day.
- The average number of days to initiate complaint inspections (State Plan formula) was 12.98 days. This was better than the State Plan's negotiated goal for

complaints addressing both serious and other-than serious hazards. DOSH conducted 613 complaint inspections.

- The State Plan conducted 233 phone/fax investigations and had an average response time of 5.05 days, which is 0.05 days above the goal of five days. Because the State Plan was close to meeting its goal and because this metric has improved over the last two years, OSHA does not consider this to be a significant issue.
- There were two CASPA investigations related to complaint inspections during FY 2016 and FY 2017 which are discussed in Section III.B.8 of this report. One investigation resulted in findings and corrective action, and one investigation did not result in findings. The enforcement case file review found that in 5% (2/40) of complaint inspections reviewed, there was not evidence of a response letter to the complainant in the case file. However, the number of inspections where this was found was not sufficient to signify a trend.

The Appendix D SAMM Report indicates that DOSH was denied entry and did not obtain entry three times during the review period. All three outliers were discussed during the quarterly State Plan monitoring meetings. In all three cases, the outliers were coding errors. OSHA will continue to work with DOSH to ensure that these errors are corrected and/or any transmittal issues between the State Plan system and OIS are resolved.

#### b) Fatalities

There were 88 workplace fatalities reported to DOSH in FY 2017 (per the OIS UPA one-liner report run on 2/12/2018); 53 of these fatalities were not considered to be work-related (i.e., natural causes) or were cases where DOSH deferred jurisdiction to a law enforcement investigation (such as traffic collisions). The remaining 35 fatalities were investigated. According to the OIS UPA report, 13 of the 35 fatalities, or 37% were not investigated timely. Four of these were due to the initial event being a hospitalization and the victim passing at a later date. Three incidents originally appeared to be natural causes; however, questions arose and it was decided to open an inspection a few days later. Two of the incidents were not reported timely and DOSH responded once they became aware of them. In two incidents, the employers were out of state. Although DOSH was on site within 24 hours, a formal opening could not be held until later. One of the incidents was a murder/arson at a convenience store and the owner was unavailable until a couple of days later. The last incident was reported on a Friday and the DOSH supervisor did not retrieve the message until Sunday; DOSH then had the inspector open an inspection on Monday. These outliers were discussed during quarterly meetings throughout the year.



As described in the Appendix D SAMM Report, DOSH inspected 22 of a total of 29 fatalities (75.86%) within one working day. The Appendix D SAMM Report pulls data on fatalities using different criteria than the OIS UPA one-liner report. In addition, due to a variety of factors, including a different report run date, the Appendix D SAMM Report did not have a complete account of all fatality investigations and the timeliness of DOSH's response. For example, the SAMM Report will not capture fatality investigations that were opened during one fiscal year when the event date occurred in the previous fiscal year. Therefore, the information from the OIS UPA one-liner report, described in the paragraph above, contains the most accurate information about DOSH's timely response to fatalities. OSHA will continue to compare the OIS UPA one-liner report to the SAMM Report to ensure that the SAMM Report is accurate, or to account for any discrepancies in the data.

Overall, the FY 2017 review of fatality case files revealed well-documented investigations that clearly explained the events leading to the incident. The documentation supported the findings and citations, where appropriate. OSHA reviewed thirteen fatality case files during the onsite review. Of those, six (46%) were determined not to contain the initial next of kin letter and five (38%) did not contain a final determination letter to the next of kin. Further discussion with DOSH revealed that there were inconsistencies with the letters being scanned into the WIN system, and all but one of the letters had actually been sent.

**Observation FY 2017-OB-01:** DOSH did not include next of kin notification and final determination letters in all fatality case files. Next of kin notification letters were not found in 46% (6/13) of the fatality case files reviewed, and next of kin final determination letters were not found in 38% (5/13) of the fatality case files reviewed.

**Federal Monitoring Plan:** During next year's FAME, fatality case files will be reviewed to ensure that next of kin notification and final determination letters are maintained in the files.

*Bureau of Labor Statistics (BLS) Rates*

An overview of Washington's private industry Total Case Incident Rate (TCIR<sub>2</sub>) and Days Away Restricted Transfer (DART<sub>3</sub>) rate for calendar years 2012 through 2016, as well as for select industries, is provided in the table that follows. At the close of this monitoring period, 2016 was the most recent year for which data was available.

**Table 1**

**BLS Rates**

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

	<b>CY 2012</b>	<b>CY 2013</b>	<b>CY 2014</b>	<b>CY 2015</b>	<b>CY2016</b>	<b>% Change, 2012-2016</b>
<b>Private Industry</b>						
TCIR	4.8	4.8	4.6	4.4	4.3	-12%
DART	2.5	2.5	2.5	2.4	2.3	-9%
<b>Construction, NAICS<sub>4</sub> 23</b>						
TCIR	6.5	7.2	7.4	7.0	6.4	-2%
DART	3.4	3.3	4.3	3.9	3.5	3%
<b>Manufacturing, NAICS 31-33</b>						
TCIR	6.1	6	6	5.8	5.8	-5%
DART	3.6	3.5	3.7	3.4	3.6	0%
<b>State and local government</b>						
TCIR	6.3	5.5	5.6	5.5	5.2	-21%
DART	2.9	2.6	2.7	2.5	2.4	-21%

The State Plan achieved a downward trend for TCIR data for all categories from CY 2012 through CY 2016. The DART rate between CY 2012 through CY 2016 also trended downward in all categories, with the exception of the construction industry which had a nominal increase of 3% during the period.

<sup>2</sup> TCIR is the total case incident rate, which represents the number of recordable injuries and illnesses per 100 full-time workers, calculated as:  $(N/EH) \times 200,000$  where N = number of injuries and illnesses; EH = total hours worked by all workers during the calendar year; and 200,000 = base for 100 equivalent full-time workers (working 40 hours per week, 50 weeks per year).

<sup>3</sup> DART is the days away from work, job transfer, or restriction rate, which represents the number of such cases per 100 full-time workers. Calculation of the DART rate is similar to that of TCIR.

<sup>4</sup> NAICS is the North American Industry Classification System

c) Targeting and Programmed Inspection

The State Plan's targeting system appears to be effectively identifying high hazard employers for inspections which contributed to overall a decrease in TCIR and DART rates for three of the four categories in Table 1 above.

The inspection file review for FY 2017 indicated that citations were issued for all apparent violations and that all violations were adequately supported. The use of willful and repeat citations was appropriate.

DOSH submits an annual grant application that includes an annual performance plan, and, every five years, a strategic plan. One component of these plans establishes goals for enforcement inspections. According to the SAMM Report, DOSH conducted a total of 3,004 out of 3,900 projected safety inspections and 982 out of 1,100 projected health inspections. The State Plan's total of 3,986 inspections for the year was 20 percent below its target of 5000 inspections. The number of both safety and health inspections was lower than the further review level. The State Plan has consistently struggled over the last several years to meet its inspection goals. The high turnover rate of enforcement staff is a significant contributing factor in DOSH's failure to meet its inspection goal. This is the fourth year in a row that DOSH has not met its compliance inspection goal.

**Finding FY 2017-02(FY 2016-01):** In FY 2017, DOSH was 20% below its goal of conducting 5,000 compliance inspections.

**Recommendation FY 2017-02:** The State Plan should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach inspection goals.

In FY 2017, DOSH's safety in-compliance rate of 41.45% rose above the FRL (23.62% - 35.44%) while its health in-compliance rate of 31.70% remained consistent and was within the acceptable range of the FRL (28.62% - 42.94%). In the FY 2016 Follow-up FAME Report, the safety in-compliance rate was outside of the FRL, which lead to Observation FY 2016-OB-03. The safety in-compliance rate continues to be outside the acceptable range of the FRL in FY 2017, which requires further review and monitoring by OSHA. Therefore, this observation will be continued for the second year in FY 2017.

**Observation FY 2017-OB-02 (FY 2016-OB-03):** In FY 2017, the State Plan's safety in-compliance rate was 41.45% which higher than the acceptable range of the further review level (23.62% - 35.44%). This measure has trended upwards over the last four years.

**Federal Monitoring Plan:** During next year's FAME, a limited number of safety in-compliance case files will be selected randomly and reviewed to further investigate this trend.

The State Plan continues to successfully manage the issuance of citations in a timely manner. The average safety lapse time for DOSH was 44.49 days, which was within the range of the FRL (36.23 to 54.35 days). The average health lapse time of 44.63 days was just slightly better than (below the range) of the FRL, which was 44.82 to 67.24 days.

DOSH completed five significant cases where total penalties were over \$100,000. More information about the State Plan's significant inspections can be found in the Appendix E SOAR report.

d) Citations and Penalties

The State Plan's average number of violations per inspection was 1.66 for serious, willful, repeat violations, which was within the FRL (1.46 – 2.20). The average number of violations per inspection for other-than-serious citations was 1.87, which was outside of the FRL (0.79 – 1.19). The average number of violations per inspection for other-than-serious citations being higher than the national average has been a trend for several years, and is due in part to the fact that the State Plan has several unique standards that require additional written programs. Deficiencies related to written programs are normally cited as general (other-than-serious) violations.

According to the FY 2017 SAMM Report, DOSH's average current penalty per serious violation in the private sector was \$1,975.11 in FY 2017. This average penalty fell within the acceptable range of the FRL. The FRL was +/-25% of the national average (\$2,516.80), which equaled \$1,887.60 - \$3,146.00. Penalty levels are at the core of effective enforcement, and the State Plan has been successful in using this enforcement tool.

e) Abatement

The State Plan has adequate policies and procedures to ensure that reasonable abatement dates are set, abatement is tracked, and proper documentation is obtained. Out of the 113 case files reviewed, less than 1% did not contain abatement information. Moreover, follow-up inspections were conducted as necessary. In the FY 2016 Follow-up FAME Report, DOSH did not meet its annual performance goal of having 95% of serious hazards verified abated within 14 days of the abatement date; therefore, this was listed as Observation FY 2016-OB-02. Per the DOSH SOAR Report, in FY 2017, DOSH improved and was within 2% (93%, 2273/2438) of achieving its goal. This observation was closed in FY 2017.

f) Worker and Union Involvement

As documented in the case files, during DOSH inspections, workers are given the opportunity to participate either through interviews or by having worker representatives accompany inspectors. Workers are also afforded the opportunity to

privately express their views about the workplace away from the employer. In addition, inspection results are provided to union or other labor representatives and complainants. The State Plan's policy is identical to the federal policy for the allowance of worker participation in inspection activities. According to the SAMM Report, in 90% of initial inspections, a worker representative participated in the walk around inspection and/or the compliance officer conducted and documented worker interviews. This was significantly lower than the FRL of 100%. However, this metric was discussed in quarterly meetings throughout the review period, and it was determined that the lower number is due in part to data entry errors, and in part because, occasionally, DOSH inspects small employers where there are no workers present at the time of the inspection.

### **3. REVIEW PROCEDURES**

#### **a) Informal Conferences**

DOSH's procedures for informal and formal review of appealed Citation and Notices (C&N) are known as the Reassumptions Program. The outcomes of the Reassumptions Program are similar to OSHA's informal conference process, although the time frames are different. Once a citation is delivered to an employer, the employer has 15 working days to file an appeal with DOSH. If DOSH decides to reassume jurisdiction, the State Plan has 30 working days (45 working days with agreement of both parties) to issue the Corrective Notice of Redetermination (CNR). During the 2017 legislative session, DOSH submitted a request bill seeking to extend the additional days available with agreement of both parties from 15 days to 45 days, for a total of 75 days to issue the CNR. The Legislature passed the bill and the new law took effect January 1, 2018. The additional time will allow more cases to be resolved by the department instead of having to be sent on to the Board when the maximum number of days was reached. DOSH also updated its administrative rules to allow electronic filing of appeals.

If the department decides to reassume, DOSH holds an informal conference with the employer, and modifications to the citation and notice are made in the corrective notice of redetermination issued to the employer. When a reassumption hearing is held, the proceedings are documented in a written narrative. The narrative explains the hearing officer's decision and supports any changes that the hearing officer made to the citations.

During the case file review, 16 inspections were found to result in a reassumption hearing. In each case where penalties were reduced or violations reclassified, the reasons were well documented in the narrative of the reassumption hearing officer's findings.

According to the FY 2017 SAMM Report, penalty retention during reassumption (those not appealed to the Board of Industrial Insurance Appeals, or BIIA) was

90%. The FRL for this metric was +/-15% of the two-year national average, which was 67.44%. Washington was better than the high end of the FRL range (57.32% - 77.56%). The State Plan's success in retaining penalties is commendable.

b) Formal Review of Citations

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

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

OSHA determined that DOSH's formal review of citations was adequate in FY 2017.

#### **4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION**

a) Standards Adoption

The Washington DOSH rulemaking process is initiated by OSHA, the State Plan, or rule petition. When the State Plan officially announces a rulemaking project, it does so through permanent rulemaking, expedited rulemaking or emergency rulemaking.

The permanent rulemaking process is as follows<sup>5</sup>:

- |         |  |
|---------|--|
| Stage 1 | A Preproposal Statement of Inquiry (CR-101 form) is filed with the Code Reviser's Office. Substantial stakeholder input occurs at this time.   |
| Stage 2 | A Proposed Rulemaking (CR-102 form) and the proposed rule language are filed with the Code Reviser's Office. Notice of the public hearing date and comment period are provided on the CR-102 form. If required, Small Business Economic Impact Statement (SBEIS) and/or a Preliminary Cost Benefit Analysis will be available to review. |
| Stage 3 | A Rulemaking Order of Adoption (CR-103 form) and the final rule language are filed with the Code Reviser's Office. The agency responds to public   |

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<sup>5</sup> <http://www.lni.wa.gov/LawRule/ruleProcess.asp>

comments in the Concise Explanatory Statement. If required, a Final Cost Benefit Analysis will be available for review.

Stage 4      The rule becomes effective 30 days after filing the CR-103 form with the Code Reviser's Office unless a later date is stated on the CR-103 form.

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017 and January 1, 2018, according to the Consumer Price Index (CPI). State Plans were required to adopt both initial increase and subsequent annual increases. The two federal standards related to maximum penalty increases required a change to the Revised Code of Washington (RCW) 49.17, and changes to the RCW can only be done by the Washington State Legislature. The Washington State Legislature meets annually, and in FY 2017 DOSH's proposed legislation regarding amendments to RCW 49.17 to adjust maximum penalties was not enacted. DOSH resubmitted the proposed penalty adjustments in the 2018 legislative session and the bill passed both the House and Senate. The bill was signed into law by the Washington state governor on March 21, 2018.

For all federal rules requiring adoption during this period, Washington DOSH elected not to adopt identically. The following table lists the standards issued by OSHA that required a response during FY 2016 and FY 2017 and Washington DOSH's response.

**Table 2**  
**Status of 2016 and 2017 Federal Standards Adopted**  
**(Includes Standards due for adoption in 2016)**

<b>Standard:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Adoption Date:</b>
Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation (1/18/2017) Adoption Required	3/8/2017	Y	N	7/18/2017	Adopted 3/21/2018, Effective 1/1/2019
Final Rule on Occupational Exposure to Beryllium (1/9/2017) Adoption Required	3/8/2017	Y	N	7/9/2017	Pending
Final Rule on Walking Working Surfaces and Personal Protective Equipment (11/18/2016) Adoption Required	1/18/2017	Y	N	5/18/2016	Pending
Interim Final Rule on Maximum Penalty Increase	8/31/2016	Y	N	1/1/2017	Adopted 3/21/2018,

(7/1/2006) Adoption Required					Effective 1/1/2019
Final Rule to Improve Tracking of Workplace Injuries and Illnesses (5/12/2016) Adoption Required	7/12/2016	Y	N	11/14/2016	Pending
Occupational Exposure to Respirable Crystalline Silica (3/25/2016) Adoption Required	5/4/2016	Y	N	9/26/2016	Adopted 3/20/2018, Effective date of 4/23/2018
Confined Spaces in Construction (5/4/2015) Adoption Required	7/29/2015	Y	N	2/4/2016	Filed 1/1/2018, Effective date of 2/5/2018

### **Beryllium Standard**

On January 9, 2017, OSHA adopted new standards addressing occupational beryllium exposure in general industry, construction, and shipyards. State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, by July 9, 2017. However, on June 27, 2017, OSHA published a notice of proposed rulemaking proposing to revoke the ancillary provisions applicable to the construction and shipyard sectors, but to retain the new permissible exposure limits (PELs). OSHA will not enforce the provisions of the January 9, 2017, construction and shipyard standards that it has proposed to revoke, while the current rulemaking is underway.

Given the unusual circumstances of this rulemaking, in which substantive changes have been proposed to a standard within six months following its initial promulgation, several State Plans, including DOSH, have delayed promulgation pending completion of the second rulemaking.

### **Electronic Reporting Rule**

On May 12, 2016, OSHA published the Final Rule to Improve Tracking of Workplace Injuries and Illnesses, effective January 1, 2017. The rule required all affected employers to submit 300A log summaries in OSHA’s Injury Tracking Application (ITA) by the specified due date of July 1, 2017. This deadline was subsequently pushed back to December 15, 2017.

In its Fall 2017 Regulatory Agenda, OSHA announced that it intends to issue a proposal to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses final rule, 81 FR 29624 (May 12, 2016).

State Plans were required to adopt an “at least as effective as” rule within six months of



promulgation, by November 14, 2016. However, given OSHA's intent to issue a proposed rule to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses rule, a number of State Plans, including DOSH, have delayed adoption until this additional rulemaking is complete.

### **Residential Fall Protection**

In December 2010, OSHA resumed the enforcement of conventional fall protection requirements for residential construction and required the State Plans to enforce "at least as effective" standards as OSHA's for residential construction fall heights of six feet or higher. During the FY 2013 FAME evaluation period, a review of the State Plan's Fall Protection Standard in Residential Construction was completed and concerns were identified. Discussions were held with both the State Plan and the National Office. During the FY 2014 FAME period, concerns about the State Plan's residential fall protection rule were addressed as Observation FY 2014-OB-04. A letter was sent to DOSH on October 2, 2015, requesting that they provide information on the effectiveness of its standard. DOSH's response was received on October 19, 2015, and indicated that they would review OSHA's concerns and that a comparative analysis would be performed. Concerns about the Washington fall protection rule were addressed as Finding FY 2015-02 in the FY 2015 FAME report and as Finding FY 2016-02 in the FY 2016 Follow-up FAME Report. In March of 2016, DOSH filed a Pre-proposal Statement of Inquiry to start the fall protection rulemaking process, and in December 2016 DOSH sent out its proposed rule language for comment. However, the State Plan decided to incorporate updates to its residential construction fall protection rules as part of a unified fall protection standard that is in the preliminary stages of rulemaking. DOSH anticipates that the first draft of the unified fall protection standard will be available in September 2018. Due to continued concerns regarding DOSH's residential construction fall protection rules, this issue remained a finding in FY 2017.

**Finding FY 2017-03 (FY 2016-02):** DOSH's standards for fall protection in residential construction are not at least as effective as that of OSHA's. The failure to adopt equivalent standards leaves workers in the State of Washington exposed to fall hazards.

**Recommendation FY 2017-03:** The State Plan should implement a fall protection standard that is at least as effective as the federal standard. The following table lists federal standards issued prior to FY 2016 that had a response pending or updates during this FAME period.

**Table 3**  
**Standards Issued by OSHA Prior to FY 2016**  
**Adopted During FY 2016 & FY 2017**

<b>Standard:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Adoption Date:</b>
Final Rule for Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment. (7/11/2014) Adoption Required	4/11/2014	Y	Y	1/11/2015	Filed 5/3/2016, Effective date of 7/1/2016

b) Federal Program Change (FPC) Adoption

A total of fourteen federal program changes (FPCs) required adoption in FY 2016 and FY 2017. DOSH's acknowledgement of intent was timely 100% (14 in 14 times) during this period.

**Table 4**  
**Status of Federal Program Changes (FPCs) Adoption**

<b>FPC Directive/Subject:</b>	<b>State Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Submission</b>
					<b>Date:</b>
CPL 02-01-058: Enforcement Procedures and scheduling for exposure Workplace violence (1/10/2017) Adoption not required	2/23/2017	N	N	7/10/2017	N/A
CPL 02-00-160: Field Operations Manual (8/2/2016) Adoption not required	9/14/2016	N	N	2/2/2017	1/31/2017 (Comparison Document)
CPL 03-00-020: OSHA's National Emphasis Program on Shipbreaking (3/7/2016)	4/26/2016	Y	N	9/7/2016	8/9/2016
CPL 02-03-007: Whistleblower Investigations Manual (1/28/2016)	4/13/2016	Y	N	9/11/2016	9/28/2016
CSP 02-00-003: Consultation Policies and Procedures Manual (11/19/2015)	2/16/2016	Y	N	5/19/2016	9/7/2016

TED 01-00-020: Mandatory Training Program for OSHA Whistleblower Investigators (10/8/2015)	12/8/2015	Y	N	4/8/2016	6/8/2016
CPL 02-00-159: Field Operations Manual (FOM) (10/1/2015)	11/17/2015	Y	N	4/1/2016	3/23/2016
CPL 02-03-006: Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Program (8/18/2015)	12/1/2015	N	N	2/18/2015	12/1/2015
CPL 03-00-019: National Emphasis Program on Amputation (8/13/2015)	8/24/2015	Y	N	2/13/2016	3/31/2016
CSP 03-01-004: Special Government Employees (SGE) Program Policies & Procedures Manual for the Occupational Safety and Health Administration's Voluntary Protection Program (7/30/2015)	9/24/2015	N	N	1/30/2016	9/24/2015
CSP 04-01-002: OSHA Alliance Program (7/29/2015)	9/24/2015	N	N	1/29/2016	9/24/2015
CPL 02-02-079: Inspection Procedures for the Hazard Communication Standard (7/9/2015)	9/3/2015	Y	N	1/9/2016	12/29/2015
CPL 02-02-078: Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis (6/30/2015) Adoption not required	8/25/2015	Y	N	12/30/2015	2/3/2016
CPL 02-03-005: Whistleblower Investigations Manual (4/21/2015) Adoption not required	7/15/2015	Y	N	10/21/2015	10/27/2015

DOSH submitted six State Plan-initiated changes in FY 2017 and thirteen in FY 2016. The State Plan made updates to several directives, including its process safety management directives, consultation manual, and compliance manual. They created new directives for

working near energized trolley lines and charter boat inspections. DOSH also promulgated a State Plan-initiated rule related to the use of helicopters for electric power generation and transmission activities and updated its telecommunication rules.

## **5. VARIANCES**

DOSH granted fourteen permanent variances during FY 2016 and FY 2017. Six permanent variance requests were denied, two were withdrawn, and an additional five requests are still being considered. DOSH did not receive or grant any requests for temporary variances during this time period.

The State Plan requires each employer requesting a variance to propose an alternative means of protection that is as effective as the written code intended. The proposed alternate means of protection is part of the request process and each one is evaluated by a DOSH safety & health technical specialist who has expertise in that area. After the technical specialist has evaluated the proposal they forward a recommendation to DOSH senior managers for a final decision to allow or deny the variance. If the employer's variance application does not propose an alternative method to protect workers or does not provide the needed information throughout the process in a timely manner, DOSH will deny the variance; however, the employer can choose to resubmit the request if the required information is included.

## **6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM**

Penalties and sanctions are imposed on employers in the state and local government sector for violations of safety and health hazards in an identical fashion as the private sector industry. In FY 2017, 4% (161/3986) of the inspections DOSH conducted were in state and local government workplaces. While this percentage was just below the FRL 4.75% to 5.25%, OSHA does not believe this difference is dramatic enough to warrant a finding or observation during the FY 2017 evaluation period.

## **7. WHISTLEBLOWER PROGRAM**

Section 49.17.160 of the Washington Industrial Safety and Health Act provides for whistleblower protection equivalent to that provided by OSHA. For FY 2017, OSHA reviewed 34 retaliation case files, all of which were randomly selected from a list generated by the Integrated Management Information System (IMIS) database of all closed whistleblower cases from FY 2017.

DOSH's timeliness of completed retaliation cases has remained significantly higher than the national average for several years. In fact, it had the highest timeliness rate of any State Plan state in the country in FY 2017. Nevertheless, the fixed further review level for this metric for all State Plans is 100% completion of retaliation cases within 90 days.

The average number of days for DOSH to complete a whistleblower protection investigation in FY 2017 was 70 days, better than the national average of 247 days and below the FRL of 90 days. No further review is warranted with regard to SAMM 16.

DOSH's merit rate has fluctuated between 16% – 29% over the last three years. In FY 2017 DOSH's merit rate was 29%, which is within FRL of 20% - 30% and did not warrant further review. During the monitoring period, DOSH dismissed 51 of 82 cases, a dismissal rate of 62%. The national dismissal rate was 61% of cases. These measures were within appropriate ranges.

**Table 5**

	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2017 National Average</b>
Completed Within 90 Days (SAMM 14)	92%	95%	89%	39%
Merit Cases (SAMM 15)	24%	16%	29%	21%
Average Number of Calendar Days to Complete Investigation (SAMM 16)	63	73	70	247

Merit, settlement, litigation, dismissal, and withdrawal rates were appropriate, as detailed in the table below:

**Table 6**

<b>FY 2017</b>	<b>Merit</b>	<b>Settlement</b>	<b>Litigation</b>	<b>Dismissal</b>	<b>Withdrawal</b>
Washington	29%	22%	7%	62%	9%
National Average	21%	15%	5%	61%	18%

In addition, DOSH completed 89% of investigations within 90 days which is below the FRL of 100%, but above the national average of 39%. DOSH's settlement and merit rates were also higher than the national average. As shown above in Table 6, the State Plan's withdrawal rate was lower than the national average.

During the on-site review of retaliation case files, OSHA found overall that the program managers and staff were conducting and documenting thorough investigations in a timely manner. Nevertheless, the following observations resulted from the review:

First, it was not clear whether DOSH followed procedures comparable to those of OSHA in cases where workers reported injuries. In 6% (two of 34) of the cases reviewed, complainants reported an injury. Reporting an injury is a protected activity under Section 11(c) of the OSH Act. However, in both cases, DOSH did not identify the reported injury as a protected activity or inform the complainant of their right to dually file with OSHA. DOSH indicated that Washington State investigates these claims under a workers'

compensation statute that is at least as effective as Section 11(c). However, it was not clear whether either of the cases identified, in the FY 2017 review, were investigated under the workers' compensation statute. In FY 2017, OSHA did not review any other cases in which Complainants alleged retaliation for reporting an injury. OSHA will continue to monitor this concern as an observation in order to evaluate the effectiveness of the State Plan's procedures for protecting workers who report injuries.

**Observation FY 2017-OB-03:** In 100% (two of two) of retaliation cases reviewed that involved a complainant reporting an injury, DOSH did not identify the injury report as a protected activity.

**Federal Monitoring Plan:** During next year's FAME, a limited number of retaliation cases will be selected randomly and reviewed to investigate whether DOSH is identifying injury reporting as a protected activity.

Secondly, OSHA found in the case file review that DOSH investigators did not always test relevant evidence prior to closing a complaint. This impacted the investigator's reports of investigation. In fact, five of the eight reports of investigation that had issues were cases in which the investigator did not test relevant evidence before closing a complaint.

**Observation FY 2017-OB-04:** In 15% (five of 34) of retaliation case files reviewed, DOSH did not adequately test relevant evidence prior to closing the case. Specifically, in five FY 2017 retaliation investigations, the determination reached was not based on sound legal reasoning and substantive evidence in the case file. In eight of the 34 retaliation case files reviewed, 24%, including the ones identified in the previous sentence, the report of investigation did not properly assess and evaluate the prima facie elements of retaliation, pretext testing and/or resolving factual discrepancies key to making a determination.

**Federal Monitoring Plan:** During next year's FAME, a limited number of retaliation cases will be selected randomly and reviewed to determine whether DOSH properly assessed, evaluated and documented the following: testing evidence, prima facie elements of retaliation, testing the employer's non-discriminatory explanation for pretext, and resolving discrepancies key to making a determination on the complaint.

Thirdly, OSHA found in the case file review that DOSH investigators did not always recognize a work refusal as a protected activity nor did they always test the evidence for this component of the case.

**Observation FY 2017-OB-05:** In 67% (two of three) of retaliation case files reviewed that involved a complainant's work refusal, DOSH did not investigate whether the work refusal was protected under the act.

**Federal Monitoring Plan:** During next year's FAME, a limited number of retaliation

cases will be selected randomly and reviewed to investigate whether the work refusal was protected under the act.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

Three new CASPAs were investigated by OSHA in FY 2016 and FY 2017. DOSH was timely and appropriate in its response to the CASPAs.

The first CASPA was from FY 2016 and was related to DOSH's handling of a complaint inspection. The State Plan was notified and conducted an internal investigation. DOSH found that a formal complaint response letter was not provided to the complainants, and determined that a follow-up inspection was necessary in order to respond to all complaint items. In addition, DOSH completed corrective actions and the CASPA was closed. The complainants appealed OSHA's determination, but the appeal did not result in the CASPA being re-opened.

The second CASPA was from FY 2017 and related to DOSH's policies and standards applicable to pre-commercial thinning operations. The State Plan was notified and they provided its response timely, which was accepted by OSHA. The complainant appealed OSHA's determination, and OSHA conducted an investigation. OSHA did not have any formal recommendations as a result of the investigation, but urged the State Plan to clarify its internal policies.

The third CASPA was also from FY 2017 and related to the complaint inspection process. OSHA and the State Plan investigated the allegations, but did not have any findings or recommended corrective actions. OSHA's initial determination was appealed, but the additional information provided by the complainant did not bring forth new concerns to warrant a second investigation.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

At the end of FY 2017, there were 32 approved Voluntary Protection Program (VPP) sites in DOSH jurisdiction. DOSH's policies and procedures for VPP are as effective as the federal program policies and procedures. No significant changes were made to the program.

## **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

DOSH's 23(g) state and local government sector consultation program conducted a total of 130 visits. A total of 131 hazards were identified, of which 100%, were verified and corrected within 14 days of the latest correction due date.

With the exception of the number of visits to small employers, the program met all other mandated activity measures. DOSH conducted 84% of its state and local government

sector visits with small employers, which is below the federally-mandated requirements that no less than 90% of visits be conducted with small employers (defined as less than or equal to 250 workers in the establishment, or 500 workers corporate-wide). Most of the visits were conducted with state agencies, which tend to be some of the larger employers. Both the private and state and local government sector consultation programs were evaluated the week of September 25th, 2017, in accordance with the guidance found in Chapter 9 of the Consultation Policies and Procedures Manual.

## **11. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAM**

DOSH's 23(g) private sector consultation program conducted a total of 2,185 visits. According to the MARC report, run date 2/7/2018, they identified a total of 3,071 hazards of which 3,019, or 98%, were corrected within 14 days of the latest correction due date. The DOSH SOAR reported that they identified a total of 5,662 hazards of which 5,498, or 97%, were corrected within 14 days of the latest correction due date. OSHA and DOSH will work together to identify why the numbers are so different between the two reports.

For the private sector, DOSH conducted 98% of their visits to small employers, thus meeting the federally-mandated requirement as described. All other mandated activity measures were met as well.

During the on-site consultation audit, OSHA found that overall the program managers and staff are providing appropriate consultative services and advice to the employers they serve. However, several concerns were noted regarding the DOSH "Safety Through Achieving Recognition Together (START)" program, which is the State Plan's equivalent of OSHA's "Safety and Health Achievement Recognition Program (SHARP)." There were two FAME findings and three FAME observations related to this program.

The OSHA Consultation Policies and Procedures Manual, CSP 02-00-003, requires that employers seeking SHARP approval to receive a full-service safety and health consultation visit, with a comprehensive review of their safety and health management system, and that all hazard(s) found by the consultant(s) be corrected. The DOSH consultation manual describes an equivalent procedure for employers seeking START approval, in that employers must receive a full-service safety and health consultation visit and a comprehensive review of their safety and health management system with all hazards found by the consultant(s) corrected. However, DOSH was only tracking the correction of serious hazards on their START consultation audits, and was not clear to employers about the expectation of correcting general (other than serious) hazards.

**Finding FY 2017-04:** DOSH does not require the correction of all hazards, including general hazards by START employers.

**Recommendation FY 2017-04:** DOSH should ensure that all general hazards are



corrected by START employers, in the same manner that DOSH requires the correction of all serious hazards, and that documentation is maintained in the visit file.

The DOSH consultation manual requires the Regional Consultation Manager to ensure that an employer satisfies all START participation criteria. One of the criteria is that START employers meet injury and illness rate requirements. However, in almost half of the files reviewed, DOSH did not have specific injury and illness rate documentation in the case file.

**Finding FY 2017-05** In 45% (5/11) of files reviewed, DOSH did not maintain documentation of the START employer's injury and illness rates.

**Recommendation FY 2017-05:** DOSH should ensure that START visit files contain a comparison of the employer's injury and illness rates to the applicable Bureau of Labor Statistics (BLS).

The DOSH consultation manual requires the employer to provide an interim-year self-evaluation so that the Regional Consultation Manager can ensure that that START employer is eligible for renewal. However, in over half of the files reviewed DOSH did not maintain this documentation.

**Observation FY 2017-OB-06:** In 64% (7/11) of START files reviewed, DOSH did not have evidence of an interim year self-evaluation for continued participation in the program.

**Federal Monitoring Plan:** During next year's FAME, a limited number of START files will be selected randomly and reviewed to ensure that DOSH is requiring interim year self-evaluations from START employers and maintaining documentation in the START files.

The DOSH consultation manual requires the Regional Consultation Manager to work with the START employer to develop a mutually agreed upon achievement plan. The manual also requires employers to submit information to DOSH about the completion of items set out in the achievement plan. However, in about half of the files reviewed, DOSH did not maintain documentation to show that these requirements were followed.

**Observation FY 2017-OB-07:** In 54% (6/11) of START files reviewed, DOSH did not have evidence to show that START employers had submitted information regarding the completion of item(s) set forth in their achievement plan to improve their safety and health management system.

**Federal Monitoring Plan:** During next year's FAME, a limited number of START files will be selected randomly and reviewed to ensure that DOSH is evaluating employers to ensure that they are working on their achievement plans, and to ensure that DOSH is maintaining documentation in the START files.

The DOSH consultation manual requires that written reports be sent to the employer as soon as possible, but not longer than 15 calendar days after the closing conference. However, DOSH did not meet this requirement in a significant number of the START files reviewed by OSHA.

**Observation FY 2017-OB-08:** In 36% (4/11) of START files reviewed, OSHA found that DOSH did not ensure that START written reports were sent to the employer within 15 calendar days and that any deviations from this requirement were explained in the file.

**Federal Monitoring Plan:** During next year's FAME, a limited number of START files will be selected randomly and reviewed to evaluate DOSH's timeliness in sending written START reports to the employer.

## Appendix A – New and Continued Findings and Recommendations

### FY 2017 Washington DOSH Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-# or FY 2016-OB-#
FY 2017-01	The State Plan has a problem with a high turnover rate of inspectors. The rate of turnover directly contributes to the State Plan struggling to meet its enforcement goals.	The State Plan should continue efforts to understand and address its high turnover rate and fill staff vacancies	FY 2016-OB-01
FY 2017-02	In FY 2017, DOSH was 20% below its goal of conducting 5,000 compliance inspections	The State Plan should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach inspection goals.	FY 2016-01
FY 2017-03	DOSH's standards for fall protection in residential construction are not at least as effective as that of OSHA's. The failure to adopt equivalent standards leaves workers in the State of Washington exposed to fall hazards.	The State Plan should implement a fall protection standard that is at least as effective as the federal standard.	FY 2016-02
FY 2017-04	DOSH does not require the correction of all hazards, including general hazards by START employers.	DOSH should ensure that all general hazards are corrected by START employers, in the same manner that DOSH requires the correction of all serious hazards, and that documentation is maintained in the visit file	New
FY 2017-05	In 45% (5/11) of files reviewed, DOSH did not maintain documentation of the START employer's injury and illness rates.	DOSH should ensure that START visit files contain a comparison of the employer's injury and illness rates to the applicable Bureau of Labor Statistics (BLS).	New

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2017 Washington DOSH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-# or FY 2016-#	Observation	Federal Monitoring Plan	Current Status
	FY 2016-OB-01	The State Plan has a problem with a high turnover rate of inspectors and consultants. The rate of turnover directly contributes to the State Plan struggling to meet both its enforcement and consultation goals.		Converted to Finding FY 2017-01
	FY 2016-OB-02	In FY 2016, DOSH did not meet its goal of having 95% of serious hazards verified abated within 14 days of the abatement date. In FY 2017, DOSH improved its performance and was within 2% of its goal. This observation was closed.		Closed
FY 2017-OB-01		DOSH did not include next of kin notification and final determination letters in all fatality case files. Next of kin notification letters were not found in 46% (6/13) of the fatality case files reviewed, and next of kin final determination letters were not found in 38% (5/13) of the fatality case files reviewed.	During next year's FAME, fatality case files will be reviewed to ensure that next of kin notification and final determination letters are maintained in the files.	New
FY 2017-OB-02	FY 2016-OB-03	In FY 2017, the State Plan's safety in-compliance rate was 41%, which was 6% higher than the acceptable range of the further review level.	During next year's FAME, a limited number of safety in-compliance case files will be selected randomly and reviewed to further investigate this trend.	Continued
FY 2017-OB-03		In 100% (2 of 2) of retaliation cases reviewed that involved a complainant reporting an injury, DOSH did not identify the injury report as a protected activity.	During next year's FAME, a limited number of retaliation cases will be selected randomly and reviewed to investigate whether DOSH is identifying injury reporting as a protected activity.	New

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2017 Washington DOSH Comprehensive FAME Report

FY 2017-OB-04		In 15% (five of 34) of retaliation case files reviewed, DOSH did not adequately test relevant evidence prior to closing the case. Specifically, in five FY 2017 retaliation investigations, the determination reached was not based on sound legal reasoning and substantive evidence in the case file. In eight retaliation case files reviewed, 24%, including the ones identified in the previous sentence, the report of investigation did not properly assess and evaluate the prima facie elements of retaliation, pretext testing and/or resolving factual discrepancies key to making a determination.	During next year's FAME, a limited number of retaliation cases will be selected randomly and reviewed to determine whether DOSH properly assessed, evaluated and documented the following: testing evidence, prima facie elements of retaliation, testing the employer's non-discriminatory explanation for pretext, and resolving discrepancies key to making a determination on the complaint.	New
FY 2017-OB-05		In 67% (two of three) of retaliation case files reviewed that involved a complainant's work refusal, DOSH did not investigate whether the work refusal was protected under the act.	During next year's FAME, a limited number of retaliation cases will be selected randomly and reviewed to investigate whether the work refusal was protected under the act.	New
FY 2017-OB-06		In 64% (7/11) of START files reviewed, DOSH did not have evidence of an interim year self-evaluation for continued participation in the program.	During next year's FAME, a limited number of START files will be selected randomly and reviewed to ensure that DOSH is requiring interim year self-evaluations from START employers and maintaining documentation in the START files.	New

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2017 Washington DOSH Comprehensive FAME Report

FY 2017-OB-07		In 54% (6/11) of START files reviewed, DOSH did not have evidence to show that START employers had submitted information regarding the completion of item(s) set forth in their achievement plan to improve their safety and health management system.	During next year's FAME, a limited number of START files will be selected randomly and reviewed to ensure that DOSH is evaluating employers to ensure that they are working on their achievement plans, and to ensure that DOSH is maintaining documentation in the START files.	New
FY 2017-OB-08		In 36% (4/11) of START files reviewed, OSHA found that DOSH did not ensure that START written reports were sent to the employer within 15 calendar days and that any deviations from this requirement were explained in the file.	During next year's FAME, a limited number of START files will be selected randomly and reviewed to evaluate DOSH's timeliness in sending written START reports to the employer.	New

## Appendix C - Status of FY 2016 Findings and Recommendations

### FY 2017 Washington DOSH Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2016-01	DOSH has consistently missed its inspection goals over each of the last three years. This struggle is due primarily to staffing vacancies resulting from a high turnover rate and retirements.	The State Plan should continue efforts to understand and address its high turnover rate and fill staff vacancies in order to reach inspection goals.	<p>DOSH is working closely with Washington State Human Resources to address the issue. A multi-pronged approach is being used:</p> <ul style="list-style-type: none"> <li>• Classification and compensation packages requesting salary increases at all levels of the Safety &amp; Health Specialist and Industrial Hygienist job series were developed, submitted to and approved by the 2017 Washington State Legislature. While the increases are less than what we hoped for and requested, they represent movement in the right direction toward more equitable compensation for our safety and health professionals.</li> <li>• DOSH requested assignment pay for staff who hold or earn professional certification relevant to their position, for high-cost geographic locations, and for hazard pay (for affected hours when using PPE). One of the requests has been approved – hazard pay for inspectors when certain criteria are met.</li> <li>• DOSH is continuing to work with L&amp;I's Office of Human Resources and the Director's Office to analyze and pursue additional opportunities to increase compensation for safety and health staff and reduce turnover rates.</li> </ul>	<p>July 2017</p> <p>July 2017</p> <p>On-going</p>	Open 12/21/2017

## Appendix C - Status of FY 2016 Findings and Recommendations

### FY 2017 Washington DOSH Comprehensive FAME Report

FY 2016-02	DOSH's standards and enforcement program for fall protection in residential construction is not at least as effective as that of OSHA's. The failure to adopt an equivalent standard leaves Washington state employees exposed to fall hazards.	The State Plan should implement a fall protection standard at least as effective as the federal standard.	Currently, the fall protection rules for Washington reside in multiple standards within the Washington Industrial Safety and Health Act (WISHA). A unified fall protection standard is being created; a first draft is expected in September 2018.	Not Applicable.	Open 12/21/2017
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## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 Washington DOSH Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Washington - DOSH			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	12.98	15 days for serious hazards; 30 days for other than serious hazards	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	12.98	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	5.05	5	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	5.05	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	3	0	The further review level is fixed for all State Plans.

## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 Washington DOSH Comprehensive FAME Report

<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.66	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
		Other: 1.87	+/- 20% of Other: 0.99	
<b>6</b>	Percent of total inspections in state and local government workplaces	4.04%	+/- 5% of 5.00%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.75% to 5.25%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 3,004	+/- 5% of S: 3,900	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 3,705 to 4,095 for safety and from 1,045 to 1,155 for health.
		H: 982	+/- 5% of H: 1,100	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,975.11	+/- 25% of \$2,516.80	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,887.60 to \$3,146.00.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$1,386.46	+/- 25% of \$1,706.10	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,279.58 to \$2,132.63.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$2,608.26	+/- 25% of \$2,867.94	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,150.96 to \$3,584.93.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$3,031.89	+/- 25% of \$3,952.26	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,964.20 to \$4,940.33.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$3,781.28	+/- 25% of \$5,063.48	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$3,797.61 to \$6,329.35.

## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 Washington DOSH Comprehensive FAME Report

<b>9</b>	Percent in compliance	S: 41.45%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 31.70%	+/- 20% of H: 35.78%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	75.86%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 44.49	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 44.63	+/- 20% of H: 56.03	
<b>12</b>	Percent penalty retained	89.72%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	90.27%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	89%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	29%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	70	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	2.76%	+/- 25% of 1.26%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 0.95% to 1.58%.

## **Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report**

### **FY 2017 Washington DOSH Comprehensive FAME Report**

NOTE: Fiscal Year 2017 is the second year since the transition from the NCR (OSHA's legacy data system) began that all State Plan enforcement data has been captured in OSHA's Information System (OIS). As such, the further review levels for SAMMs typically referencing a three-year rolling average will instead rely on a two-year average this year. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 13, 2017, as part of OSHA's official end-of-year data runs.

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

FY 2017 Washington DOSH Comprehensive FAME Report

*Keep Washington Safe and Working*

# SUMMARY OF DOSH ACCOMPLISHMENTS State OSHA Annual Report – SOAR Washington State

Federal Fiscal Year 2017  
October 1, 2016 – September 30, 2017

Strategic Management Plan  
2016-2020

Prepared by the Division of Occupational Safety and Health  
Department of Labor and Industries  
State of Washington  
January 5, 2018



## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

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## Introduction

Washington State's workplace safety and health program is authorized by the Washington Industrial Safety and Health Act of 1973 (WISHA – Chapter 49.17 RCW) and administered by the Division of Occupational Safety and Health (DOSH) within the Department of Labor and Industries (L&I). The federal Occupational Safety and Health Administration (OSHA) monitors and partially funds WISHA, which must be at least as effective as federal OSHA.

In the last five years, an average of 70 Washington state workers died on-the-job and an estimated 150,000 people suffered on-the-job injuries annually. Many occupational illnesses are believed to go unreported. Our mission is to protect the safety and health of Washington's workers by ensuring that employers provide safe and healthful working conditions. Our strategic goals help us to accomplish our mission by focusing on prevention and protection.

In partnership with OSHA, our ultimate goal is for every worker to go home whole and healthy every day. While we have made progress in reducing injuries, illness and fatalities, our work is not done. Like trying to describe a world to our children where computers did not exist, not to mention smart phones, drones, and virtual reality headsets, we will not be satisfied until it's extremely difficult to remember or imagine a time when each year, many workers in Washington lost their life in the course of doing their job.

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*\* FFY 2012-2016 Average number of total received claims (L&I Injury Data: L&I and Self-Insured Workers' Compensation Claims: Year, Status, and Liability)*

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### Summary of 2016- 2020 Strategic Management Plan Goals

This report summarizes DOSH's efforts and results for the 2017 reporting year (October 1, 2016 – September 30, 2017), which is the second of five years in the 2016-2020 strategic management plan.

Strategic Goal	5 year Performance Goals
Reduce fatalities* and hospitalization** rates in the most hazardous industries compared to the previous 5-year period  *Reduce fatalities rate from 2.7 per 100,000 full time workers to 2.5 per 100,000 full time workers (by 2016)  **Reduce hospitalization rate from 35 per 100,000 full time workers to 26 per 100,000 full time workers (by 2016)	1. Focus DOSH resources in these chosen most hazardous industries <ul style="list-style-type: none"><li>• Agriculture</li><li>• Logging</li><li>• Construction</li><li>• Healthcare</li><li>• Electrical Utilities and Telecommunications</li></ul> 2. Conduct annual review of hospitalization and fatality data to ensure rules are in place that mitigate contributing exposures in the most hazardous industries
Reduce the risk of catastrophic releases of hazardous chemical in Washington state	By 2020, DOSH will have conducted safety or health inspections or consultations at at-least half (approximately 145) of known facilities covered by PSM requirements in Washington State
Recruit and retain technically skilled safety and health professionals, including qualified bilingual professionals	Increase the average number of months that newly hired safety and hygiene professionals stay in DOSH*  *Baseline and target will be determined after the results of the 2016 collective bargaining negotiations over compensation, and legislative funding during the 2017 session are known. Data and methodology to measure this goal are already in place.

DOSH also set goals in support of mandated activities and to further ensure meeting the ultimate goal – every worker goes home safe and sound at the end of a work day.

- Reduce deaths from work-related injuries
- Reduce workplace injuries and illnesses
- Conduct onsite consultations and inspections
- Ensure timely abatement of serious hazards
- Maintain hygiene and safety citation lapse times below the national average



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### FY 2017 Washington DOSH Comprehensive FAME Report

#### Summary of Results 2017

<b>Goal A-1</b>	<u>Rule: Silica</u> DOSH will adopt a proposed silica rule by November 30, 2016
<b>Results:</b>	<b>This goal was not met.</b> The Notice of Rulemaking (CR-102) proposal was filed 10/31/17, with a public stakeholder meeting scheduled for 12/15/17. The anticipated filing date of the Order Adopting Rule (CR-103) is 1/23/18 and the anticipated adoption date is set for 2/26/18.
<b>Comment</b>	A high level of stakeholder involvement delayed this rulemaking project which is on track for adoption January 23, 2018 and becoming effective February 26, 2018.
<b>Strategic Goal 1</b>	Reduce fatalities and hospitalization rates in the most hazardous industries compared to the previous 5 years
<b>5 Yr Performance Goal</b>	Focus DOSH resources in these chosen most hazardous industries: Agriculture, Logging, Construction, Healthcare, Electrical Utilities and Telecommunications Conduct annual review of hospitalization and fatality data to ensure rules are in place that mitigate contributing exposures in the most hazardous industries

<b>Goal A-2</b>	<u>Rule: Confined Space</u> DOSH will adopt a proposed confined space rule by October 31, 2016
<b>Results:</b>	<b>This goal was not met.</b> The planned adoption date is set for 1/2/18 with an effective date of 2/5/18.
<b>Comment</b>	Extensive stakeholdering response and interpretation challenges delayed the rulemaking project which is on track for completion during the 2 <sup>nd</sup> quarter of FFY 18.
<b>Strategic Goal 1</b>	Reduce fatalities and hospitalization rates in the most hazardous industries compared to the previous 5 years

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<b>5 Yr Performance Goal</b>	<p>Focus DOSH resources in these chosen most hazardous industries: Agriculture, Logging, Construction, Healthcare, Electrical Utilities and Telecommunications</p> <p>Conduct annual review of hospitalization and fatality data to ensure rules are in place that mitigate contributing exposures in the most hazardous industries</p>
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<b>Goal A-3</b>	<p><u>Rule: Lead</u></p> <p>DOSH will complete a final draft to update the lead rule and distribute it to stakeholders by June 30, 2017</p>
<b>Results:</b>	<b>Goal partially met.</b> A discussion draft was distributed in June 2017, followed by a series of stakeholder meetings from July-October 2017.
<b>Comment</b>	Currently reviewing and researching comments from stakeholders in order to incorporate appropriate stakeholder feedback into the next draft which is planned to be released early in 2018. The goal is to file the rule proposal (CR-102) in the summer or fall of 2018.
<b>Strategic Goal 1</b>	Reduce fatalities and hospitalization rates in the most hazardous industries compared to the previous 5 years
<b>5 Yr Performance Goal</b>	<p>Focus DOSH resources in these chosen most hazardous industries: Agriculture, Logging, Construction, Healthcare, Electrical Utilities and Telecommunications. Conduct annual review of hospitalization and fatality data to ensure rules are in place that mitigate contributing exposures in the most hazardous industries</p>

Goal A-4	<u>Logging</u> Maintain 2016 inspection level for non-LSI logging employers						
Results:		FFY	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
	NON-LSI INSPECTIONS	2016	11	25	15	14	65
		2017	8	22	20	7	57
	LSI INSPECTIONS	2016	8	8	6	7	29
		2017	9	16	6	12	43
	TOTAL LOGGING INSPECTIONS	2016	19	33	21	21	94
		2017	17	38	26	19	100
Comment	<b>The intent of the goal was met.</b> The number of logging employers in/not in the Logging Safety program (LSI) fluctuated throughout the year. While we conducted 8 fewer non-LSI logging inspections in 2017 than 2016, we conducted 14 more LSI inspections, exceeding 2016’s total logging						

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	inspections by 6. This is especially significant as two of four logging inspector positions were vacant for a large part of the year.
<b>Strategic Goal 1</b>	Reduce fatalities and hospitalization rates in the most hazardous industries compared to the previous 5 years
<b>5 Yr Performance Goal</b>	Focus DOSH resources in these chosen most hazardous industries: Agriculture, Logging, Construction, Healthcare, Electrical Utilities and Telecommunications. Conduct annual review of hospitalization and fatality data to ensure rules are in place that mitigate contributing exposures in the most hazardous industries

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<b>Goal A-5</b>	<u>Healthcare</u> Convene Workplace Violence Prevention in Healthcare workgroup three times during FFY 2017
<b>Results:</b>	<b>Goal met.</b> The group met three times during FFY 2017.
<b>Comment</b>	After three meetings, the Workplace Violence Prevention in Healthcare workgroup was suspended due to an apparent lack of stakeholder interest and participation. DOSH will continue to focus on other options for helping to reduce workplace violence in healthcare settings going forward.
<b>Strategic Goal 1</b>	Reduce fatalities and hospitalization rates in the most hazardous industries compared to the previous 5 years
<b>5 Yr Performance Goal</b>	Focus DOSH resources in these chosen most hazardous industries: Agriculture, Logging, Construction, Healthcare, Electrical Utilities and Telecommunications  Conduct annual review of hospitalization and fatality data to ensure rules are in place that mitigate contributing exposures in the most hazardous industries

Goal A-6	<u>Reassumptions</u> 50% of all non-financial settlement agreements will include safety or health strategies above and beyond the minimum compliance requirements														
Results:	<table><tr><td>Qtr 1</td><td>Qtr 2</td><td>Qtr 3</td><td>Qtr 4</td><td>YTD FFY 2017</td></tr><tr><td>6 of 7 = 86%</td><td>2 of 2 = 100%</td><td>3 of 3 = 100%</td><td>5 of 5 = 100%</td><td>16 of 17 = 94%</td></tr></table>					Qtr 1	Qtr 2	Qtr 3	Qtr 4	YTD FFY 2017	6 of 7 = 86%	2 of 2 = 100%	3 of 3 = 100%	5 of 5 = 100%	16 of 17 = 94%
Qtr 1	Qtr 2	Qtr 3	Qtr 4	YTD FFY 2017											
6 of 7 = 86%	2 of 2 = 100%	3 of 3 = 100%	5 of 5 = 100%	16 of 17 = 94%											
Comment	Goal exceeded. Leveraging settlement agreements to go above and beyond the minimum compliance requirements helps employers focus on the ultimate goal of protecting workers. It is a win-win-win solution for employers, workers and the Department.														
Strategic Goal 1	Reduce fatalities and hospitalization rates in the most hazardous industries compared to the previous 5 years														
5 Yr Performance Goal	Focus DOSH resources in these chosen most hazardous industries: Agriculture, Logging, Construction, Healthcare, Electrical Utilities and Telecommunications  Conduct annual review of hospitalization and fatality data to ensure rules are in place that mitigate contributing exposures in the most hazardous industries														

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<b>Goal A-7</b>	Conduct between 30 and 35 safety or health inspections or consultations at facilities covered by PSM requirements by September 30, 2017
<b>Results:</b>	<b>Goal met.</b> 30 PSM inspections and 2 consultations completed = 32
<b>Comment</b>	We have now conducted a total 54 PSM inspections/consultations out of the five-year goal of 145 leaving us with 91 more to conduct over the next three years (2016 total = 22).
<b>Strategic Goal 2</b>	Reduce the risk of catastrophic releases of hazardous chemicals in Washington state
<b>5 Yr Performance Goal</b>	By 2020, DOSH will have conducted safety or health inspections or consultations at at-least half (approximately 145) of known facilities covered by PSM requirements in Washington State

<b>Goal A-8</b>	Identify, implement and monitor action for at least three additional A3 countermeasures from the Safety and Health Specialist and Industrial Hygienist retention plan
<b>Results:</b>	<b>Goal exceeded.</b> DOSH used at least 9 additional countermeasures to improve retention and recruitment of safety and health professionals.
<b>Comment</b>	<ul style="list-style-type: none"> <li>Two years' worth of significant efforts to get salary increases resulted in 10% raises for Safety and Health Specialists and Industrial Hygienists starting July 1st, which is appreciated but much less than what's needed to close the salary gap.</li> <li>A Lean work session was held in July 2017. We identified data needed to demonstrate higher levels of turnover in high cost areas, which supports the need for geographical pay.</li> <li>Assigned a seasoned safety inspector to be a full-time training officer in Region 2 which faces the greatest challenge with retention due to the high cost of living in King County.</li> <li>We requested and received 16 new field positions that are being phased in over a 2-year period, a major accomplishment. This will help to start closing the gap created by a significant growth in employment over the last 20 years with no net increase of inspectors and consultants.</li> <li>We've stepped up the already significant efforts spent recruiting, including hiring events at state universities. Several of our senior and regional managers helped interview prospective applicants at a job fair at Central Washington University.</li> <li>In December 2016 we graduated the 2<sup>nd</sup> cohort of 20 supervisors and managers from our successful Keystone Leadership program. They joined 19 of their colleagues who graduated in May 2016. A third cohort with 28 participants is underway during FFY 2018. This program helps our managers and supervisors</li> </ul>

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### FY 2017 Washington DOSH Comprehensive FAME Report

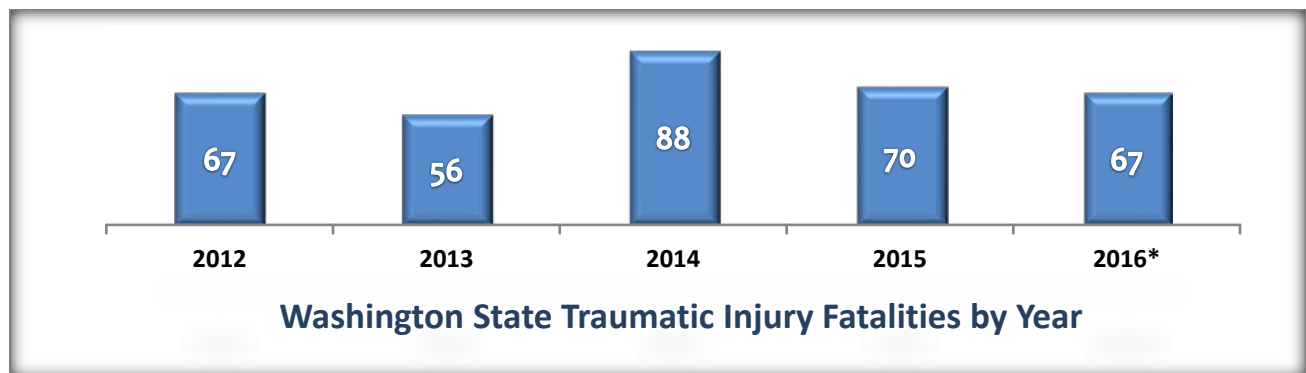
	<p>develop the skills needed to manage during such challenging times, and even more importantly, helps them build relationships with their peers across the state.</p> <ul style="list-style-type: none"> <li>• We have successfully worked through long-standing agency barriers to get tablet computers for DOSH field staff. Following a pilot earlier this year, a rollout to staff with expiring leases on their current computer will soon be under way. The remaining non-expiring leased computers will be replaced in 2018, so at that point, all DOSH field staff will have lightweight tablet computers they can carry with them on job sites. The tablet docks to twin monitors and a full-size keyboard in the office, so there is no need to transfer field notes or other documents from one device to another.</li> <li>• We implemented recognition for the significant investment of time and effort by new CSHOs in completing required New Hire training by presenting them with a DOSH challenge coin upon graduation. This was the 2<sup>nd</sup> in our series of recognizing significant achievements with challenge coins. Keystone Leader challenge coins were awarded to all of our leadership program graduates.</li> <li>• The DOSH Management Team completed its third consecutive annual round of all-day visits with field staff. The focus is on listening to our staff, responding to their questions and concerns, and letting them know what we did with the suggestions they made previously, including what we are doing with employee survey feedback. These visits have been very successful and include time for managers to talk informally with staff over a shared lunch.</li> </ul>
<b>Strategic Goal 3</b>	Recruit and retain technically skilled safety and health professionals, including qualified bilingual professionals
<b>5 Yr Performance Goal</b>	<p>Increase the average number of months that newly hired safety and hygiene professionals stay in DOSH*</p> <p><small>*Baseline and target will be determined after the results of the 2016 collective bargaining negotiations over compensation, and legislative funding during the 2017 session are known. Data and methodology to measure this goal are already in place.</small></p>

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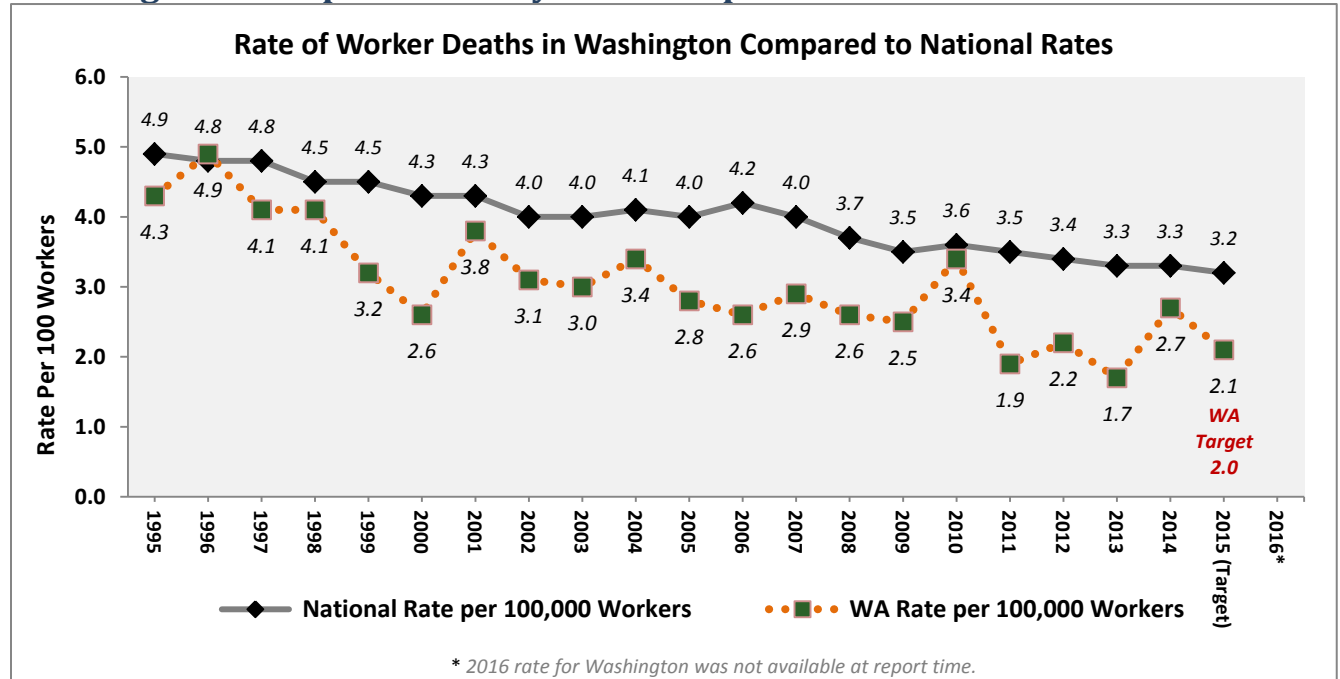
#### Mandated Activity Goals

<b>Goal B-1</b>	<b>Reduce deaths from work-related injuries in support of the 2020 goal of no more than 2.5 deaths per 100,000 full-time workers</b>
<b>Results:</b>	<b>On track to meet 2020 goal.</b> From January through November 2017, Washington experienced 67 work related fatalities.
<b>Comment</b>	Beginning with the 2015 reference year, final data from the Census of Fatal Occupational Injuries (CFOI) is released in December - four months earlier than in past years. The final 2016 CFOI data is scheduled for release on December 19, 2017.



**Data Source:** Washington's Fatality Assessment and Control Evaluation (FACE) system administered by L&I's Safety and Health Assessment and Research for Prevention (SHARP) program and annual CFOI Fatality Reports.

#### Washington Workplace Fatality Rate Compared to National Rate



**Data Source:** Census of Fatal Occupational Injuries (CFOI), Bureau of Labor Statistics, U.S. Department of Labor; and, Washington State Employment Security Report

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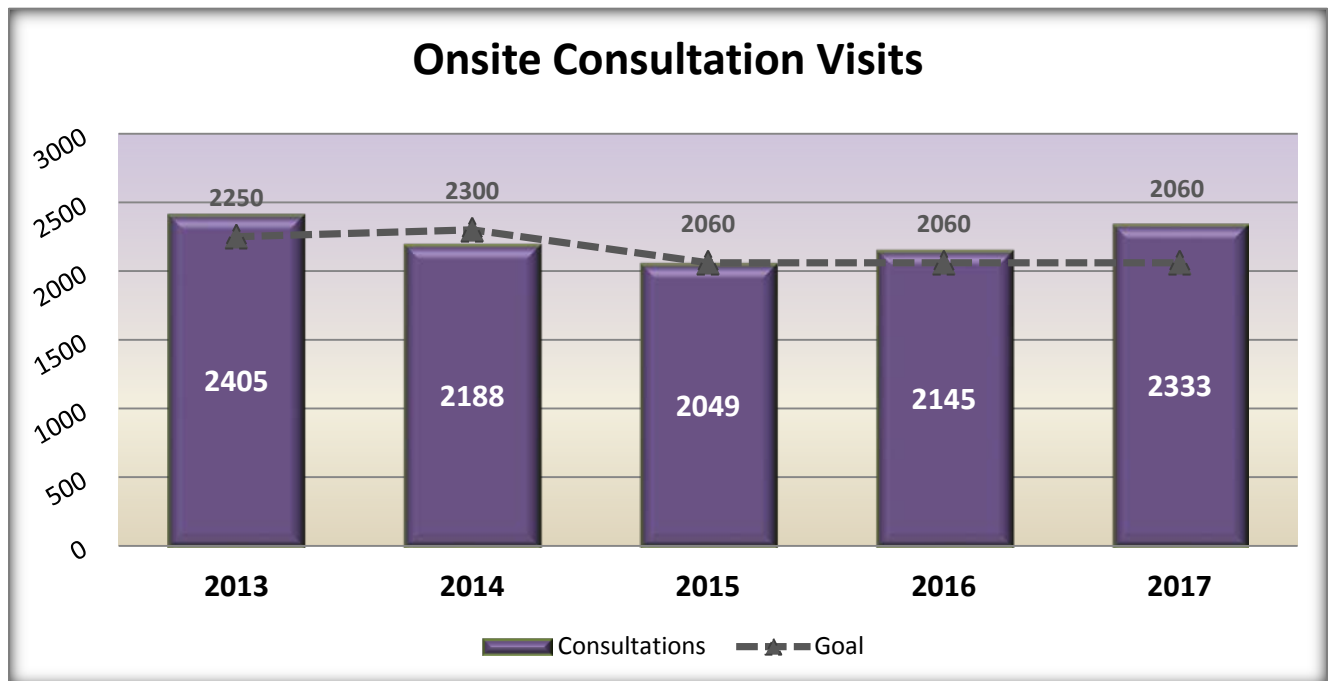
### FY 2017 Washington DOSH Comprehensive FAME Report

<b>Goal B-2</b>	<b>Conduct at least 2,060 onsite consultations.</b>									
<b>Results:</b>	<b>Qtr 1</b>		<b>Qtr 2</b>		<b>Qtr 3</b>		<b>Qtr 4</b>		<b>Final</b>	
	513	25%	536	26%	626	30%	658	32%	<b>2333</b>	<b>114%</b>
<b>Comment</b>	<b>Goal exceeded.</b> This is our highest number of Consultation visits conducted in the last four years. We conducted 273 more consultations than the goal.									

**Indicator:** Number of onsite consultation visits with a closing conference date in the current period.

Consultation activity reports prepared and distributed weekly.

**Data Source:** L&I Data Warehouse and WISHA Information Network (WIN)





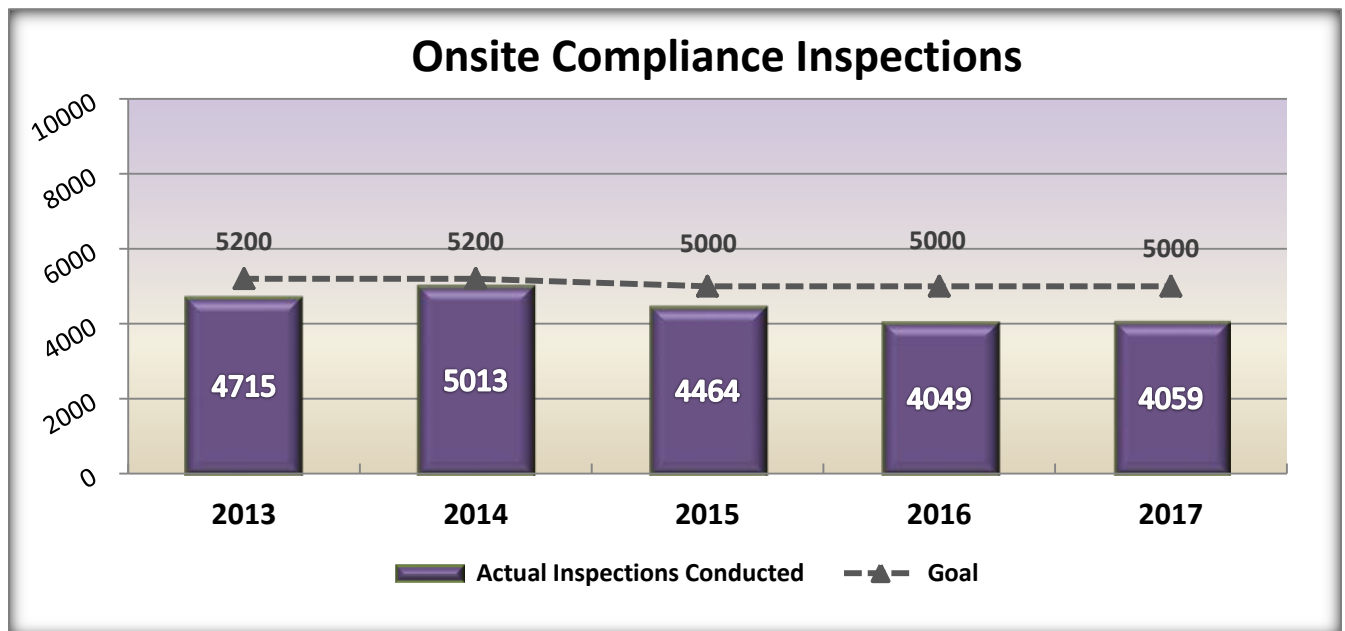
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<b>Goal B-3</b>	<b>Conduct at least 5,000 compliance inspections.</b>									
<b>Results:</b>	<b>Qtr 1</b>		<b>Qtr 2</b>		<b>Qtr 3</b>		<b>Qtr 4</b>		<b>Final</b>	
	1019	20.4%	1066	21.3%	975	19.5%	999	20%	4059	81.2%
<b>Comment</b>	<p><b>This goal was not met.</b> These results are due to the significant ongoing problems we're experiencing with retention and recruitment of qualified safety and health professionals. Key factors, all stemming from non-competitive state salary levels, are vacancies, limited experience, and workload. Staff who are experienced must divert part of their time to help train new staff. While we made some inroads on salary levels this year, it has not been enough to reverse the loss of seasoned professionals.</p>									

**Indicator:** Number of compliance inspections with a closing conference date in the current period. Compliance activity reports prepared and distributed weekly.

**Data Source:** WISHA Information Network (WIN) Performance Report



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Goal B-4	Ensure that 100% of serious hazards are corrected and that 95% are verified by Consultants within 14 days of the abatement date.									
Results:										
	Qtr 1		Qtr 2		Qtr 3		Qtr 4		Final	
	1251/1290	97%	1238/1266	98%	1556/1605	97%	1453/1501	97%	5498/5662	97.1%
Comment										
	<b>Goal exceeded.</b> When DOSH assures the timely correction of serious hazards, Washington workers are exposed to significantly fewer hazards that can cause serious injuries, illnesses, or fatalities. Data is produced through the Data Warehouse, rather than the MARC report. This allows monitoring performance more frequently and accommodates the reduction in the measurement period from 30 days to 14 days. <b>Note that 100% of the serious hazards identified during consultation visits were verified as corrected, even though some verifications took longer than 14 days after the abatement due date.</b>									

**Indicator:** At least 95% of serious hazards with abatement due during the period have abatement verified as completed.

**Data Source:** WISHA Information Network (WIN) Performance Report.

	Consultation	
	# Serious Hazards Abated	% Timely w/in 14 days
<b>2017</b>	<b>5498 of 5662</b>	<b>97.1%</b>
2016	4903 of 5099	96.1%
2015	4724 of 4910	96.2%
2014	5,666 of 5,874	96.5%
2013	6,014 of 6,174	97.4%

Goal B-5	Ensure that 100% of serious violations are corrected and that 95% are verified by Inspectors within 14 days of the abatement date.																													
Results:	<table><tr><th colspan="2">Qtr 1</th><th colspan="2">Qtr 2</th><th colspan="2">Qtr 3</th><th colspan="2">Qtr 4</th><th colspan="2">Final</th></tr><tr><td>593/638</td><td>93%</td><td>591/632</td><td>94%</td><td>609/665</td><td>92%</td><td>480/503</td><td>95%</td><td>2273/2438</td><td>93.2%</td></tr></table>										Qtr 1		Qtr 2		Qtr 3		Qtr 4		Final		593/638	93%	591/632	94%	609/665	92%	480/503	95%	2273/2438	93.2%
Qtr 1		Qtr 2		Qtr 3		Qtr 4		Final																						
593/638	93%	591/632	94%	609/665	92%	480/503	95%	2273/2438	93.2%																					
Comment	<p><b>Goal almost met.</b> On-going recruitment, retention and vacancy issues resulting in diminished numbers of fully trained and experienced CSHOs directly impacts our ability to meet this goal. Data is produced through the Data Warehouse instead of using the SAMM report. This allows us to monitor performance on a more frequent basis, and accommodates the reduction in the measurement period from 35 days to 14 days. <b>Note that 100% of the serious violations identified during inspections were verified as corrected, even though some verifications took longer than 14 days after the abatement due date.</b></p>																													

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

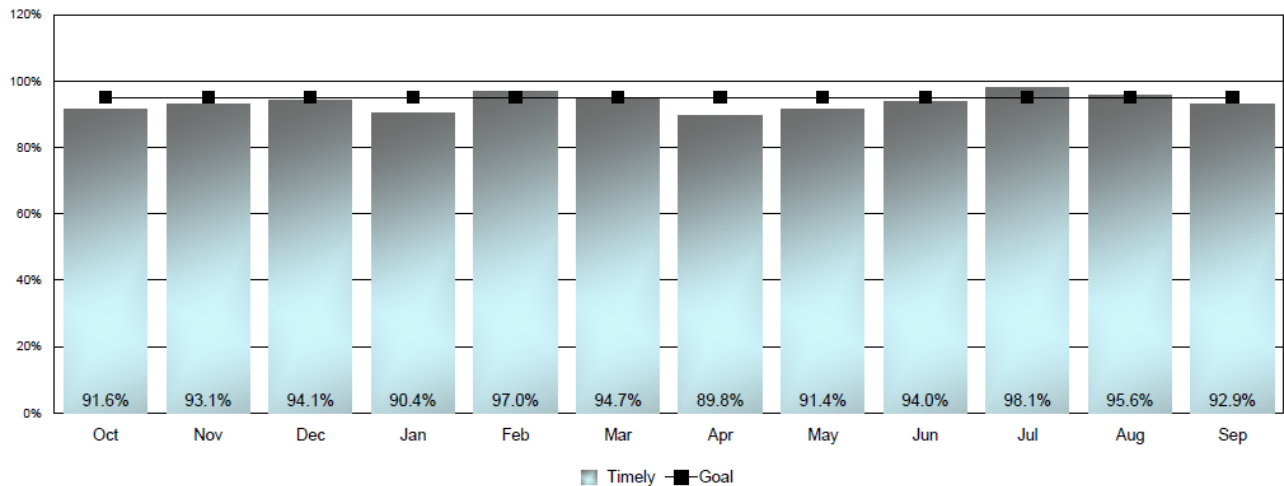
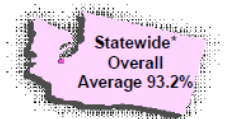
### FY 2017 Washington DOSH Comprehensive FAME Report

**Indicator:** At least 95% of serious violations with abatement due during the period have abatement verified as completed.

**Data Source:** L&I Data Warehouse and WISHA Information Network (WIN).

	Compliance	
	# Violations Abated	% Timely w/in 14 days
<b>2017</b>	<b>2273 of 2438</b>	<b>93.2%</b>
2016	2,017 of 2,188	92.2%
2015	3,177 of 3,508	90.6%
2014	2,730 of 2,848	95.8%
2013	3,611 of 3,737	96.6%

### Department of Labor & Industries, DOSH Division Statewide Violation Abatement Timeliness Performance, FFY 2017 Monthly Goal: 95.0%



Includes all violation types where abatement due date is within the period, violation is employer abated and inspection is currently not on appeal, Timely <= 14 days, Untimely > 14 days

		Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Total
Health	Timely	100	132	83	116	90	118	78	152	103	62	96	86	1,216
	Untimely	16	4	5	16	0	4	12	15	6	1	0	8	87
	Total	116	136	88	132	90	122	90	167	109	63	96	94	1,303
	Percent	86.2%	97.1%	94.3%	87.9%	100.0%	96.7%	86.7%	91.0%	94.5%	98.4%	100.0%	91.5%	93.3%
Safety	Timely	86	99	93	119	71	77	115	93	68	90	76	70	1,057
	Untimely	1	13	6	9	5	7	10	8	5	2	8	4	78
	Total	87	112	99	128	76	84	125	101	73	92	84	74	1,135
	Percent	98.9%	88.4%	93.9%	93.0%	93.4%	91.7%	92.0%	92.1%	93.2%	97.8%	90.5%	94.6%	93.1%

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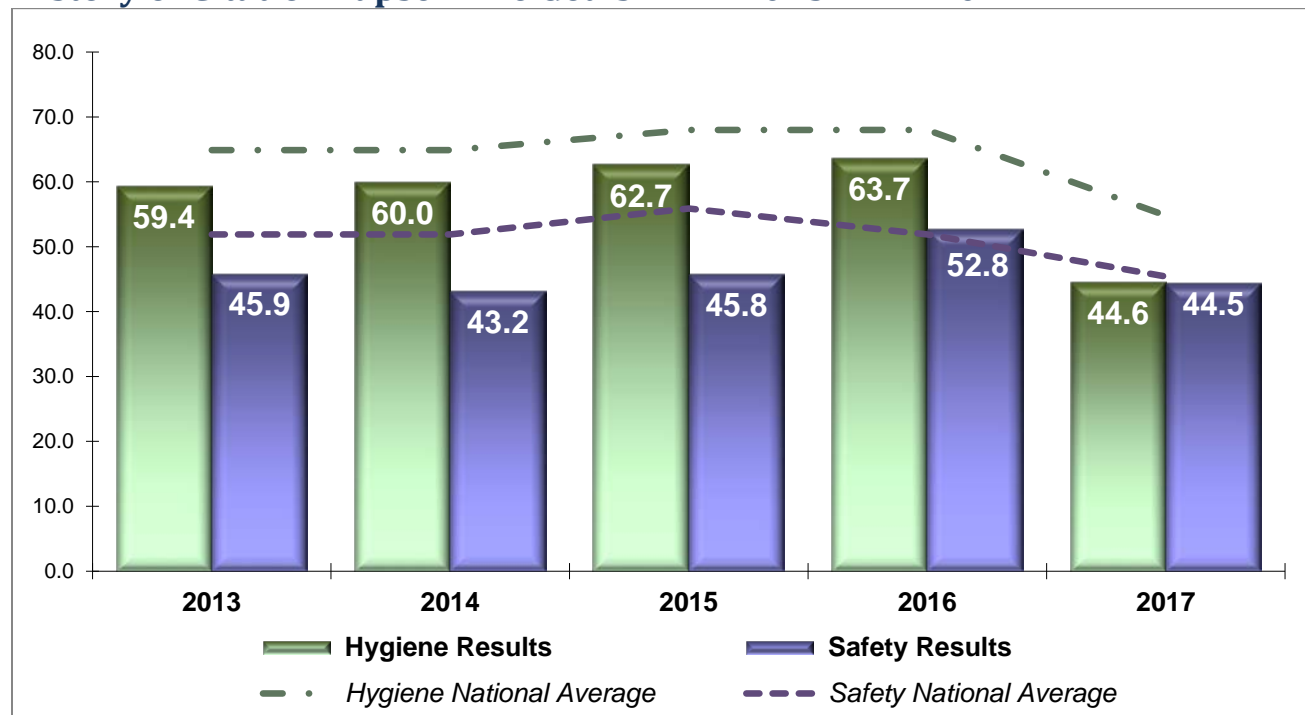
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Goal B-6	Maintain hygiene citation lapse time at or below the current national average of 54.8 calendar days (for citations with violations, from opening conference to issuance date).										
Goal B-7	Maintain safety citation lapse time at or below the current national average of 45.4 calendar days (for citations with violations, from opening conference to issuance date).										
B-6Results:	<table><tr><td>Qtr 1</td><td>Qtr 2</td><td>Qtr 3</td><td>Qtr 4</td><td>Final</td></tr><tr><td>40.3</td><td>47.65</td><td>44.1</td><td>47.0</td><td>44.6</td></tr></table>	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Final	40.3	47.65	44.1	47.0	44.6
Qtr 1	Qtr 2	Qtr 3	Qtr 4	Final							
40.3	47.65	44.1	47.0	44.6							
B-7 Results:	<table><tr><td>Qtr 1</td><td>Qtr 2</td><td>Qtr 3</td><td>Qtr 4</td><td>Final</td></tr><tr><td>46.2</td><td>45.4</td><td>41.3</td><td>44.6</td><td>44.5</td></tr></table>	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Final	46.2	45.4	41.3	44.6	44.5
Qtr 1	Qtr 2	Qtr 3	Qtr 4	Final							
46.2	45.4	41.3	44.6	44.5							
Comment	Both of these goals were met.										

**Indicator:** Average number of days between opening conference date and citation issuance date for all hygiene/safety citations with violations issued during the period.

**Data Source:** Quarterly & year-end SAMM reports from OIS. Current national average taken from fiscal year-end SAMM.

### History of Citation Lapse Time Goals – FFY 2013 – FFY 2017



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### Special Accomplishments

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#### **Adoption of Cell Tower Rules**

Cell tower climbers and telecommunication workers in Washington will have greater protection from safety and health hazards under new rules adopted this month. Washington joins North Carolina and Michigan to become the third state in the nation to adopt rules that encompass emerging telecommunication technology (Chapter 296-32 WAC). This is the final step in a multi-year effort to update the state's 40-year-old telecommunication rules to include new safety and health standards for communication tower workers. The new rules take effect January 1, 2018. DOSH worked closely with industry stakeholders including communication tower owners, subcontractors, labor and safety representatives, and companies that sell telecommunication services.

The most significant rule change is the new wireless section, which covers radio-frequency hazards (non-ionizing radiation). Non-ionizing radiation can pose a considerable health risk to workers if not properly controlled. The rules also contain current and revised requirements covering the expected hazards of this work, which includes host employer/contractor responsibilities, microwave/laser technology, control of hazardous energy, working during hours of darkness, fall protection, remote cell tower sites, and emergency response and rescue. For the latest rulemaking activity, and to obtain copies of proposed rules that have been filed or final rules, visit our website at: <http://www.lni.wa.gov/Safety/Rules/WhatsNew/default.asp>

#### **OSCAR Awarded to DOSH by OSHA**

In May 2017, DOSH was awarded an On-site Consultation Achievement Recognition (OSCAR) from OSHA for "Improving Safety in the Agriculture Industry." The OSCAR was awarded for our significant contribution to promote safe and healthful workplaces in the small business agriculture community including extensive outreach to the dairy industry. DOSH took a comprehensive approach in addressing one of the most hazardous industries. A WISHA-10 Agriculture Train-the-Trainer program in English and Spanish was developed and implemented; an Agriculture Safety Forum was established; and, an Agriculture Safety Pocket Guide in English and Spanish was developed and distributed. The pocket guide is a compact ring-bound booklet printed on water-resistant paper. Farmworkers in Washington are safer thanks to DOSH's efforts to build relationships and reach out to agricultural employers and workers. Assistant Director Anne Soiza and DOSH Statewide Consultation Manager Lou Flores received the award in person at the annual OSHCON meeting in Little Rock, Arkansas. Ms. Soiza said that Washington employers and workers were enthusiastic about the pocket guide and the



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WISHA 10 training certifications, and that it is doubly gratifying  
to be recognized by our peers around the country.

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#### **Keystone Leadership Program and DOSH Challenge Coin Recognition**

In December 2016, our second group of 20 managers and supervisors graduated from our Keystone Leadership program which started with the first group of 19 participants in February 2016. The course included three 3-day modules and two individual coaching sessions with a highly accomplished, world class instructor who is based in Olympia, Washington. Graduates of the program received a Keystone Leader challenge coin recognizing their achievement. It was the first in a series of coins we've designed as part of a DOSH recognition program.

Overwhelmingly, Keystone graduates indicated the course will help them manage the challenges related to retention. All 39 of the graduates participated in 360-degree evaluations to get feedback from their bosses, staff and colleagues to further assist them in their career development. Having growth and development opportunities is consistently ranked high as a job satisfaction ingredient in our annual employee surveys.



During FFY 2017, new DOSH compliance officers graduating in December 2016 from our New Hire course received the first Protecting Workers challenge coins in recognition of their hard work, dedication to our mission, and status as new CSHOs. The next New Hire class that graduated in June 2017 also received the coins. So far in FFY 2018, a New Hire class that graduated in December 2017 became the third class to be awarded the coins during their graduation ceremony. The training includes more than 250 hours of classroom instruction which is followed by many more hours of on-the-ground training. This coin is the 2<sup>nd</sup> DOSH Challenge Coin to be issued as part of our new recognition program. The vendor we are working with to design and make the coins is a small local veteran-owned business ([Coinforce.com](http://Coinforce.com)).





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#### Significant Inspections

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##### **Major asbestos violations result in \$87,000 in fines for Kirkland employer**

A Kirkland asbestos removal contractor was cited in October 2016 for several workplace health violations that put workers, contractors and homeowners at risk. DOSH cited America Disaster Services (ADS) a total of eight willful, serious and general violations for exposing workers and others to cancer-causing asbestos during renovation work at several Seattle area jobsites. Penalties totaled \$87,000. In addition to the penalties, we took away ADS's certification to do asbestos removal work. Our agency's public safety division suspended the company's contractor registration at the same time, so they can no longer legally work in construction or asbestos abatement in the state. An investigation found that the contractor had left a massive amount of asbestos on the basement floor of one Seattle home and told the homeowner he was finished, got paid and left the site. Anyone performing additional work on the floor, or prepping the area for new flooring could have been unknowingly exposed to very high levels of asbestos. ADS was cited for one willful-serious violation for not ensuring that all asbestos material was removed from three rooms of the basement of the Seattle residence. We cited the company for a second willful-serious violation for failure to do personal air-sample monitoring during asbestos removal work at several different job sites. ADS was cited for two willful-general violations for not notifying us of upcoming asbestos-removal work and for not filing accurate notices of intent to remove asbestos on three projects. Four serious violations were cited for additional violations of asbestos regulations. ADS was identified as a severe violator and placed on the SVEP list.

##### **Dollar Tree store cited for willfully exposing workers to safety hazards**

In November 2016 we cited Dollar Tree Stores, a Virginia based company for two willful violations and a repeat-serious violation with total penalties of \$145,200. Our most recent inspection of the company at their Aberdeen store found serious repeat safety violations. The employer was previously cited for the same hazards at its Chehalis location. The first willful violation was for storing merchandise in a way that created a serious hazard. The inspection found the storage room was a crowded jumble of stacked boxes, bundles and containers that weren't secured and could topple over at any moment. The haphazard stacks stood as high as nine feet, with heavy boxes piled on top of light ones. Some were leaning due to collapsed boxes or crushed corners. The second willful violation cited was for not ensuring that exit routes were free of obstructions. At the time of the inspection, several aisles and passageways were blocked with merchandise. Employees did not have clear paths to emergency exits, and a doorway with two swinging doors couldn't be accessed because it was obstructed by stacks of merchandise or carts full of products. In addition, there were hazardous products stored in the area, including helium cylinders that are explosive when heated, lighters, and plastic merchandise that would emit toxic fumes in a fire, increasing the danger to employees. Dollar Tree was cited for a repeat-serious violation for not installing protective guarding or covers over light fixtures that could be struck and broken by the stacked merchandise.



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#### **Puyallup construction company fined more than \$200,000 for repeated safety violations**

In February 2017, DOSH cited J&I Construction for 13 violations at a residential construction site in Olympia, including several that were classified as willful and repeat-serious. The citation included penalties totaling \$203,420. Three willful violations, each with a penalty of \$42,000, were for not providing proper fall protection to three employees who were working on the top edge of a wall nearly 20 feet off the ground. The employer was previously cited two other times for the same issue. They were also cited for three repeat-serious violations for not having a fall protection plan, exposing workers to unguarded wall openings, and for not ensuring that workers did not stand or step on the top of a self-supporting ladder. Each violation carries a penalty of \$21,000. The company was cited for two additional repeat-serious violations for not having railings on open-sided stairs to protect employees from falls (\$5,600) and for not ensuring that employees wore hard hats where there was a danger of flying or falling objects (\$4,200). They were also cited for a serious violation for not having safety springs on nail guns to protect against accidental discharges (\$2,800). The employer was cited for a third-time repeat-general violation with a \$700 penalty for not conducting walk-around safety inspections, and a fourth-time repeat-general violation with a \$1,120 penalty because no one onsite had a valid first-aid card. As a result of the willful and repeat-serious violations, J&I Construction was placed on the SVEP list.

#### **Spokane business fined more than \$150,000 for exposing employees to ammonia leaks**

Lack of emergency planning for ammonia leaks put workers at Johanna Beverage Company of Spokane in harm's way three times in the past year. As a result, the Department of Labor & Industries (L&I) fined the business \$154,000 for multiple willful, serious and general workplace safety violations in March 2017. In each of the incidents, when the leaks occurred, employees were unsure what to do, which way to run to escape the corrosive vapors and how to call for emergency help. In one situation in August 2016, panicked employees ran downwind of the leak into the vapor cloud. Eight employees were exposed and one was hospitalized. DOSH cited the employer for two willful violations, each with the maximum legal penalty of \$70,000, and two serious violations, each with the maximum \$7,000 penalty. One willful violation was for not developing a comprehensive written emergency response plan on what to do in the event of an ammonia leak. After the disorganized response to the first leak in December 2015, the local fire department advised the company to call 9-1-1 sooner and to prepare a detailed employee emergency evacuation plan. However, months later there were two more ammonia leaks, also with disorganized evacuations, poor communication and miscommunication with the fire department. The second willful violation was cited for not providing employees with emergency response training that specifically addressed what to do during an ammonia leak. That citation was also for not designating and training specific employees to assist in a safe and orderly evacuation. One of the serious violations was for not providing an ammonia alarm system to alert employees when they needed to evacuate the work area. The second serious violation was for not ensuring that voluntary use of respirators was done safely. During a

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hazardous situation, improper use of a respirator can result in a serious injury or even death.

#### **Construction companies cited for power line incident that severely injured workers**

In April 2017 we cited three King County contractors after a crane boom made contact with high-voltage power lines at a construction site in Seattle. Two workers were severely injured during the incident when approximately 14 kilovolts traveled down the crane's hoist line to the men working below the power lines. Marpac Construction of Seattle was cited for six safety violations including three willful and fined \$133,500. A subcontractor, Spartan Concrete of Kirkland, was cited for five violations including two willful and \$90,000 in fines. Shaffer Crane & Equipment, another subcontractor, was cited for three serious and one general violation with a total fine of \$5,700. The investigation began last September when news outlets reported that two workers had been taken to Harborview Medical Center after suffering severe electrical burns. DOSH inspectors found that a mobile crane and a forklift with a crane-boom attachment had been operating under live high-voltage power lines. The power lines were scheduled to be moved underground, but rather than wait for that work to be done, the companies continued to work under them. A Shaffer Crane employee was operating the crane and a Spartan foreman was giving signals when the incident happened. Seven workers were put at risk by being exposed to the potentially deadly electrical shock. The danger from a crane contacting overhead power lines is well-known.

From 1999-2012, there were nine deaths in Washington from crane contacts with power lines, including a double fatality in 2010. In 2012, we issued an alert to warn companies of the deadly hazard after receiving reports of six power line contacts by cranes over six months. The willful violations were for not ensuring that protective measures were in place and for not prohibiting work below energized power lines. Marpac was cited for an additional willful violation for not designating a qualified lift director who was aware of the voltages of the power line and the safety requirements for working around them. The investigation found that Marpac's lift director was not aware of the voltages involved or the specific safety requirements. Marpac was also cited for three serious violations related to inadequate training and for not ensuring an effective accident prevention plan, with penalties totaling \$7,500. The investigation found that Spartan's employees were not trained or aware of the danger of working under power lines. The concrete company was cited for two serious safety violations and fined \$6,000 for not ensuring that employees clearly understood the hazards of overhead power lines and for lack of training and supervision. Spartan was also cited for one general violation for not holding and documenting walk-around safety inspections at the beginning of the job and weekly. As a result of the violations and the severity of the injuries, both Marpac Construction and Spartan Concrete were identified as severe violators and placed on the SVEP list.

#### **Mukilteo company fined \$887,140 for exposing roofers to fall hazards**

Between October 1, 2016 and September 30, 2017, America 1<sup>st</sup> Roofing & Builders was issued citations for seven inspections for a total of \$887,140.00 in fines for workplace safety and health violations. The company has over a 20 year history of DOSH inspections. Over the years,

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this company has gone by the names “TPS” and “America 1<sup>st</sup>” with the same type of history of safety violations. In the few years they expanded their business to include siding work which has added scaffolding violations to the list of safety and health violations. They have been issued a total of 13 willful violations for these seven inspections, along with 2 willful general violations, 1 repeat serious, 3 serious, and 2 repeat general. Six of these inspections are currently on appeal. The seventh citation is currently in undeliverable status. The fines for the inspections on appeal total \$698,540, with the undeliverable citation totaling \$188,600.

In April 2017 America 1st Roofing & Builders was cited for 21 safety violations found during four separate inspections. The company exposed workers to potential falls from elevations exceeding 30 feet, and other hazards at job sites in Issaquah and Vancouver. During the inspections, DOSH discovered eight violations related to fall protection equipment and work plans. Based on the company's history and prior knowledge of the hazards and regulations, these violations were cited as willful, each with a penalty of \$66,000. A ninth violation was also cited as willful with the maximum legal penalty of \$70,000 after an inspector found an employee working unprotected on a rooftop 32 feet off the ground. The inspections began in August 2016, when a DOSH inspector saw a worker on the roof of a three-story home under construction. America 1st has been cited for repeat-serious violations of fall protection rules at least six times in the last three years. Along with the fall protection violations, America 1st was cited for unsafe ladder use; not ensuring walk-around safety inspections at the beginning of each job and weekly; not requiring hard hats when working under overhead hazards; scaffold safety; not having an accident prevention program; and for not having someone with first-aid training at the worksite.

### **Settlement with Aerospace company related to explosion that injured 17 workers**

At the end of June 2017 we reached a settlement agreement with a Spokane-area aerospace company that will continue to be listed as a severe violator as part of a settlement agreement over safety and health violations at the company's Newport, Washington, plant. Seventeen workers were injured in an explosion at the Zodiac Cabin & Structures Support LLC plant in July 2015. Our investigation was completed in January 2016, resulting in 17 willful violations, one for each worker who was injured and hospitalized. The company was also cited for 21 serious violations. Zodiac appealed the citation.

While the appeal was pending, the employer and DOSH agreed to mediation and reached a settlement. Zodiac was required to fix all serious hazards in the facility and that work has been completed. The final willful violation affirms that the company used defective equipment and didn't ensure safe procedures were used when processing flammable materials in its industrial curing oven, as advised in a consulting engineer's report. This directly led to the explosion. Along with upholding the severity level of each violation, the settlement required Zodiac to pay a final penalty of \$500,000 related to one willful violation affecting 17 workers, and the serious violations. The company was originally fined more than \$1.3 million.

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#### **Fatal fall investigation results in citation and fine for Aberdeen lumber mill**

In September 2017 we cited Sierra Pacific Industries, an Aberdeen, Washington lumber mill with penalties totaling \$112,000 for safety violations following the death of a worker in April. The worker died when he fell from an elevated platform where he was working, to the concrete surface below. During the investigation we discovered that a section of permanent yellow guardrail was removed from the 17½ foot-high platform and replaced with yellow caution tape so that a crane could move some equipment. When the worker went to the edge of the platform to communicate with the crane operator below, he leaned forward and fell. The investigation found that the employer knew that caution tape can't be used in place of guardrails at a high elevation, but still regularly allowed it to happen. Additionally, the employer did not provide workers with a fall protection system such as a harness, lanyard and tie-off point while working on the elevated platform that lacked adequate guardrails.

As a result, Sierra Pacific was cited for a willful violation with the maximum penalty of \$70,000 for not ensuring that an open-sided work platform was adequately guarded and for not ensuring employees wore fall protection equipment. We also cited the employer for six serious violations, each with the maximum penalty of \$7,000. Those violations covered a range of serious hazards that exposed workers to harm, including ineffective safety and health training; a safety program that wasn't tailored to company operations; inadequate personal protective equipment training; untrained crane personnel; and, not following safety precautions required for open flame work. Because the willful violation led to the death of a worker, Sierra Pacific Industries has been placed on the severe violator list and will be subject to follow-up inspections to determine if the conditions still exist in the future. The company has appealed the violations.

#### **Notable Decisions on Appealed Cases**

##### *Cascade Structural Solutions / 317936417 / 15W1136 (BIIA Dec):*

This was a citation to a roofing company for violations of fall protection rules. The employer argued that it was not an employer under the Act, because all of the "employees" were "owners in the company. The Board of Industrial Insurance Appeals had a prior decision in which it stated that in order to determine whether employees are owners; it will look to several factors such as decision-making authority, ability to enter contracts, etc. In this case, the Board expanded its prior decision finding that the burden was on the employer, not the Department, to establish that the workers were owners and not employees.

##### *Ever-Green / 317607489 and Arborists of Washington Inc. / 317614733 (BIIA Dec):*

These cases involved a fatality when a worker fell from a tree he was in the process of cutting down. At the time of inspection, the Department was advised Ever-Green was the Employer. A few days later Ever-Green claimed Arborists of Washington, Inc. was the employer. The Department cited both companies, which included a repeat violation issued to The Tree Expert, Inc., a prior company that was owned by the Ever-Green owner. The Board of Industrial

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Insurance Appeals determined the companies were joint employers and affirmed all violations. Ever-Green appealed to Superior Court; Arborists of Washington did not.

*Afoa v. Port of Seattle, 198 Wn. App.206; 393 P.3d 802 (2017):*

This was a tort case at the Court of Appeals that upheld a jury verdict finding that the Port of Seattle retained sufficient control to be liable as a jobsite owner under WISHA. It held that the Federal Aviation Act does not preempt WISHA at the airport. In addition, it held that the Port may not allocate fault to other negligent companies.

## Safe Workplace Initiatives

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### Unified Fall Protection

The department hosted six stakeholder meetings across the state during the summer of 2017 to discuss creating a unified set of fall protection requirements for employers in Washington State. The general response from over 300 stakeholders who attended these meetings was positive and encouraging. We believe that making it easier for employers to find and follow the safety rules will help further reduce fall related injuries and fatalities. In 2015 Washington had the third lowest overall fatality rate in the nation and the lowest rate for Construction. We plan to roll OSHA's walking-working surfaces and fall protection updates and a recent "not at least as effective as" (NALAE) finding into this project.

### Updated Safety Standards for Telecommunications, WAC 296-32

Washington State took a significant step towards giving cell tower climbers and telecommunications workers greater protection from safety and health hazards by updating our 40-year-old telecommunication rules to include new safety and health standards for communication tower workers. The new rules take effect January 1, 2018. DOSH staff worked closely with industry stakeholders including communication tower owners, subcontractors, labor and safety representatives, and companies that sell the telecommunication services. The most significant change is the new wireless section, which covers radio-frequency hazards (non-ionizing radiation). These rules also include requirements related to host employer/contractor responsibilities, microwave/laser technology, control of hazardous energy, working during hours of darkness, fall protection, remote cell tower sites, and emergency response and rescue.

### Process Safety Management for Refineries

The department officially started rulemaking in the fall of 2017 to write the first update to our Process Safety Management requirements for refineries since 1992 when they were first enacted. Current plans include releasing a rule draft by the end of 2017 and then working with industry and labor professionals over the next several quarters to improve the draft prior to adoption. The momentum to update the rule began building after the department formed the Process Safety Management Advisory Committee three years ago. The PSM Advisory Committee meetings led to the formation of a rule review committee comprised of industry

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and labor professionals who collaborated with the department to review all the current  
standards to find areas to update.

### **Updated Occupational Safety and Health Standards for Lead (General Industry and Construction)**

DOSH officially started rulemaking to update the occupational safety and health standards for Lead in April 2016 and released a discussion draft in June of 2017. This discussion draft is the first attempt at making substantial changes to the lead rule in over 25 years. Following several stakeholder meetings over the summer of 2017, DOSH staff are currently updating this discussion draft to reflect numerous comments received from business, labor and public health advocates. An updated draft will be available to stakeholders in early 2018 with additional stakeholder meetings to follow.

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#### **Citation Appeals Process**

DOSH proposed legislation in 2017 that extends the time the Department can use to reassume an appeal. Currently law allows the Department 30 working days to issue a corrective notice of redetermination, which can be extended an additional 15 working days upon the agreement of the parties. Effective, January 1, 2018, the new law allows the Department to extend an additional 45 working days upon agreement of the parties instead of the additional 15. This new law will allow Department's reassumptions hearings officers (RHOs) additional time as needed to work on complex cases, settlement negotiations and agreements.

In addition, Washington State updated its rules to allow electronic filing of an appeal. This rule also goes into effect on January 1, 2018.

#### **Digital Education Programs**

2017 was a big transition year for us. We are putting significant effort into a developing a digital/social media presence. We spent the year researching and strategizing exactly what that meant and how we were going to accomplish it. This is what we have accomplished as we charge forward and further into the digital/social media world:

- We have created a Digital/Social Media Marketing team that includes an L&I executive level communications representative; attended comprehensive social media marketing classes; and, have started in earnest to build a digital/social media marketing strategy.
- We have gathered multimedia assets for messaging content (photo, video and audio stock subscriptions, original video footage, original animation, still photography).
- We have constructed a dedicated green-room in partnership with L&I's Communication Services that will allow for high quality studio video and audio
- We have developed a concise "60 Seconds for Safety" campaign that highlights incidents that could have been prevented. These are fast-moving, engaging videos with a call to action that we will publish to YouTube, Facebook, and other strategic platforms in the future.

#### **Outreach Cooperative Programs**

The Governor's Conference events saw increased participation across the board.

- The Agriculture Safety Day was expanded to two locations, which made it easier for local agriculture employers to get their workers to the events. Attendance grew by 108 attendees with an overall increase of 19%.
- The renewal of Maritime Safety Day drew a 100% participation increase from the last time it was held in 2010, with 81 attendees and 12 exhibitors.
- Construction Safety Day and the Governor's Industrial Safety and Health Conference saw attendance increases as well. Construction Safety Day was moved to a Friday and attendance increased to 265 attendees. The annual Governor's Industrial Safety and Health Conference was held in Tacoma with 1446 attendees.



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#### **SHIP Grant Program**

Currently, 19 Safety and Health Investment Project (SHIP) grants are funded. They include:

- The Washington Retail Association released a SAFE ME app for young retail workers. The user-friendly app offers safety lessons, videos and hazard identification for a variety of occupations where teens and young workers often find jobs, including retail and restaurants. The popular app has received national attention having been downloaded in 49 of 50 states to date. Statistics show that young workers are more likely to be injured on the job than adults, especially when they are new to the working world.
- John Shervey Associates and Shuchart Construction released WA-HSEQ that functions as an app for Good Observation, Near-Miss and Accident Reporting. Employers can use the app to photograph a safe practice, a near miss or an accident and then use the finger drawing tool to mark-up the photo. A quick-report feature lets you save the photo, add a few details and send it others in your organization.
- Workplace violence in emergency departments.
- Best practices for mechanical crafts.
- Safety for special education para-professionals.
- The Fair Work Center developed safety and health awareness training for low-wage workers.
- Latino Educational Training Institute (LETI) will deliver OSHA-10 (enhanced to include more stringent DOSH regulations) in Spanish to Latino businesses and their employees.
- Washington Fire Chiefs are developing a RTW program for fire departments (not including volunteers).
- NICA's (Northwest Independent Contractors Association) finalized their Don't Hit the Grant video which addresses correct placement and installation of roofing anchors.
- Kent Fire Department finalized their grant publication, "Healthy In, Healthy Out," which outlines best practices to reduce fire fighters' exposure to carcinogens. It has been requested throughout the US, and Canada has asked to translate it into French.

#### **Hispanic Outreach Program**

##### *WISHA-10 for Agriculture – Workers:*

A WISHA-10 for Agriculture worker training course, conducted in English and Spanish, was held on January 30-31, 2017, in the Toyota Convention Center in the Tri-Cities. AgriNorthwest sponsored the course which involved the collaboration of five DOSH instructors and three certified WISHA-10 for Agriculture train-the-trainer instructors to teach AgriNorthwest agricultural workers. A total of 288 participants received WISHA-10 for Agriculture worker cards. To date, 349 WISHA-10 for Agriculture worker cards have been issued.

##### *WISHA 10 for Agriculture Train-the-Trainer (TOT):*

In 2017, two WISHA-10 for Agriculture train-the-trainer classes with 20 participants were held in Yakima and Kennewick. To date, a total of 34 WISHA-10 for Agriculture TOT cards have been issued. These courses are taught in collaboration of six DOSH staff.

Our next challenge is a strategy to support and motivate our certified trainers. We believe a co-training model and additional coaching may be necessary to transition new trainers into coordinating and conducting WISHA-10 for Agriculture courses independently.



## **Appendix E - FY 2017 State OSHA Annual Report (SOAR)**

### **FY 2017 Washington DOSH Comprehensive FAME Report**

#### **Voluntary Protection Program**

We currently have 32 Star sites which include the recent approval of two Cintas sites in Spokane Valley and Pasco. We will have seven onsite assessments by the end of the year:

- Two are initial certifications – Trident Seafoods, Everett; Honeywell Aerospace Seattle Service Center, Renton.
- Five are recertifications – Trident Seafoods, Anacortes; PSE Ferndale Generating Station, Ferndale; Cascades Sonoco, Tacoma; Weyerhaeuser Distribution Center, Tacoma; Veolia Environmental, Vancouver.